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Briefing on How To Use the Federal Register

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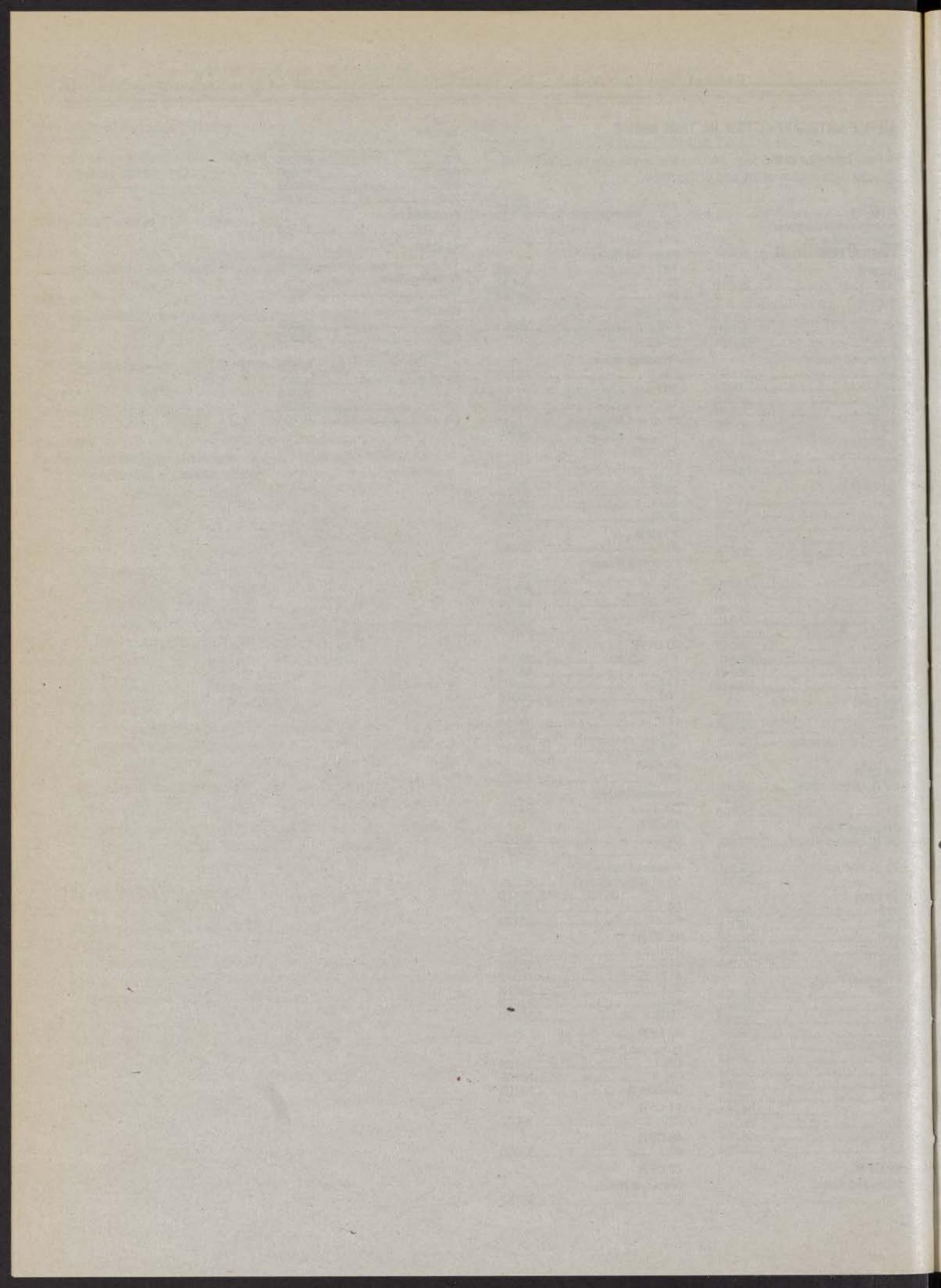
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The President

Expanding Family-Friendly Work Arrangements in the Executive Branch

Memorandum for the Heads of Executive Departments and Agencies

In order to recruit and retain a Federal work force that will provide the highest quality of service to the American people, the executive branch must implement flexible work arrangements to create a "family-friendly" workplace. Broad use of flexible work arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction, while decreasing turnover rates and absenteeism. I therefore adopt the National Performance Review's recommendation that a more family-friendly workplace be created by expanding opportunities for Federal workers to participate in flexible work arrangements, consistent with the mission of the executive branch to serve the public.

The head of each executive department or agency (hereafter collectively "agency" or "agencies") is hereby directed to establish a program to encourage and support the expansion of flexible family-friendly work arrangements, including: job sharing; career part-time employment; alternative work schedules; telecommuting and satellite work locations. Such a program shall include:

- (1) identifying agency positions that are suitable for flexible work arrangements;
- (2) adopting appropriate policies to increase the opportunities for employees in suitable positions to participate in such flexible work arrangements;
- (3) providing appropriate training and support necessary to implement flexible work arrangements; and
- (4) identifying barriers to implementing this directive and providing recommendations for addressing such barriers to the President's Management Council.

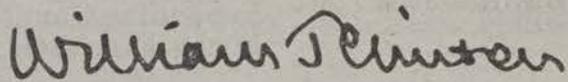
I direct the Director of the Office of Personnel Management ("OPM") and the Administrator of General Services ("GSA") to take all necessary steps to support and encourage the expanded implementation of flexible work arrangements. The OPM and GSA shall work in concert to promptly review and revise regulations that are barriers to such work arrangements and develop legislative proposals, as needed, to achieve the goals of this directive. The OPM and GSA also shall assist agencies, as requested, to implement this directive.

The President's Management Council, in conjunction with the Office of Management and Budget, shall ensure that any guidance necessary to implement the actions set forth in this directive is provided.

Independent agencies are requested to adhere to this directive to the extent permitted by law.

This directive is for the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this directive in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 11, 1994.

[FR Doc. 94-17409

Filed 7-13-94; 3:34 pm]

Billing code 3110-01-M

Rules and Regulations

Federal Register

Vol. 59, No. 135

Friday, July 15, 1994

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF82

Prevailing Rate Systems; Rockingham, New Hampshire, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the Rockingham, New Hampshire, Nonappropriated Fund (NAF) Federal Wage System wage area for paysetting purposes. After this change, a new wage area, York, Maine, will include the same three counties, with York County, Maine, designated as the survey area and Rockingham County, New Hampshire, and Windsor County, Vermont, designated as areas of application. With the closing of Pease Air Force Base, there are no longer enough NAF wage employees in Rockingham County to satisfy the requirements established by regulation for a survey county.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2848.

SUPPLEMENTARY INFORMATION: On March 23, 1994, OPM published an interim rule to redefine the Rockingham, New Hampshire, NAF wage area (59 FR 13641). The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on March 23, 1994 (59 FR 13641), is adopted as final without any changes.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94-17149 Filed 7-14-94; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 00-0599

Vending Stands To Be Operated by Licensed Blind Persons

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This action removes subpart F (§§ 1.91-1.94) from 7 CFR part 1. Subpart F of 7 CFR prescribes procedures governing the installation of vending stands operated by licensed blind persons on premises under the control of USDA in accordance with the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*). Subsequent to the promulgation of these regulations, the Randolph-Sheppard Act Amendments of 1974 were enacted, and pursuant to its authority thereunder the Department of Education issued Governmentwide implementing regulations at 34 CFR part 395, which supersede the USDA regulations. The removal of 7 CFR subpart F (§§ 1.91-1.94) will eliminate obsolete provisions, reduce duplication of material in the CFR, and allow USDA agencies to look to the Agriculture Property Management Regulations for the internal implementation of 34 CFR part 395.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Kiley, Realty Specialist, Real Property Management Division, Office of Operations, United States Department of Agriculture, room 1566,

South Building, 14th Street & Independence Avenue SW., Washington, DC 20250, telephone (202) 720-5001. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: USDA first published 7 CFR 1.91-1.94, to implement the provisions of the Randolph-Sheppard Act in USDA controlled facilities, at 22 FR 7169, September 7, 1957, and amended them at 28 FR 8117, August 8, 1963. These regulations were superseded when the Randolph-Sheppard Act Amendments of 1974, Public Law 93-651, November 21, 1974, designated the Rehabilitative Services Administration of the then Department of Health, Education, and Welfare as the principal agency for carrying out the Act. The function subsequently was transferred to the Department of Education, which issued 34 CFR part 395 to implement the provisions of the Act Governmentwide. USDA has determined that this action relates solely to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this action may be made effective less than 30 days after publication in the **Federal Register**. Further, since this action relates solely to internal agency management, it is not a significant regulatory action for the purposes of E.O. 12866. This action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

List of Subjects in 7 CFR Part 1

Administrative regulations, Vending stands.

For the reasons set forth in the preamble, Title 7, Part 1 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Part 1 is amended by removing Subpart F (§§ 1.91-1.94).

Signed at Washington, DC, on July 7, 1994.
Mike Espy,
 Secretary.
 [FR Doc. 94-17239 Filed 7-14-94; 8:45 am]
 BILLING CODE 3410-98-M

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the authority to administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, to conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program as authorized by the National Nutrition Monitoring and Related Research Act of 1990, and to conduct a program of nutrition education research.
EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT:
 Betty Ollila, Office of the General Counsel, United States Department of Agriculture, Room 2332, South Building, 14th Street and Independence Avenue SW., Washington, DC (202) 720-5824.

SUPPLEMENTARY INFORMATION: Public Law No. 103-211 requires that funds appropriated by Public Law No. 103-111 for the functions of the Human Nutrition Information Service be available only to the Agricultural Research Service. These amendments to the delegations of authority are necessary in order for the Agricultural Research Service to carry out the functions of the Human Nutrition Information Service. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment procedures of the Administrative Procedure Act, and this rule may be effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. This action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from its provisions. This rule is

also exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), and requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICES OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.15 is amended by revising the section heading and by removing and reserving paragraph (b) to read as follows:

§ 2.15 Assistant Secretary for Food and Consumer Services.

* * * * *

3. Section 2.30 is amended by adding a new paragraph (h) to read as follows:

§ 2.30 Assistant Secretary for Science and Education.

* * * * *

(h) *Related to national food and human nutrition research and information.* (1) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171-3175, 3177).

(2) The authority in paragraph (h)(1) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(3) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(4) Conduct a program of nutrition education research.

(5) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Public Law No. 101-445.

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

4. Section 2.92 is removed and reserved.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

5. Section 2.106 is amended by adding new paragraphs (a)(65) through (a)(69) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(65) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and
(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171-3175, 3177).

(66) The authority in paragraph (a)(65)(i) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management

procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(67) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(68) Conduct a program of nutrition education research.

(69) Provide staff support to the Assistant Secretary for Science and Education related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Public Law No. 101-445.

* * * * *

For Subparts C and L.

Dated: July 5, 1994.

Mike Espy,
Secretary of Agriculture.

For Subpart N.

R.D. Plowman,
Acting Assistant Secretary, Science and Education.

[FR Doc. 94-16757 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Marketing Service

7 CFR Part 929

[FV94-929-11FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the rules and regulations under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the marketing order completed in 1992. This rule will make the order's rules and regulations consistent with the current marketing order language.

DATES: Effective July 15, 1994; comments received by August 15, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Mark Hessel, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-3923.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601-674], hereinafter referred to as the "Act."

The Department 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 date of the entry of the ruling.

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

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

There are approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been

defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$3,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the order completed in 1992. This rule makes the order's rules and regulations consistent with current order language. These changes were unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 1, 1994, meeting.

In 1992, the cranberry marketing order was amended [57 FR 38748, August 27, 1992] to change, among other provisions, the volume control features of the order. Prior to the amendment, the order authorized a base quantity program in which each producer received a base quantity calculated by the Committee from a representative period in the order. Base quantity was annually distributed to existing producers and new producers based on a formula in the order. The 1992 order amendments authorized a volume control program to be based on the sales history of each producer. The Committee now calculates a sales history for each producer based on the average of sales for a specified period for each producer or, in the case of a new producer, sales history is based on a State's average yield per acre. Other order amendments were made to reflect current industry practices.

The first change revises section 929.107 which currently provides the basis for determining established cranberry acreage. The section is revised by deleting various terms, dates, and section references. The term "established" cranberry acreage and the reference to section 929.16 are no longer applicable since they were removed by the 1992 amendment. The reference to growing cranberries during a specified period of time (i.e., 1965-66 through 1967-68) and other similar date references are removed since producers are no longer required to produce during this period to have a commercial crop of cranberries. Other modifications are made in the section for clarity.

The second change deletes section 929.108 which provides for procedures to substantiate a firm and substantial commitment for use in determining base quantities. This section is no longer applicable since the order amendments authorize a sales history to be computed for every producer. New or existing

producers no longer have to show a firm and substantial commitment to receive base quantity.

The third change revises section 929.110 which provides for transfers or sales of cranberry acreage during the representative period. This section is revised by deleting the term "representative period." This term is no longer applicable since all reference to a representative period for computing base quantities was removed by the 1992 amendment. Producers must inform the Committee at any time when transfers or sales of acreage are made. Also, the term "base quantity" is deleted and replaced with the term "sales history." Other minor changes are made to the section to make it consistent with the order amendment.

The fourth change deletes section 929.148 which provides factors to be considered when assigning or adjusting base quantities for producers. This section is no longer applicable since the order amendment authorizes the computation of a sales history for each producer. These factors are not used when calculating sales history.

The fifth change revises section 929.150(a) which provides for the transfer or assignment of base quantities. This section is revised by deleting the term "base quantity" and replacing it with the term "sales history." The term base quantity is no longer applicable since the order amendment authorizes a sales history to be calculated for each producer.

The last change deletes section 929.153 which provides for the establishment and distribution of a base quantity reserve. This section is no longer applicable since the 1992 order amendment provides for a volume control program to be based on sales histories of producers. A producer's sales history is updated annually based on the highest four out of six years' sales. Therefore, a base quantity reserve is not necessary for updating producers' sales histories or for allowing entry of new growers.

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

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581-0103.

After consideration of all relevant material presented, including the Committee's recommendation, and

other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register* because: (1) The rules and regulations need to be consistent with the marketing order to allow the order to operate efficiently; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) this rule is administrative in nature and provides no new restriction on handlers; (4) cranberry handlers are aware of this rule and need no additional time to comply with its requirements; and (5) this rule provides a 30-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.107 is revised to read as follows:

§ 929.107 Basis for determining cranberry acreage.

(a) To be classified as cranberry acreage pursuant to section 929.48, all such acreage must be producing cranberries on a commercial basis or planted, in accordance with order provisions, so as to produce cranberries on a commercial basis. Commercial crop is synonymous with commercial basis and shall mean acreage that has a sufficient density of growing vines to show that such acreage can produce a commercial crop of at least 15 barrels per acre without replanting or renovation of any kind.

(b) So that the committee may properly identify cranberry acreage, the grower shall furnish, upon request, on forms furnished by the committee, information sufficient for the committee to establish that such grower is the grower for the acreage involved. It shall be the responsibility of the committee to determine by physical inspection or other means whether there is sufficient vine density as to qualify as "cranberry acreage" in accordance with paragraph (a) of this section. In making such determination, the committee shall be guided by standards of comparison between the potential bog and existing bogs in the same area.

(c) If the determination were that all or part of the acreage eligible under paragraph (a) of this section does not have sufficient vine coverage to produce 15 barrels per acre, that portion without sufficient vine coverage will not qualify as cranberry acreage under this section. In the event only a portion of an acreage has sufficient vine population and density to produce 15 barrels of cranberries per acre, such portion will qualify as cranberry acreage pursuant to this section. Since such qualified portion of the acreage would be eligible for a sales history, it must be definitely and permanently delineated.

(d) It shall be the responsibility of the grower to maintain adequate sales records to show actual sales from their cranberry acreage and submit such records to the committee separately from sales records pertaining to any other acreage. The report of sales must be filed by the grower no later than January 15 of the calendar year succeeding the crop year to which such sales pertain.

3. Section 929.108 is removed.

4. Section 929.110 is revised to read as follows:

§ 929.110 Transfers or sales of cranberry acreage.

(a) Sales or transfers of cranberry acreage shall be reported by the transferor and transferee to the committee, in writing, on forms provided by the committee. Completed forms shall be sent to the committee office not later than 30 days after the transaction has occurred.

(b) Upon transfer of all or a portion of a grower's acreage, the committee shall be provided with certain information on the forms it will provide to the parties. The transferor and transferee must provide the following information:

(1) Crop records for the acreage involved;

(2) Annual production and sales for each crop year on the acreage involved,

either in total, or for each individual parcel; and

(3) Such other information as the committee deems necessary.

(c) Cranberry acreage sold or transferred shall be recognized in connection with the issuance of sales history as follows:

(1) If a grower sells all of the acreage comprising the entity, all prior sales history shall accrue to the purchaser;

(2) If a grower sells only a portion of the acreage comprising the entity from which prior sales have been made, the purchaser and the seller must agree as to the amount of sales history attributed to each portion and shall provide, on a form provided by the committee, sufficient information so that sales are shown separately by crop year. However, the sales history attributed to each portion shall not exceed the total sales history, as determined by the committee, for such acreage at the time of transfer.

5. Section 929.148 is removed.

6. In § 929.150, the section heading and paragraph (a) are revised to read as follows:

§ 929.150 Transfer or assignment of sales history.

(a) If indebtedness is incurred with regard to the acreage to which the cranberries are attributed, and on which a sales history is established, the sales history holder may transfer or assign the sales history solely as security for the loan. During the existence of such indebtedness no further transfer or assignment of sales history by the sales history holder shall be recognized by the committee unless the lender agrees thereto: Provided, That a copy of such loan agreement or assignment shall be filed with the committee before any right expressed therein, with regard to the sales history, shall be recognized by the committee under this paragraph (a).

* * * * *

7. Section 929.153 is removed.

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-17240 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 94-008-2]

Brucellosis in Cattle; State and Area Classifications; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class B to Class A. We have determined that Texas meets the standards for Class A status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Texas.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4918.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the *Federal Register* on March 28, 1994 (59 FR 14359-14360, Docket No. 94-008-1), we amended the brucellosis regulations in 9 CFR part 78 by removing Texas from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before May 27, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 59 FR 14359-14360 on March 28, 1994.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-17247 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 92

[Docket No. 94-014-1]

Ports Designated for Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds. This action will add another port through which certain pet birds from Canada, certain pet birds that originated in the United States, and performing or theatrical birds may be offered for entry into the United States. We are also making several nonsubstantive changes to correct errors in the regulations concerning importation of birds.

DATES: This rule will be effective on September 13, 1994 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 15, 1994. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the *Federal Register* withdrawing this rule before the effective date.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 94-014-1. Submissions received 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 to inspect comments and notices are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tracey Butler, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767,

Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart A—Birds, §§ 92.100 through 92.107 of the regulations, regulates the importation of pet birds, commercial birds, zoological birds, research birds, and performing or theatrical birds into the United States.

This direct final rule will add the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds that are not required to be quarantined upon arrival at the port of entry. The Greater Cincinnati International Airport has no quarantine or holding facilities for birds. Under §§ 92.101(c)(1) and (c)(2) and 92.101(f) of the regulations, certain pet birds from Canada, certain U.S.-origin pet birds, and performing or theatrical birds are not required to be quarantined upon arrival at the port of entry, and so may be offered for entry at a limited port.

In the past, limited ports of entry for certain pet birds and performing or theatrical birds have been listed in § 92.203(d) of the regulations, which is part of Subpart B—Poultry. Limited ports were listed in § 92.203(d) because those ports were also designated as ports of entry for performing or theatrical poultry and certain other poultry and poultry products, such as poultry test specimens, hatching eggs, and day-old chicks, none of which require restraint or holding facilities.

There has been an increasing number of pet birds arriving at the Greater Cincinnati International Airport; there have not, however, been any poultry or poultry products offered for entry at the airport. For this reason, the Animal and Plant Health Inspection Service (APHIS) intends that the Greater Cincinnati International Airport be designated as a limited port of entry for certain birds only. Therefore, in this direct final rule, the list of limited ports in § 92.203(d) will be reproduced in § 92.102, "Ports designated for the importation of birds." The list will be part of a new paragraph that states that the ports listed in the paragraph are designated as ports of entry for pet birds imported under the provisions of § 92.101(c)(1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f). This new paragraph will serve only as a

means for APHIS to add the Greater Cincinnati International Airport as a limited port of entry for certain birds; its addition will have no substantive effect on any other provisions of the regulations.

Miscellaneous

This direct final rule will also make several corrections to the regulations.

Under § 92.101(c)(3), certain pet birds are required to be quarantined upon arrival at the port of entry. Section 92.103(c) states that these birds may be offered for entry at one of the ports listed in § 92.102(a), which are the special ports for pet birds. However, in § 92.101(c)(3)(ii), there are three references to such birds being offered for entry at a port of entry designated in §§ 92.102 or 92.203. This direct final rule will correct § 92.101(c)(3)(ii) by removing the three references to § 92.203 and, because we will be adding a second list of ports to § 92.102, changing the three references to that section to specify the special ports listed in § 92.102(a). We will also correct a misspelling in paragraph § 92.101(c)(3)(ii).

In a final rule published in the *Federal Register* on July 13, 1993 (58 FR 37642, Docket No. 92-103-2), we added Port Canaveral, FL, as a port of entry for pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products such as poultry test specimens, hatching eggs, and day-old chicks. As discussed above, such birds, poultry, and poultry products are not required to be quarantined at the port of entry. We stated in the July 1993 final rule that the port of entry at Port Canaveral, FL, has facilities only for those birds, poultry, and poultry products that do not appear to require restraint and holding facilities, so we added Port Canaveral, FL, to the list of limited ports in § 92.203(d). We also, however, mistakenly added Port Canaveral, FL, to the list of special ports in § 92.102(a), which are the special ports for pet birds that are required to be quarantined upon arrival at the port of entry. This direct final rule will correct that error by removing Port Canaveral, FL, from the list of special ports in § 92.102(a).

In § 92.105(b), the first sentence refers to the limited ports listed in § 92.203(d) when the reference should actually be to the special ports listed in § 92.102(a). The error dates back to 1980, before part 92 was reorganized into its present format, when the limited ports and the special ports were listed in the same section (the former § 92.3). The special ports were listed in § 92.3(e) until the publication of a final rule in the

February 22, 1980, *Federal Register* (45 FR 11796-11797) that redesignated § 92.3(e) as § 92.3(f) and added the list of limited ports as the new § 92.3(e). When paragraph (e) was redesignated, we inadvertently failed to reflect that change in § 92.8(c), which contained a reference to § 92.3(e). Not correcting that reference had the effect of changing the meaning of § 92.8(c) so that the paragraph stated that pet birds requiring quarantine at the port of entry must be presented for entry at ports that have no facilities for quarantine. The error was repeated when part 92 was reorganized into its present format by a final rule published in the *Federal Register* on August 2, 1990 (55 FR 31484-31562, Docket No. 90-023), and § 92.8(c) became § 92.105(b). This direct final rule will, therefore, correct the reference so the regulations in § 92.105(b) regain their intended meaning.

In § 92.106(a), this direct final rule will restore one sentence and delete another to correct an error that resulted from an earlier final rule. A final rule published in the *Federal Register* on January 6, 1982 (47 FR 591-596, Docket No. 81-071), directed the revision of the seventh and eighth sentences in § 92.106(a), but the sixth and seventh sentences were the ones actually revised in the regulations. As a result of that error, the sentence "The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine" was deleted and the sentence that begins "During the quarantine period, the importer shall * * *" was left in the text. The former sentence will be restored and the latter sentence deleted.

This direct final rule will amend §§ 92.101, 92.102, 92.105, and 92.106 in accordance with the procedures explained below. The amendments will add the Greater Cincinnati International Airport as a limited port, add a list of limited ports to § 92.102, and correct several errors in the regulations.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the *Federal Register* unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the *Federal Register*.

Adverse comments are comments that suggest the rule should not be adopted

or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the *Federal Register* withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document to this effect in the *Federal Register*, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This direct final rule will add the Greater Cincinnati International Airport in Covington, KY, as a limited port of entry for certain birds. The Greater Cincinnati International Airport has seen a steady increase in the number of international arrivals, especially from Europe. The airport is a hub for at least one major airline and receives flights from London, Zurich, Paris, Frankfurt, and Munich. The increase in international arrivals is expected to continue.

When a traveler with a pet bird arrives at the Greater Cincinnati International Airport without advance notice, APHIS inspectors at the airport must contact APHIS Veterinary Services (VS) personnel in Kentucky to arrange for an inspection. The traveler then must wait at the airport for an APHIS veterinarian to arrive. In order to streamline this process, the APHIS Area Veterinarian in Charge in Kentucky has requested that the Greater Cincinnati International Airport be designated as a limited port of entry for pet birds. Such a designation will enable travelers to contact APHIS in advance to schedule an inspection to coincide with their arrival, and APHIS/VS personnel will have the necessary forms and equipment on hand to conduct those inspections. This will allow a more orderly approach to the inspection of

pet birds arriving at the Greater Cincinnati International Airport from foreign countries.

We believe that designating the Greater Cincinnati International Airport as a limited port of entry for birds will have no economic impact on domestic or foreign consumers or producers, large or small, because the designation will not have any effect on commercial imports of birds. No additional cost is expected for APHIS because no new personnel will have to be hired, nor will any additional hours have to be worked by the APHIS/VS personnel already on staff who currently perform the required inspections for arriving pet birds without the benefit of prior notice.

The remaining changes contained in this document are administrative in nature and, therefore, will have no economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Amended]

2. Section 92.101 is amended as follows:

a. In paragraph (c)(3)(ii), in the second sentence, the words "as provided, in § 92.102 or 92.203" are removed and the words "in § 92.102(a)" are added in their place, and the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place.

b. In paragraph (c)(3)(ii), in the third sentence, the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place, and the word "Newberg" is removed and the word "Newburgh" is added in its place.

3. In § 92.102, paragraph (a) is revised as set forth below and a new paragraph (d) is added to read as follows:

§ 92.102 Ports designated for the importation of birds.

(a) *Special ports for pet birds.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) and performing or theatrical birds imported under the provisions of § 92.101(f): Los Angeles and San Ysidro, CA; Miami, FL; Honolulu, HI; New York, NY; and Hidalgo, TX.

(d) *Limited ports.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) (1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f): Anchorage and Fairbanks, AK; San Diego, CA; Denver, CO; Jacksonville, Port Canaveral, St. Petersburg-Clearwater, and Tampa, FL; Atlanta, GA; Chicago, IL; New Orleans, LA; Boston, MA; Baltimore, MD; Portland, ME; Minneapolis, MN; Great Falls, MT; Covington, KY (Greater Cincinnati International Airport); Portland, OR; San Juan, PR; Galveston and Houston, TX; and Seattle, Spokane, and Tacoma, WA.

§ 92.105 [Amended]

4. In § 92.105, paragraph (b), the reference "§ 92.203(d)" is removed and the reference "§ 92.102(a)" is added in its place.

§ 92.106 [Amended]

5. In § 92.106, paragraph (a), the eighth sentence, which reads "During the quarantine period, the importer shall comply with handling procedures (including inspection and testing) as provided in paragraph (c) of this section.", is removed.

6. In § 92.106, paragraph (a), a new sentence is added after the fifth sentence to read as follows: "The daily log and the identification record shall be maintained for 12 months following the

date of the release of the bird from quarantine".

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-17246 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 70, and 72

RIN 3150-AD85

Timeliness in Decommissioning of Materials Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require timely decontamination and decommissioning by nuclear material licensees. These amendments establish specific time periods for decommissioning unused portions of operating nuclear materials facilities and for decommissioning the entire site upon termination of operations. The rule is intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6230.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1990, the NRC implemented the Site Decommissioning Management Plan (SDMP) to identify and resolve

issues associated with the timely cleanup of a number of sites where buildings, soil, and ground water are contaminated. The SDMP contaminated sites are symptomatic of the need for definitive NRC regulations that specify acceptable time periods for decommissioning nuclear material facilities when licensed activities have ceased.

When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning.

The NRC published a proposed rule addressing timeliness of decommissioning for public comment in the *Federal Register* on January 13, 1993, (58 FR 4099). The public comment period for the proposed rule expired on March 29, 1993. The NRC is issuing this final rule to establish timeliness criteria for decommissioning nuclear materials facilities to avoid future problems resulting from delayed actions on the cleanup of contaminated inactive facilities and to avoid the occurrence of difficulties associated with a case-by-case approach to requiring timely decontamination and decommissioning.

II. Need for a Rule

The lack of definitive criteria as to when licensees should commence and complete decommissioning their facilities has resulted in instances where the NRC has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a generic issue, the NRC is amending its regulations to clearly delineate the licensee's responsibility for timely decommissioning.

In developing details of these requirements, the NRC considered whether to impose them on all licensees, or to limit the requirements only to those licensees who, because of the size of their operations, had greater potential for needing significant cleanup before their sites could be fully decommissioned; i.e., those licensees covered by the financial assurance requirements for decommissioning in 10 CFR 30.35, 40.36, 70.25, and 72.30. Because the regulatory problems in delaying decommissioning apply to all licensees, regardless of size, the NRC has determined that the provisions of the rule should apply to all 10 CFR Parts 30, 40, 70, and 72 licensees.

Under existing regulations in, § 72.42(b), ISFSI and MRS licensees are required to file applications for renewal of their licenses at least 2 years prior to expiration of the existing license. This final rule requires licensees to notify the NRC (at least 2 years prior to license expiration) if an application for renewal will not be filed. The notification requirement, coupled with the 12-month time period for preparation of the final decommissioning plan, is equivalent to the current requirement in § 72.54(a) for submittal of a plan 1 year before expiration of the license. This requirement also has the effect of clearly documenting the licensee's decision on the future of the site 2 years before license termination.

This final rule does not define radiological criteria for release for unrestricted use, but states that licenses will be terminated in accordance with NRC requirements. The NRC is in the process of establishing these levels in an enhanced participatory rulemaking that will be noticed in the *Federal Register*. Pending promulgation of the new radiological criteria, licensees are expected to comply with current criteria and practices as described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP Sites (57 FR 13389; April 16, 1992). Further information on acceptable criteria may be obtained through the NRC regional or headquarters offices. Once the radiological criteria are finalized, licenses would be terminated in accordance with those criteria.

The final rule also clarifies requirements for radiological surveys performed as part of the license termination process. This rule clarifies that licensees need only submit the final survey showing that the site or area is suitable for release in accordance with NRC requirements after decommissioning has been completed. Some licensees have questioned whether existing requirements may be construed to require two surveys. In order to adequately review and approve a decommissioning plan the NRC must be aware of the conditions at the site. Therefore, a new item was included in the proposed rule that added to the contents of a proposed decommissioning plan a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan. This description may be a preliminary radiation survey or other type of documentation which characterizes the conditions of the site. No comments were received on this item in the proposed rule.

III. Summary of Requirements and Discussion of Comments

Seventeen comment letters were received on the proposed rule. Nine letters were received from licensees, three from public interest groups, four from industry organizations, and one from a State government. All of the comments were considered with respect to possible revision of the proposed rule. This discussion summarizes the major requirements in the regulation by section and discusses the significant issues raised by public comment and how they were resolved. The bases and origins of the requirements are also explained. Copies of the public comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20036.

Sections 30.4, 40.4, 70.4, and 72.3—Definitions

These sections define terms that are used in the amended Parts 30, 40, 70 and 72. Of particular relevance to this rulemaking is the definition of principal activities. The final rule defines principal activities as those activities that are essential to achieving the purpose for which the license was issued or amended. Principal activities are commonly listed or described in the license under the Authorized Use heading. Principal activities are defined in the regulation to prevent licensees from avoiding end-of-use decommissioning. For example, a licensee could not store licensed radioactive material in an otherwise unused building to avoid end-of-use decommissioning. Storage of licensed material is not a principal activity unless it is specifically authorized for waste (such as greater than class C) that cannot currently be accepted at available disposal facilities, or it is the primary purpose for which the license was issued (such as, spent fuel storage in an ISFSI).

Some commenters suggested that definitions for the terms "uranium recovery facility" and "characterization of the site" be added to the proposed rule. The NRC did not adopt these suggestions with this rulemaking. First, the term "uranium recovery facility" does not appear in this rule; hence no definition is needed. Second, whether there is a need to define "site characterization" is better determined by the nature of the criteria for decommissioning and will be addressed upon completion of that rulemaking.

Sections 30.36(a)-(c), 40.42(a)-(c), 70.38(a)-(c) and 72.54(a)-(c)

These sections of the regulations address license termination, expiration, revocation, denial of renewal, and their relationship to each other. A license "expires" when: (1) the expiration date stated in the license is reached [unless the licensee has appropriately filed for renewal], (2) the NRC revokes the license, or (3) the NRC formally denies an application to renew the license. "Expiration" of a license, whether voluntary or involuntary, refers to the end of a licensee's authorization to perform activities licensed under the Atomic Energy Act of 1954, as amended, with the exception of a licensee's continuing authorization to perform licensed activities incident to and necessary for site decontamination and decommissioning. Licensees with expired licenses must then decommission pursuant to the time limits and other requirements stated in the regulations. The final rule makes clear that the decommissioning and timeliness criteria apply to all licensees for whom the authorization to perform licensed activities has expired, regardless of whether the expiration was voluntary or involuntary. When the NRC has determined that decommissioning has been completed in a satisfactory manner, the NRC will relieve the licensee of license obligations by terminating the license. All licenses remain in effect until formally terminated by the NRC. One commenter suggested revising the language to clarify that licensees were not required to control access to areas within their facility once they are decontaminated. The language in the final rule was revised to state that licensees were required to control access to restricted areas until they were suitable for release in accordance with NRC requirements.

Sections 30.36(d), 40.42(d), 70.38(d), and 72.54(d)—Submittal of Decommissioning Plan (if Required) Within 12 Months of Notification

The final rule establishes specific requirements for: (1) timely decommissioning of the entire site at the end of all licensed activity at the site, thereby allowing license termination and release of the site in accordance with NRC requirements (i.e., "end-of-license" decommissioning); and (2) timely decommissioning of separate buildings and outdoor areas where licensed activities have ceased while licensed activities continue to be conducted at other site locations (i.e., "end-of-use" decommissioning).

Licenses will be amended to exclude decommissioned buildings or outdoor areas as authorized places of use following satisfactory completion of end-of-use decommissioning.

The final rule requires licensees to submit notification of the existence of inactive buildings or outdoor areas but does not require them to provide notification of the existence of inactive parts of buildings, such as rooms or laboratories. To include parts of buildings in the regulation was seen as a cumbersome regulatory requirement both for licensees and the NRC without sufficient resultant benefit. In addition to notification, licensees will be required to initiate decommissioning, or submit a decommissioning plan for NRC approval within 12 months of the notification.

A commenter noted that the 12-month period allowed by the proposed rule for submittal of a decommissioning plan fails to recognize the scope of work necessary to characterize a site prior to preparing a plan. This commenter suggested that consistent with other licensing actions, scheduling commitments should be developed on a site-specific basis. A second commenter also felt that the 12-month period was unrealistic because of the need to obtain other agency approvals and those agencies are not subject to NRC schedules or under the licensee's control. This commenter suggested that, rather than requiring that a decommissioning plan be submitted within 12 months, the rule should require submission of a proposed schedule taking into account the requirements of other affected regulatory bodies.

The NRC did not extend the 12-month period for submittal of a decommissioning plan. The NRC notes that flexibility has been included in the final rule. The NRC may approve alternate schedules as indicated in §§ 30.36(f)(2), 40.42(f)(2), 70.38(f)(2) and 72.52(e)(2). The final rule requires the decommissioning plan to be submitted within 12 months from:

- (1) The notification of license expiration,
- (2) A decision by the licensee to permanently cease "principal activities," or
- (3) When there are no "principal activities" for 24 months.

Sections 30.36(d) (2), (3), and (4), 40.42(d) (2), (3), and (4), 70.38 (d) (2), (3), and (4), 72.54(d) (2) and (3)—Notification of Inactivity for 24 Months and Begin Decommissioning or Submit Plan, as Appropriate.

Sixteen of the 17 commenters foresaw major difficulties with having to begin decommissioning within 24 months of inactivity. They stated that it may not be in the licensee's best interest to decommission unattached buildings because of the additional manpower involved and that future business that would require use of the buildings may be unknown.

The time required for completing decommissioning consists of the periods both for initiating the decommissioning process and for subsequently completing decommissioning activities. In determining the appropriate time period for initiating decommissioning, the NRC considered the health and safety benefits to be obtained by allowing short-lived isotopes to decay before beginning decommissioning operations and the licensee's need to make business decisions concerning future use of inactive buildings or outdoor areas. In determining the appropriate time period for the completion of subsequent decommissioning activities, the NRC considered the time needed to plan and safely carry out decommissioning operations based on previous experience.

With regard to initiation of the decommissioning process, the background information developed for the rulemaking on general requirements for decommissioning (53 FR 24018; June 27, 1988) included an evaluation of decommissioning planning and preparation requirements for the wide variety of different sized operations licensed under 10 CFR Parts 30, 40, and 70. The evaluation indicated that, in general, for materials license facilities, further benefits derived from radiological decay are not likely to be gained by delaying decommissioning beyond approximately 3 years from the date that operations cease. The NRC considers a period of approximately 24 months for making business decisions on further use of inactive facilities to be reasonable. This permits licensees sufficient time to make decisions concerning future use of an inactive facility, while accommodating periods of inactivity due to normal operations, testing, or routine business cycles.

Based on the 24-month time period considered reasonable for making business decisions and considering that the incremental benefits due to

radioactive decay between the second and third years of inactivity are small, the NRC considers a period of approximately 24 months to be a reasonable time period to permit a building or outdoor area to remain inactive without undergoing decommissioning. Therefore, the final rule stipulates that licensees must notify NRC if they have buildings or outdoor areas where no principal activities have been conducted for 24 months. Notification is also required when the license has expired or when the licensee has decided to permanently cease principal activities and begin the formal process leading to license termination. The rule allows licensees 60 days to provide notification. The rule requires licensees that are not required to submit decommissioning plans to begin decommissioning within the 60-day period provided for notification unless the NRC has granted a delay or postponement. Licensees required to submit decommissioning plans will be required to submit final decommissioning plans within 12 months following notification to cease principal activities.

Based on its analysis of the situation, the NRC arrived at a 24-month period as being a reasonable time period for a facility, building or outdoor area to remain inactive without undergoing decommissioning. Licensees may file for exemption if they feel they will exceed the 24-month inactivity period.

Sections 30.36(e) and (h), 40.42(e) and (h), 70.38(e) and (h), and 72.54(e) and (j)—Submittal of Request to Delay Initiation of the Decommissioning Process and Submittal of Alternate Decommissioning Schedules.

The NRC recognizes that licensees may not wish to decommission the site or separate buildings or outdoor areas when submitting the notification of inactivity for 24 months. Thus, the rule permits licensees to make a request and justify delay or postponement. Licensees will be required to submit the request with justification 30 days prior to the time notification would have been required under paragraph (d). In practical terms, this means:

- (1) 30 days after the license expiration date,
- (2) 30 days following the decision to permanently cease principal activities at the site or in separate buildings or outdoor areas, or
- (3) 30 days following the end of the 24-month time period of inactivity for the site or in separate buildings or outdoor areas.

Five commenters expressed opinions against the provision for granting an

extension of time for submitting a decommissioning plan. A commenter recommended that an additional factor be included under paragraph (h), in each of the affected sections in the regulation as a reason to delay decommissioning—the future availability of emerging technologies which would enable more thorough or efficient decontamination. The NRC did not adopt this recommendation because this additional factor, as worded, appears to be too general to be used as a basis for delaying decommissioning. If some particular emerging technology could be identified which would offer more thorough or efficient decontamination on a definite time scale, it could form the basis of a request to the NRC by a licensee for a delay in beginning decommissioning.

Some commenters expressed the opinion that 30 days is not enough time for the licensee to perform a proper analysis and prepare a meaningful submittal. They proposed allowing 90 days for submitting a schedule for preparation, submittal and review of a site characterization plan, site characterization report, and site decommissioning plan and elimination of the 30-day notice. The commenters appeared to misunderstand the purpose of the 30-day notice. The 30-day notice is not for a request to extend the time for submittal of a decommissioning plan but applies to a request and justification for postponement of the initiation of the decommissioning process. For those licensees required to submit decommissioning plans, the regulation allows licensees 12 months, not 30 days, to prepare the decommissioning plan.

A commenter expressed concern with the provision which puts the decommissioning timetable "on hold" until the NRC makes a determination on the extension request. To make the NRC accountable, the commenter strongly urged that the NRC modify the rule to place a reasonable time limit on NRC determinations regarding extension requests (i.e., 30 days). The NRC did not adopt this comment because a 30-day time period for evaluating a request for an extension of the 24-month decommissioning period would be difficult to adhere to due to the complexity involved in evaluation of non-routine factors such as extensive ground-water contamination and because the NRC may have to request further information from the licensee.

Sections 30.36(e), 40.42(e), 70.38(e), and 72.54 (e)(1)—Inclusion of Specific Information to Support a Request to Delay or Postpone Initiation of Decommissioning

Three commenters stated that the wording of the extension request provision failed to define specific standards to be met by a licensee or to describe how the NRC will evaluate requests. It was noted that the term "otherwise in the public interest" was not precisely defined and could be interpreted in a variety of ways. Two commenters noted that the rule states that the NRC may grant a request to delay or postpone decommissioning if NRC determines the relief "is not detrimental to public health and safety and is otherwise in the public interest." In addition, these commenters felt that this section was unnecessary for uranium recovery licensees because the NRC already knows the safety status of the facilities through various periodic reports that must be submitted.

The NRC did not adopt these suggestions. Sections 30.36(h), 40.42(h), 70.38(h) and 72.54(j) of the final rule contain five criteria the NRC will evaluate in reaching a decision on the merits of the licensee's request. Guidance on techniques used by the staff to evaluate requests is typically provided in regulatory guides and other guidance documents. The NRC will issue additional guidance as necessary after the final rule is issued.

Sections 30.36 (e) and (h), 40.42 (e) and (h), 70.38 (e) and (h), and 72.54 (e) and (j)—Public Participation

One commenter suggested that the public would like to be given a role in evaluating the merits of requests for extensions of the decommissioning schedules. This commenter stated that the rule should provide for hearings for any variation in the rule conditions, including granting of an extension.

In most cases, when an extension is granted the license would be amended. Since current NRC rules (§ 2.1205) provide individuals that could be affected the right to request a hearing whenever a license amendment is issued, there does not appear to be a need for any additional rule changes to accommodate this concern.

Sections 30.36(f)(4)(vi), 30.36(g), 30.36(h), 40.42(f)(4)(vi), 40.42(g), 40.42(h), 70.38(f)(4)(vii), 70.38(g), 70.38(h), 72.54(i), and 72.54(j)(1) and (2)—Decommissioning Period

Six of the 17 comment letters on the proposed rule questioned the practicability of the 18-month period for

the completion of decommissioning for various reasons. Several commenters felt that the 18-month limit was premature because NRC has not yet established the acceptance criteria, which may affect cost and scheduling of decommissioning. Other commenters stated that most fuel facilities require significantly more time than 18 months and the rule should recognize this. A commenter expressed the view that the 18-month period should not apply to uranium recovery facilities because portions of the milling facility may need to remain under license for ground-water remediation and tailings closure. The commenter suggested modifying the rule to state that decommissioning would be completed as soon as practicable after a final decision to cease operations. This commenter also suggested extending the period for decommissioning to make scheduling more realistic for major materials licensees. In addition, this commenter suggested that the NRC request strict compatibility for Agreement States to preclude imposition of more restrictive standards than those imposed by NRC.

The NRC has concluded that an 18-month period for completion of decommissioning may not be adequate for many major materials licensees. In response to the comments received, the NRC has decided to increase the time limit to complete decommissioning. This change is expected to have the effect of reducing the number of requests for extensions of the time period without having a significant impact on public health and safety. Following initiation of decommissioning activities, licensees would have a maximum of 24 months to complete decommissioning.

The amended regulations permit licensees to request the NRC to consider extending the 24-month time limit for decommissioning. The NRC will consider site-specific factors on a case-by-case basis. Factors that the NRC may consider to be appropriate include:

- (1) Availability of waste disposal facilities;
- (2) Reductions in dose or waste volume due to radioactive decay;
- (3) Technical feasibility of decommissioning;
- (4) Regulatory requirements of other government agencies;
- (5) Lawsuits;
- (6) Ground-water treatment activities;
- (7) Monitored natural ground-water restoration; or
- (8) Other factors that could result in more environmental harm than deferred clean-up or that are beyond the control of the licensee.

Based on these time periods the NRC estimates that licensees who are not required to submit decommissioning plans will complete their decommissioning activities in approximately 50 months or less after cessation of operations (i.e., 24 months of inactivity, 60 days for notification, and 24 months to complete decommissioning). Licensees who are required to submit decommissioning plans would be expected to complete their decommissioning activities in approximately 62 months or less (i.e., 24 months of inactivity, 60 days for notification, 12 months to submit a decommissioning plan, and 24 months to complete decommissioning). NRC review and approval of decommissioning plans (estimated to be 6 months or less) will be in addition to the 62-month total.

Sections 30.36(f)(1) and (3), 40.42(f)(1) and (3), 70.38(f)(1) and (3)—Activities Permitted Prior to Approval of a Decommissioning Plan

Three commenters stated that the rule should clearly specify what decontamination and decommissioning activities are permitted without approval of a decommissioning plan. They also stated that there should be specific wording that permits the licensee to proceed with certain activities pending approval of the plan. They believed that decommissioning activities covered under existing authorizations and procedures should be able to proceed pending approval of the plan. In addition, one commenter believed that those activities which would not increase health and safety impacts to workers and the public should be permitted pending approval of the plan. A commenter noted that license amendments could be considered for specific activities while the plan is under NRC review.

The NRC did not adopt these suggestions because sufficient latitude currently exists for licensees to carry out decommissioning activities in the absence of an approved decommissioning plan provided the procedures used are approved under existing licensing conditions and do not increase the potential for health and safety impacts to workers or to the public or result in significantly greater release of radioactive material to the environment.

Sections 30.36(i), 40.42(i), 70.38(i), and 72.54(k)—Radiation Surveys

The comments on this subject were concerned with radiation survey measurements and radiation units to be used. Three commenters questioned the

practical value of the required measurement of beta/gamma radiation levels at one centimeter from the surface. The commenters noted that this measurement was not included in NUREG/CR-5849. Four commenters objected to the requirement in the proposed rule to use SI units. They believed that this proposal was in conflict with Part 20 and would be confusing to all concerned. Here again, the commenters suggested that the results of radiation measurement be specified elsewhere, such as in the rule dealing with residual radiation standards.

The NRC has decided to delete the requirement for beta/gamma radiation levels at 1 centimeter from the surface since sufficient guidance exists in NUREG/CR-5849. The provision in the final rule that requires that radiation levels be reported in SI units reflects NRC policy on metrication which was published in the *Federal Register* on October 7, 1991 (57 FR 46202). In keeping with this policy, levels of gamma radiation will be expressed in units of millisieverts. The millisievert was chosen over Coulomb/kilogram to convert from Roentgen because expressing in units of absorbed dose allows easy conversion. The values only differ with respect to orders of magnitude. The staff notes that using absorbed dose to express levels gamma radiation is the approach adopted in Europe and will foster international consistency.

Sections 30.36(j)(2), 40.42(j)(2), 70.38(j)(2), and 72.54(l)(2)—Delay for Radiation Criteria Rule

Five commenters expressed opposition to or concern with the NRC's plans to proceed with the timeliness in decommissioning rulemaking separate from and in advance of the EPR currently underway. The main points made by the commenters in support of either delaying the timeliness rulemaking or combining the two rulemakings were:

- (1) Proceeding with the timeliness rulemaking separately constrains the public's ability to influence the radiological-standards rulemaking and weakens the NRC's stated commitment to greater public participation;
- (2) The timeliness rulemaking is isolated from the enhanced public participation of the radiological-standards rulemaking;
- (3) It is inconsistent to define the length of time decommissioning will require when it is not known what the extent of decommissioning will be (the timeliness rulemaking is based on the premise of decommissioning for release

in accordance with NRC requirements). The results of the radiological standards rulemaking may provide for alternative approaches to decommissioning, such as continual remediation or long-term monitoring, restricted use, and continued institutional care, perhaps through the transfer of the property to a governmental entity; and

(4) Because decommissioning should be done correctly and is expensive, its scheduling and implementation should be accomplished with the benefit of final residual radiation criteria.

The comments regarding the desirability of either delaying the timeliness in decommissioning rulemaking until the rulemaking on decommissioning criteria is completed or combining the two rulemakings have merit. Ideally, the two subjects could be addressed in a single rulemaking because of their strong interdependence. However, the NRC has determined that, pending promulgation of the new decommissioning criteria, adequate criteria exist to conduct

decommissioning and are described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP sites (57 FR 13389; April 16, 1992). Because having these new timeliness requirements in the regulations is expected to improve the NRC's ability to see that timely decommissioning is accomplished, the NRC did not adopt the commenters' suggestion. Adoption of the suggestions of the commenters on this point would result in either the continuation of the "status quo", i.e., establishment of time schedules for decommissioning on a case-by-case basis through license condition or order, or postponement of all decommissioning of materials facilities until the rulemaking on decommissioning criteria has been completed.

Section 70.38(f)(4)(vi)

A commenter suggested deleting the requirements to submit updated descriptions of physical security plans and material control and accountability plans. This comment was not adopted because this information is likely to be different from the plans designed to cover routine operations. As noted in the comment, the licensee may be in a position where the possession limit for special nuclear material can be reduced below the threshold for the plans, then the information would not be required in the decommissioning plan.

Viability of Uranium Recovery Industry

Uranium recovery licensees consist of conventional mills, commercial, research and development in situ facilities, ore buying stations, and heap-

leach facilities. These sites may contain processing facilities and waste disposal areas. All of the sites, other than the tailings impoundments and waste disposal areas, are to be decommissioned and released in accordance with NRC requirements under NRC's present regulations. The waste disposal areas are reclaimed and, when the specific license is terminated, they are licensed for long-term care under the general license in § 40.28.

The current requirements for decommissioning and reclamation of these sites are contained primarily in Appendix A to 10 CFR Part 40. In particular, Criterion 9 of Appendix A requires that prior to commencement of operations, there must be a NRC-approved plan for:

(1) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and

(2) The reclamation of tailings and/or waste disposal areas in accordance with technical criteria presented in Section I of Appendix A.

Nonetheless, § 40.42 applies to the uranium processing facilities. The effect of the final rule is to require the uranium recovery licensees to notify the NRC within 60 days when they have permanently ceased operations or have not conducted operations for 24 months (§ 40.42(d)) and to submit an updated decommissioning plan within 12 months of this notification or license expiration. The provisions in the amended § 40.42(g) on the content of a decommissioning plan are consistent with the decommissioning plan required in Criterion 9 of Appendix A to 10 CFR Part 40. The decommissioning plan submitted at the end of operations is intended to better describe the actual conditions of the site at that time.

Some uranium recovery licensees may require additional time to conduct final decommissioning and site survey in order to support the reclamation of waste disposal areas. Section 40.42(k) provides for an exemption for the waste disposal areas at uranium recovery facilities.

Disposal areas (as defined in Appendix A to 10 CFR Part 40) are reclaimed and ownership is eventually transferred to the Department of Energy. Criterion 6A of Appendix A to 10 CFR Part 40 and Subpart D of 40 CFR Part 192 specifically require the submittal and approval of a timely reclamation plan. For these reasons, the provisions in the final rule in § 40.42(f) for the content of a plan and § 40.42(g) for the timing of completion of the plan do not

apply to the reclamation of the waste disposal areas at uranium recovery facilities and thorium mills.

To coordinate decommissioning of uranium recovery facilities and reclamation of disposal areas, the NRC may need to extend the date for completion of decommissioning including the final radiological survey until the reclamation of the disposal area has been completed. Typically, the reclamation of a disposal area may require several years of drying, several construction seasons, and a period of stability monitoring prior to the licensee proposing to terminate the license. Requests for delay in completion of the final aspects of decommissioning can be accommodated through the provisions in § 40.42(h).

The NRC recognizes the fluctuation that has occurred in the uranium industry. The amended regulation allows the NRC to extend the 24-month period of inactivity if the NRC determines, based on a request by the licensee, that this relief is not detrimental to the public health and safety and is otherwise in the public interest. Commenters stated that the proposed rule threatens future energy security of the United States by forcing decommissioning of uranium production facilities. According to the commenters, the proposed timetables failed to take into account site-specific circumstances, factors beyond the control of the licensee, and the problematic nature of the international marketplace. Two commenters stated that their suggestion of exempting uranium recovery facilities from the rule would allow the United States to maintain its domestic uranium producing industry rather than forcing its demise with every downturn in the market and thereby help limit U.S. dependence on foreign energy sources. They also stated that such an exemption would be consistent with NRC Chairman Selin's written testimony before the Senate Committee on Energy and Natural Resources during hearings on the then proposed National Energy Act on June 26, 1992.

What the commenters are referring to is not written testimony but NRC's June 26, 1992, comments to Congress on provisions of the proposed National Energy Policy Act of 1992 relating to mill tailings cleanup funding. The NRC is not exempting uranium recovery facilities from decommissioning. There is no policy justification for concluding that once a uranium recovery facility has ceased operations, decommissioning should not commence promptly. In fact, prompt decommissioning is consistent with this agency's mandate to protect

public health and safety. Commenters have misconstrued the Commission's June 26, 1992, letter to Congress. In that letter, the Commission urged Congress to modify the legislation to provide that uranium mills could be eligible for reimbursements for some of their cleanup costs even if the mills were still operating in 2002. The legislation then pending provided that decommissioning of a mill had to be completed by the end of 2002 in order to receive Federal funding. The legislation ultimately enacted included the modifications recommended by the NRC. Nowhere in NRC's correspondence did the Commission suggest that decommissioning be deferred once a facility has ceased operations. In addition, flexibility has been built into the final rule so that a licensee can file for an exemption from having to commence decommissioning following 24 months of inactivity.

Inclusion of QA Plan in the Decommissioning Plan

One commenter suggested that the content of the decommissioning plan be augmented to include a quality assurance program description, a description of the manner in which the characterization of the site was performed and assurance that the characterization was performed in accordance with a quality assurance program and implementing procedures. This commenter pointed out that the QA program is currently only discussed in Part 72. Because it is especially important to assure high quality data in conducting various tests (e.g., analysis of soil, water, air, contamination), requirements for QA programs should be added to the other sections as well.

The NRC believes that the QA programs incorporated into existing licenses apply to decommissioning as well.

IV. Other Issues

10 CFR Part 2, Appendix C, Supplement VI—Enforcement

Four commenters expressed disagreement with the enforcement policy stated in the Supplementary Information of the proposed rule. They believed that a Severity Level 3 enforcement category seemed harsh or excessive in view of the subjective and unpredictable character of many factors that will influence determinations and actions regarding decommissioning. They also noted that the one-level approach does not seem to recognize the wide range of situations or interpretations that could result in citations. They suggested that the

enforcement policy be consistent with the complexities and uncertainties involved.

This comment was not adopted because the NRC considers timely decommissioning of materials facilities an important regulatory issue. Thus, violations involving a failure to notify the NRC as required by regulation or license condition or to complete decommissioning activities in accordance with regulation or license condition normally will be classified at Severity Level III and will result in consideration of monetary civil penalties or other enforcement action as appropriate.

Environmental Assessment

A commenter disagreed with the NRC Finding of No Significant Environmental Impact for the proposed rule and believed that it represented an inadequate consideration of potential environmental effects. The commenter noted that NRC has indicated its intention to prepare a GEIS for the residual radiological standards rulemaking and because the timeliness rulemaking has such a strong link to it that the timeliness rulemaking also logically requires a GEIS.

As noted in the Supplementary Information with the proposed rule, the NRC staff prepared an Environmental Assessment which found that, if adopted, the proposed rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. As discussed in the Environmental Assessment, the NRC had previously prepared a Generic Environmental Impact Statement on Decommissioning (GEIS). For licensees covered by this regulation, the GEIS found that either immediate decommissioning or short-term storage to allow short-lived radionuclides to decay is the preferred decommissioning strategy. Delayed decommissioning for an extended period of time would only rarely be justified for these types of facilities. The GEIS concluded that the overall impact of decommissioning existing nuclear materials facilities is small. Because these regulatory changes specifically lean in the direction of the preferred decommissioning strategies, immediate decommissioning or short-term storage, it can be concluded that this rulemaking will have no adverse impact on the environment. A more detailed rationale is given in the environmental assessment published with the notice of proposed rulemaking on Timeliness in Decommissioning of

Materials Facilities (58 FR 4099; January 13, 1993).

Economic Impacts

Several commenters stated that the proposed rule represents gross interference with the licensee's right to operate a business within applicable regulations and within the framework of normal business and economic cycles. They believed that licensees must be given the option to "wait out" downturns in the market by idling facilities and placing them under long term care and maintenance until operations can be profitably restarted. They believed that the proposed rule would deprive the licensees of the ability to obtain future financial return on investment.

The NRC agrees that licensees should have flexibility with regard to business decisions, and this sensitivity resulted in specific provisions and exemptions to account for the special circumstances where the rule might work a hardship on a particular licensee. The NRC does not believe that further considerations are necessary.

License Fees

A commenter suggested that the timeliness rule should recognize the diminished risk and regulatory effort associated with a license during the decommissioning process and the NRC fee structure adjusted accordingly.

In response, there does not appear to be any need to change the fee structure for decommissioning. It is noted that fees for license amendments for major materials or fuel cycle facilities are on a full cost recovery basis and the cost, therefore, would depend upon the amount of effort expended by the NRC staff on any given case. Once a licensee enters a possession-only status the option is available of qualifying for a different fee category due to a change in the nature of the licensed activities.

V. Enforcement

Concurrent with the publication of the final rule, the Commission is modifying Supplement VI of the Enforcement Policy to provide that violations involving a failure to notify the NRC as required by regulation or license condition, failure to meet decommissioning standards, failure to complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification may be classified as Severity Level III and may result in consideration of monetary civil penalties or other enforcement action as appropriate.

VI. Agreement State Compatibility

The final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. This rule is assigned a Division 2 compatibility. Under this level of compatibility, the Agreement States would be expected to adopt a timeliness in decommissioning rule but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

VII. Implementation

The timing provisions of this rule begin on the effective date. Thus, licensees that currently have unused facilities at the time of publication of the final rule would not need to submit notifications required by this rule earlier than 2 years after the rule becomes effective. This provides those licensees with same period of time (2 years) in which to determine whether the unused facility would be put into use again or to submit notification as required by the rule.

VIII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The action establishes specific requirements for timeliness of decommissioning of nuclear materials facilities. The action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these facilities and does not change the underlying fundamental requirement to decommission facilities to levels acceptable for release. Thus, this action will not adversely affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980

(44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150-0009, -0017, -0020, -0028, and -0132.

The public reporting burden for this collection of additional information is estimated to average 0.5 hours per response, to prepare and submit a notification of intent to terminate licensed activities. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0009, 3150-0017, 3150-0020, 3150-0028, and 3150-0132), Office of Management and Budget, Washington, DC 20503.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the requirements in the rule. The analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule imposes requirements for timely decommissioning of a site. Although the rule includes all materials licensees regulated by the NRC and the Agreement States, decommissioning efforts for licensees that possess and use only materials with short half-lives or materials only in sealed sources are simple and require only that enough time be permitted to either allow short-lived materials to decay or to enable them to properly dispose of their sealed sources. Therefore, the impact of the rule on these licensees is not significant. The net cost to the remaining licensees, estimated to number 3,300, is expected to be small based on an analysis of the costs of decommissioning, including waste disposal. The analysis indicates that in nearly all cases, the cost of decommissioning (which includes the costs of waste disposal) will increase if decommissioning is delayed. Complete details of the cost analysis are contained in Section 6.2 of the Regulatory Analysis. However, these remaining 3,300 licensees are not likely to be small entities and, in addition, there actually may be significant costs of cleanup of

secondary contamination if decommissioning is delayed.

XII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex Discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Independent storage of spent fuel and high level waste, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

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

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123. (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 127, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 30.4 Definitions.

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

3. Section 30.36 is revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of

byproduct material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving byproduct material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 30.6, each licensee shall provide notification to the NRC in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to extend the time periods established in paragraph (d) if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission

and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) Procedures such as those listed in paragraph (f)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning

will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microrentgen)

per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Byproduct material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or (ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

4. Section 30.37 is revised to read as follows:

§ 30.37 Application for renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 30.32.

(b) [Reserved]

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

7. Section 40.42 is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements;

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 40.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and

begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and

safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (f)(1) of this section may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow

completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microrentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements.

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

(k) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (f) and (g) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

8. Section 40.43 is revised to read as follows:

§ 40.43 Renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 40.31.

(b) [Reserved]

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In Section 70.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 70.4 Definitions.

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

§ 70.33 [Amended].

11. Section 70.33 is amended by removing and reserving paragraph (b).

12. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date

stated in the license unless the licensee has filed an application for renewal under § 70.33 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of special nuclear material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving special nuclear material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 70.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the

Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (f)(1) of this section may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning.

(vii) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration,

actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Special nuclear material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42

U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102 Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

14. In § 72.3, a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 72.3 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended, excluding activities incidental to decontamination or decommissioning.

* * * * *

15. Section 72.54 is revised to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license except when a licensee has filed an application for renewal pursuant to § 72.42 not less than 24 months before the expiration of the existing license. If an application for renewal has been filed at least 24 months prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license or on the expiration date stated in the determination or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of

licensed material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving spent fuel or other licensed material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) As required by § 72.42(d), or within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 72.4, each licensee shall notify the NRC in writing, and submit within 12 months of this notification, a final decommissioning plan and begin decommissioning upon approval of the plan if—

(1) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(2) No principal activities under the license have been conducted for a period of 24 months; or

(3) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e)(1) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(2) The Commission may approve an alternate schedule for submittal of the final decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternate schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety, and is otherwise to the public interest.

(f) The proposed final decommissioning plan must include—

(1) A description of the current conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) The choice of the alternative for decommissioning with a description of the activities involved;

(3) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(4) A description of the planned final radiation survey; and

(5) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period; and

(6) A description of technical specifications and quality assurance provisions in place during decommissioning.

(g) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(h) If the final decommissioning plan demonstrates that the decommissioning will be completed as soon as practicable, performed in accordance with the regulations in this chapter, and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to any appropriate conditions and limitations and issue an order authorizing decommissioning.

(i)(1) Except as provided in paragraph (j) of this section, each licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

(2) Except as provided in paragraph (j) of this section, when decommissioning involves the entire site, each licensee shall request license termination as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

(j) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternate schedule is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors that the Commission may consider appropriate on a case-by-case basis, such as regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(k) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a final radiation survey of the premises where the licensed activities were conducted and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(l) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

16. In § 72.86, paragraph (b), is revised to read as follows:

§ 72.86 Criminal penalties.

(b) The regulations in this Part 72 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.236, 72.238, and 72.240.

Conforming Amendment

The following amendment to Chapter I of Title 10 generally updates citations to 10 CFR Parts 30, 40, 70 and 72 and is found in Part 2 of the NRC regulations. This amendment is particularly important as it goes beyond updating cross-reference citations. The amendment to 10 CFR Part 2, Appendix C updates and modifies the examples of severity levels. Because Appendix C is a policy statement of the Commission and not a regulation, the Commission is issuing the amendment to the Commission's enforcement policy in 10 CFR Part 2, Appendix C in final form without public comment.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

17. The authority citation for Part 2 continues in part to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)

18. In Appendix C to 10 CFR Part 2, Supplement VI, Section C is amended by revising paragraphs 9, and 10, and by adding a new paragraph 11, as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

Supplement VI—Fuel Cycle and Materials Operations

C. Severity Level III—Violations involving for example:

9. A failure to submit an NRC Form 241 in accordance with the requirements in § 150.20 of 10 CFR part 150;

10. A failure to receive required NRC approval prior to the implementation of a

change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance; or

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification.

Dated at Rockville, Maryland, this 11th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-17206 Filed 7-14-94; 8:45 am]

BILLING CODE 7590-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 709, 745, 747, 790, 791, 792, 793 and 794

Change of Addresses and Redesignation of Offices

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: NCUA moved the location of its central office from Washington, DC to Alexandria, VA in September, 1993. This document updates various sections of NCUA's Rules and Regulations to reflect the agency's current address. Several additional changes are made. First, a correction to a referenced subpart in the regulations is made. Second, NCUA's Administrative Office was renamed the Office of Administration several years ago. References to the Administrative Office are changed to the Office of Administration. Third, in 1990 NCUA switched from the government wide GS pay system to its own CU (credit union) system. References to GS pay are changed to CU pay. Fourth, in February, 1994, NCUA established two new offices, the Office of Community Development Credit Unions and the Office of Chief Economist and Policy Analysis, and placed the Central Liquidity Facility within the Office of Examination and Insurance. In addition, in May, 1994, the Office of Training and

Development was established and certain functions were moved from one office to another as a result of streamlining studies done both by agency staff and an outside consulting firm. Descriptions of these changes as well as some minor changes in other office descriptions are made to the appropriate regulation.

EFFECTIVE DATE: July 15, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at 703-518-6540.

SUPPLEMENTARY INFORMATION: NCUA's central office location changed from 1776 G Street, NW., Washington, DC 20456 to 1775 Duke Street, Alexandria, VA 22314-3428 in September, 1993.

The change in address is made in parts 701, 709, 745, 747, 791, 792, 793 and 794 of NCUA's Regulations. In July of 1991, NCUA revised part 747 of the Regulations (see 56 FR 37828, 8/9/91). This part sets forth procedures for various administrative actions. Under the earlier version of part 747, subpart L (12 CFR § 747.1201 et seq.) described the procedures for appeal of a notice of disapproval of a change in senior executive officers. These procedures are found in subpart J of the current version of part 747. Section 701.14(f) refers to the now nonexistent subpart L. A correction is made to this reference in § 701.14(f). NCUA's Office of Administration was previously titled the Administrative Office. Parts 792 and 794 contain several references to the Administrative Office. These have all been changed to the Office of Administration. Section 792.5(b) contains several references to GS pay. In 1990, NCUA switched from the GS pay system to its own CU pay system. The references in § 792.25(b) are changed from GS to CU.

In February, 1994, the NCUA Board established two new offices, the Office of Community Development Credit Unions and the Office of the Chief Economist and Policy Analysis. The Board also placed the Central Liquidity Facility within the Office of Examination and Insurance. The Office of Community Development Credit Unions will administer the Community Development Revolving Loan Program. This Program is currently described in paragraph 790.2(e). Paragraph 790.2(e) is deleted and the information is moved to the new description of the Office of Community Development Credit Unions in new paragraph 790.2(b)(13). Description of the Office of the Chief Economist and Policy Analysis is found

in new paragraph 790.2(b)(14). Some of the functions contained in the current description of the Office of Examination and Insurance will now be done by the Office of the Chief Economist and Policy Analysis. These functions have been deleted from the description of the Office of Examination and Insurance. The current description of the Central Liquidity Facility currently found in paragraph 790.2(d) goes into more detail than other office descriptions. Deletions and other modifications have been made and the CLF description is now part of the description of the Office of Examination and Insurance and appears as new paragraph 790.2(b)(6)(iii).

In the early part of 1994, streamlining studies of the central office by both agency staff and an outside consulting firm were completed. In May, 1994, results of the streamlining studies were implemented. The Office of Training and Development was established and is described in new paragraph 790.2(b)(15). This new training office has taken over some of the functions of the Office of Human Resources. Appropriate changes have been made to the description of the Office of Human Resources found in paragraph 790.2(b)(9). The responsibility for initial Freedom of Information Act requests was moved from the Office of Administration to the Office of General Counsel. The resulting changes are made to paragraphs 790.2(b)(3), 790.2(b)(8), 792.2(f), and 792.2(g) (1) and (2). A clarification is also made to the description of the NCUA Board in paragraph 790.2(b)(1).

Since all of these changes are either housekeeping and do not have any substantive effect on credit unions or merely provide the description of offices, the Board finds it unnecessary to either issue a proposed rule or to have a delayed effective date. Therefore these changes are issued in final form and are effective upon publication.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial

number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects

12 CFR Parts 701, 709, 745, 747, 790, 791, 793 and 794

Credit unions.

By the National Credit Union Administration Board on July 8, 1994.

Hattie M. Ulan,

Acting Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Public Law 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601-1610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

PART 709—INVOLUNTARY LIQUIDATION AND CREDITOR CLAIMS

2. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1766; Pub. L. 101-73; 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

PART 745—SHARE INSURANCE AND APPENDIX

3. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

4. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

5. The authority citation for part 790 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

6. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

7. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552, 5 U.S.C. 552a, Executive Orders 12600 and 12356.

PART 793—TORT CLAIMS AGAINST THE GOVERNMENT

8. The authority citation for part 793 is revised to read as follows:

Authority: 12 U.S.C. 1766.

PART 794—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CREDIT UNION ADMINISTRATION

9. The authority citation for part 794 continues to read as follows:

Authority: 12 U.S.C. 794.

§§ 701.1, 701.2, 701.31, 747.306, 793.2 [Amended]

10. Remove the address "Washington, DC 20456" and add, in its place, the address "1775 Duke Street, Alexandria, VA 22314-3428" in the following places:

- (a) § 701.1;
- (b) § 701.2(b);
- (c) § 701.2(c);
- (d) § 701.31(d)(3) (two times);
- (e) § 747.306(b);
- (f) § 793.2(c).

11. Remove the address "1776 G Street, NW., Washington, DC 20456" and add, in its place the address "1775 Duke Street, Alexandria, VA 22314-3428" in the following places:

- (a) § 709.8(c)(1);
- (b) § 709.9(b);

- (c) § 745.202(a);
 (d) § 747.609(d);
 (e) § 747.616;
 (f) § 791.8(c);
 (g) § 792.2(g)(1);
 (h) § 792.22(a);
 (i) § 792.26(a);
 (j) § 792.27(a);
 (k) § 792.27(c);
 (l) § 792.40.

12. Remove the address "1776 G Street NW., Room 7261, Washington, DC 20456" and replace it with "1775 Duke Street, Alexandria, VA 22314-3428" in § 794.170(c).

13. Section 701.14(f) is amended by revising the last sentence to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

(f) * * * The Notice of Disapproval will advise the parties of their rights of appeal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

14. Section 747.307(a) is amended by revising the first sentence to read as follows:

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in the Washington, DC metropolitan area or at such other place as the NCUA Board designates before a Presiding Officer designated by the NCUA Board to conduct the hearing.

15. Remove the title "Administrative Office" and replace it with "Office of Administration" in the following places:

- (a) § 792.24(b)(3);
 (b) § 792.26(a);
 (c) § 792.37(a);
 (d) § 792.50(a);
 (e) § 794.170(c).

16. Remove the letters "GS" and replace them with "CU" in § 792.5(b)(1)(i), (b)(1)(ii), and (b)(2).

17. Section 790.2 is amended by adding a new fourth sentence to paragraph (b)(1); by removing the phrase "the Freedom of Information Act," from the second sentence of paragraph (b)(3); by redesignating the two paragraphs contained in paragraph (b)(6) as paragraphs (b)(6)(i) and (ii); by removing the phrase "and economical reports and research papers on market trends affecting credit unions" from the end of the first sentence of newly designated paragraph (b)(6)(i) and replacing it with the word "reports"; by

adding new paragraph (b)(6)(iii); by adding a new fourth sentence to paragraph (b)(8); by removing the word "training," from the fourth sentence of paragraph (b)(9); by adding new paragraphs (b)(13), (14) and (15) and by removing paragraphs (d) and (e) to read as follows:

§ 790.2 Central and regional office organization.

(1) * * * The Chairman shall be the spokesman for the Board and shall represent the Board and the NCUA in its official relations with other branches of the government.

(6) Office of Examination and Insurance.

(iii) *NCUA Central Liquidity Facility (CLF).* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed-ownership Government corporation under the Government Corporation Control Act (31 U.S.C. 9101, *et seq.*). The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the CLF Board of Directors. The Secretary of the Board serves as the Secretary of the CLF.

(8) * * * The Office has responsibility for processing Freedom of Information Act requests and appeals.

(13) *Office of Community Development Credit Unions.* This Office is responsible for coordinating NCUA policy as it relates to community development credit unions, including those credit unions designated as "low-income." The Office administers the Community Development Revolving Loan Program for Credit Unions (Program). This Program was funded from a congressional appropriation and serves as a loan and technical assistance vehicle for low-income credit unions. The Office Director serves as Program Chairman and authorizes loans and technical assistance to participating credit unions. The Program is governed by part 705 of subchapter A of this chapter.

(14) *Office of Chief Economist and Policy Development.* The Office is responsible for developing and conducting research projects and analytical studies in support of NCUA programs, including the fields of cooperative thrift, credit, investments and the impact of the national economy

on the credit union movement. The Office will make periodic reports on its activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other governmental and private groups. The Office also provides policy advice to the Board and senior agency staff.

(15) *Office of Training and Development.* This Office provides a comprehensive program for the training and development of NCUA's staff. The Office is responsible for developing policy, consistent with the Government Employees Training Act, related to its training program; for providing training opportunities equitably so that all employees have the skills necessary to help meet the agency's mission; for evaluating the agency's training and development efforts; and for ensuring that the agency's training monies are spent in a cost efficient manner and in accordance with the law.

18. Section 792.2 is amended by revising the second sentence of paragraph (f), the first sentence of paragraph (g)(1) and the last sentence of paragraph (g)(2) as follows:

§ 792.2 Information made available to the public and requests for such information.

(f) *Information centers.* * * * The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office.

(g) Methods of request.

(1) *Indices.* Requests for indices should be made to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428.

(2) *All other records.* * * * When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Office of General Counsel at the address noted in paragraph (g)(1) of this section.

[FR Doc. 94-17161 Filed 7-14-94; 8:45 am]
 BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108, 120, and 123

Media Policy Rule

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: SBA is repealing its media policy or opinion mold rule. Under this final regulation, creditworthy small business concerns engaged in media activity will be eligible to be considered for SBA financial assistance unless they are otherwise ineligible. Under the final regulation, SBA reserves the right to withhold financial assistance on a case-by-case basis when the extension of assistance would be in violation of a statute or the Constitution. This action is being taken to enable SBA to promote job growth and economic development by making SBA financial assistance available to a larger number of small business concerns.

EFFECTIVE DATE: July 15, 1994. The amendment of Part 123 is effective for disasters which occur on or after July 15, 1994.

FOR FURTHER INFORMATION CONTACT: John R. Cox, Assistant Administrator for Financial Assistance, 202/205-6490.

SUPPLEMENTARY INFORMATION: On April 5, 1994, SBA published in the *Federal Register* a proposed regulation repealing its media policy rule (59 FR 15872). SBA received 143 comments which favored the repeal, and two comments against it. The majority of the affirmative commenters represented the owners of motion picture theaters and bookstores. They noted that the proposed repeal by the Agency would allow many small business concerns throughout the country, but particularly in rural areas, to obtain urgently needed financial assistance for maintenance, upgrading, and growth. While one of the commenters favored the proposed repeal, he voiced concern about SBA providing financial assistance to adult motion picture theaters. As is noted below, SBA will consider the constitutional and legal implications of the repeal of the present rule, as they arise on a case-by-case basis. However, the Agency does not consider the need to deal with these implications as sufficient to prevent it from going forward with the general repeal. Accordingly, the Agency is promulgating the repeal is proposed.

Under SBA's existent regulatory policy, no SBA direct or guaranteed business loan, economic injury disaster loan, or development company assistance has been made to an applicant engaged in the "creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content." (13 CFR § 120.101-2(b) (1993)). There are several express exceptions to this prohibition.

This policy was originally adopted by SBA in 1953 under the authority granted by Section 4(d) of the Small Business Act (15 USC 633(d)) which authorizes the Agency to "establish general policies (particularly with reference to the public interest * * *), which shall govern the granting and denial of applications for financial assistance by the Administration." The Reconstruction Finance Agency, the predecessor to SBA, had a similar media policy rule.

There were three basic reasons for the policy: First, the prohibition was based upon SBA's desire to avoid any possible accusation that the Government was attempting to control editorial freedom by subsidizing media or communication for political or propaganda purposes. Second, the Agency has generally sought to avoid Government identification through its business assistance programs with concerns which might publish or produce matters of a religious or controversial nature. Third, SBA recognized that the constitutionally protected rights of freedom of speech and press ought not to be compromised either by the fear of Government reprisal or by the expectation of Government financial assistance.

Over the years, Congress has considered the policy and has not objected to SBA's approach. In H.R. Rep. No. 840, 94th Cong., 2d Sess. 28 (1976), the Subcommittee on SBA Oversight and Minority Enterprise acknowledged that SBA's statutory duty to assist small business

Must be in balance with supervening First Amendment prohibitions. The Subcommittee does not believe that the SBA should engage in activities which would necessitate its assumption of a censorship role. By censorship we mean the ability of SBA to direct a business as to what it can do or cannot do, relative to First Amendment protected activity, coupled with the power to enforce its will through the use of sanctions. The subcommittee believes such censorship would exist if SBA were to place in its loan agreements a prohibition against the promulgation of certain ideas and values, a breach of which would allow the Agency to liquidate the loan.

However, many individual Members of Congress have expressed concern with the substance of SBA's regulations in this area. Several bills have been introduced to revise the rule legislatively, although none has been enacted. For example, S. 2084, 98th Cong., 2nd Sess. (1984), would have abolished the rule except in cases where the financial assistance would have been used primarily to (1) advance or inhibit religion; (2) threaten the

overthrow of organized Government by unlawful means; or (3) engage in any illegal activity or the dissemination of obscene materials which may be unlawful in any jurisdiction in which the small concern may operate. S. 2084 also would have required SBA to look at the content of the publications or communications in making its decision to assist a particular small concern.

H.R. 1157, 98th Cong., 1st Sess. (1983), would have required SBA to hold a hearing, if the business was covered by the media policy rule, in order to ascertain if the SBA financial assistance would have been (1) adverse or detrimental to a legitimate public interest, or (2) used primarily to promote or criticize political or religious ideas. This approach would have led to lengthy hearings on applications for assistance every time the Agency interpreted the law adversely to an applicant.

SBA testified on both of these bills and supported a legislative remedy to the problems associated with the administration of the rule. However, no legislation has been forthcoming.

In hearings on March 7, 1984, before the House Subcommittee on Export Opportunity and Special Small Business Problems, which was considering H.R. 1157, an expert in Constitutional Law on the faculty of the George Washington University Law School testified that the media policy rule was constitutional and was a justifiable approach in light of SBA's business and financial orientation and limited First Amendment expertise. However, there have been concerns raised over the years regarding the breadth of the present rule.

The regulation presently provides a very broad list of ineligible enterprises which includes publishers, producers, importers, exporters or distributors of all types of communications (such as newspapers, sheet music, posters, film, tape, theatrical productions, greeting cards, and books), plus transportation concerns limited to the distribution of such products. Regulatory exceptions have been granted to commercial printing firms, advertising agencies, technical production facilities (such as a recording studio), and vocational schools. Eligible for assistance based on administrative interpretations are general merchandise stores which sell books, magazines and newspapers, and general book, music, record or videotape stores. Not eligible for assistance are specialty book or videotape stores which sell or rent items in a single or limited subject area. The rationale underlying the distinction between general and specialty stores has been

that a general store covers a broad range of ideas, values and thoughts, rather than a particular or narrow set of ideas or values. SBA no longer regards this distinction as a proper basis for determining eligibility.

SBA is well aware that small media concerns often have difficulty in raising capital or borrowing money. The media policy rule applicable to the financing of business loans has not been applied to assistance provided by small business investment companies (SBICs) which are licensed by SBA. Thus, SBICs are permitted to help businesses engaged in the media. The policy surrounding SBIC assistance to media concerns is similar to the approach taken by the Congress in funding broadcasting through the nonprofit Corporation for Public Broadcasting. SBICs operate within SBA regulations, but their transactions with small companies are private arrangements which carry no SBA guaranty.

SBA also has been making physical injury disaster loans to media concerns and academic schools since 1953, based on humanitarian grounds. The SBA's disaster loan program attempts to restore to an injured party that which was lost due to circumstances beyond its control. No distinction is made for eligibility purposes between media and non-media concerns for physical disaster loans, but economic injury disaster loans have been subject to the limitations of the media policy rule.

SBA believes that the assistance it presently makes available under the exceptions to the media rule and under the SBIC and disaster programs is not sufficient to assist small businesses in the media industries which are demonstrably in need of increased aid. Accordingly, SBA is changing its policy so as to make assistance available, under the 7(a) business, economic injury disaster and development company loan programs, to media concerns which are otherwise eligible for such assistance.

SBA believes that its present regulatory apparatus and administrative practice for screening applicants for such assistance are sufficient to protect the public interest. In this regard, the present credit criteria under which applications for such assistance are reviewed and the prohibition on funding illegal activities should be sufficient to provide the desired level of protection. (See 13 CFR Parts 120 *et seq.* and 122 *et seq.*, specifically 13 CFR §§ 120.101-2(d) and 120.103-2). SBA's Office of General Counsel plans to address constitutional and other legal issues which may arise as a result of this repeal on a case by case basis. The General Counsel's Office will provide

SBA field personnel with guidance and advice with respect to loan applications which are referred to that office because of constitutional or other legal concerns.

Since SBA is repealing the media rule in Part 120 of its regulations, it is also eliminating the cross-reference to the rule which is in Part 123 of its regulations, relating to economic injury disaster loans. Because the repeal of the opinion molder necessitates renumbering subparagraphs in Part 120, SBA is also changing a cross-reference to Part 120 in Part 108 of its regulations, relating to development companies.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this final rule will have a significant economic impact on a substantial number of small entities. From the limited amounts of data that the SBA had at the proposed rulemaking stage, SBA certified that repeal of the media policy rule would not have a significant economic impact upon a substantial number of small entities. Based upon data received from various sources and comments received by SBA concerning the proposed rulemaking, SBA, upon further consideration, believes that this rule could have a significant economic impact upon a substantial number of small entities.

Repeal of the media policy rule would increase the eligibility for small entities in certain industries. Material from unpublished data prepared under contract by the United States Bureau of the Census for the SBA in May, 1994, show that approximately 75,000 small business concerns in the affected industries would become eligible for participation in the SBA's loan guaranty program. These small business concerns account for approximately 95% of the businesses in those industries.

In compliance with the Regulatory Flexibility Act, the SBA has examined alternatives other than the repeal of the media policy rule. The alternatives included modification of the rule and maintenance of the status quo. The SBA has determined that of those courses of action, repeal of the rule would be most beneficial to those entities.

This final rule was reviewed by OMB under Executive Order 12866. This final rule is intended to make eligible more media small business concerns. It is reasonable to assume that SBA will not be requested to process a disproportionate number of additional media loan applications. For example,

in fiscal 1991, 1992 and 1993, respectively, SBA guaranteed 202, 199 and 241 section 7(a) loans to eligible bookstores, advertising agencies, video stores and vocational schools. The aggregate amounts of the SBA guaranteed portions for those three years for such businesses were, respectively, \$27.7, \$28.7 and \$35.2 million.

SBA certifies that the final rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this final rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

List of Subjects

13 CFR Part 120

Loan programs/businesses; Small Businesses

13 CFR Part 123

Disaster Assistance; Loan programs—business

13 CFR Part 108

Loan programs—business; Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA is amending parts 108, 120 and 123, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.101-2 is amended by removing paragraph (b) in its entirety, and redesignating paragraphs (c) through (h) as paragraphs (b) through (g).

PART 123—DISASTER—PHYSICAL DISASTER AND ECONOMIC INJURY LOANS

1. The authority citation for part 123 continues to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act (15 U.S.C. 634 (b)(6),

636 (b), (c), (f); and Pub. L. 102-395, 106 Stat. 1828, 1864, and Pub. L. 103-75, 107 Stat. 739.

2. Section 123.41(b)(2) is revised to read as follows:

§ 123.41 General Provisions.

(b) *Eligible applicants.* (1) * * *
 (2) Small business concerns regardless of their business activity are eligible to apply for these loans, except for (i) gambling concerns—see § 120.101-2(b); (ii) concerns engaged in illegal activities—see § 120.101-2(c); (iii) lending or investment concerns—see § 120.101-2(d); (iv) concerns with principals incarcerated, on parole or probation—see § 120.101-2(e); (v) multi-level sales distribution ("pyramid") concerns—see § 120.101-2(f); (vi) loan packagers—see § 120.101-2(g); (vii) concerns engaged in speculation—see § 120.102-5; (viii) concerns investing in property—see § 120.102-8.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.8(g) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

(g) *Other loan eligibility requirements.* Sections 120.101-2 (except paragraph (d)), 120.102-5 and 120.102-9 of this chapter shall apply to loans made or guaranteed under this part.

Dated: June 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-17187 Filed 7-14-94; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising on an immediate basis the commencement date for the increases in the limitations on SBA's share of homeowner disaster assistance which were published at 59 FR 6213 (February 10, 1994). This revision is being undertaken on an emergency basis and is therefore published as a final rule.

EFFECTIVE DATE: July 15, 1994.

ADDRESSES: Comments should be submitted to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael E. Deegan, Office of Disaster Assistance, (202) 205-6734.

SUPPLEMENTARY INFORMATION: On February 10, 1994, SBA published a final rule increasing the limitations on SBA's share of disaster assistance made available to homeowners or renters for any one disaster commencing on or after January 1, 1994. 59 Fed. Reg. 6213. The increased limits were twice those previously available for disaster assistance to homeowners and renters.

As SBA explained in the preamble to the final rule, the former loan limitations had become insufficient to meet the needs of many homeowners and renters confronted with the effects of physical disasters. Economic inflation, together with the increase in construction costs typically present in the aftermath of a large catastrophe, had precipitated the need for the increased loan limits.

The increases were adopted by SBA on an emergency basis, without notice or comment, in order to expedite their application to the California earthquake disaster of January 1994. As adopted, the increases were effective only for disasters commencing on or after January 1, 1994.

Comments received subsequent to the publication of that emergency rule have caused SBA to reconsider its selection of January 1, 1994 as the appropriate commencement date for the application of the new loan limits. As is sometimes the case when a new rule is adopted, the precipitating factors (in this case, general inflation and spikes in construction expense) have been present for a period of time either before the need for a revision to the regulation is recognized or before the regulation is finally adopted. In order to compensate for this delay, SBA sometimes makes a rule effective prior to its date of publication. By adopting an effective date of January 1, 1994 for the homeowner/renter loan limitation rule (a date six weeks prior to the publication of the rule), SBA was extending the benefits of that rule to victims of very recent disasters, whose loan applications had not yet been processed by the Agency.

At that time, however, loan applications in connection with disasters commencing as far back as October 26, 1993, the commencement

date for the California wildland fire disaster, were still being processed. Victims of the California fire disaster were as much in need of the increased loan limits as their counterpart victims of the California earthquake disaster since both disasters occurred in the same general area. In order to administer the Disaster Program in a consistent and equitable manner, SBA has determined that the increased loan limits it adopted on February 10, 1994 should be extended to all disasters commencing on or after October 26, 1993.

This change is being made effective upon publication pursuant to 13 CFR 123.1(b) which authorizes emergency changes in the regulations governing its disaster assistance program, and 5 U.S.C. 553(b)(B) which permits publication of regulations in final form without notice or comment when an agency finds that good cause exists for publication in final form on an emergency basis, and that notice and comment is impracticable, unnecessary or contrary to the public interest. In this regard, the public interest in seeing to it that the new limitations are immediately effective as to the California wildland fire disaster so as to promptly assist the affected homeowners and renters makes the utilization of notice and comment rulemaking impracticable.

Compliance With Executive Orders 12866, 12612, and 12778; Regulatory Flexibility Act, 5 U.S.C. 601, et seq.; and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of \$100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule. SBA has made this determination based upon the fact that for the five disasters commencing between October 26, 1993 and December 31, 1993 (inclusive), physical disaster loans to homeowners and renters did not exceed \$38 million. Many of those borrowers will not need or be eligible for the increased loan limits. However, even if they all needed and were eligible for the full amount of the increases, the maximum effect of those increases could be no more than \$38 million.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement.

(Catalog of Federal Domestic Assistance Program No. 59.008, Small Business)

List of Subjects in 13 CFR Part 123

Disaster, Physical disaster and economic injury loans.

For the reasons set out above, pursuant to sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, Title 13, Part 123 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 123 continues to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636(b), (c), (f); Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739.

2. Section 123.25 is amended by revising paragraph (a) to read as follows:

§ 123.25 Special conditions—Home loans.

(a) Limits. SBA's share of loans approved on or after October 1, 1983, to a Homeowner (including all dependents) is limited for any one disaster commencing on or after October 26, 1993, to the following:

1. \$40,000 for repair or replacement of household and personal effects;

(2) \$200,000 for repair or replacement of a primary residence, including repair or replacement of landscaping and/or recreational facilities not to exceed \$5,000;

(3) eligible refinancing pursuant to § 123.24(f) not to exceed the lesser of \$200,000 or the physical damage to the real property which is to be repaired;

(4) \$48,000 for mitigation pursuant to § 123.24(j) of this part;

(5) \$488,000 for the total loan within the limitations specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

Dated: June 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-17202 Filed 7-14-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-90-AD; Amendment 39-8974; AD 94-15-03]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This action requires revising the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This amendment is prompted by reports that flight crew procedures related to fuel system leaks are not defined adequately in the FAA-approved AFM for these airplanes. The actions specified in this AD are intended to ensure that the flight crew is advised of the potential hazard related to fuel exhaustion due to undetected leakage, and the procedures necessary to address it.

DATES: Effective on August 1, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-90-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2684; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: Several in-service incidents have occurred on Boeing Model 757 series airplanes in which an engine fuel line has cracked or fractured and a significant fuel leak has occurred. These fuel leaks have occurred at locations within the engine fuel system upstream of the fuel flow transmitter. Under these circumstances, sufficient fuel may still be supplied to the engine, and the engine may operate normally. In these instances, the flight

crew would receive no indication of abnormal fuel flow (i.e., fuel leakage) from the fuel flow meter. If the flight crew fails to detect a fuel leak, appropriate action would not be taken to prevent further fuel loss. This condition, if not corrected, could result in fuel exhaustion due to undetected fuel leakage.

Because the fuel system indication system and the AFM procedures of the Model 767 are similar to those of the Model 757, the potential for undetected fuel loss in the event of fractures of the fuel lines, and subsequent fuel leakage, exists for the Model 767.

In light of this information, the FAA finds that certain procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for Model 767 series airplanes to enable the flight crew to detect fuel system leaks and to take appropriate action. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to ensure that flight crews are advised of the potential hazard related to a significantly reduced or exhausted airplane fuel supply, and of the procedures to address it. This AD requires revising the Non-Normal Procedures Section of the AFM to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-90-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-15-03 Boeing: Amendment 39-8974.
Docket 94-NM-90-AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with fuel exhaustion due to undetected fuel leakage, and of the procedures necessary to address it, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This may be accomplished by inserting a copy of this AD in the AFM.

In-Flight Engine Fuel Leak

If the Flight Management Computer (FMC) message, "FUEL DISAGREE—PROG 2/2", or "INSUFFICIENT FUEL", is displayed:

Compare the Fuel Quantity Indicating System (FQIS) total fuel quantity and the FMC calculated fuel remaining (based on fuel flow) with estimated fuel usage data.

If a fuel leak is suspected, turn off the center wing tank pumps and close the crossfeed valves (tank-to-engine fuel feed configuration). Watch for any unusual decrease in fuel tank quantity and/or a fuel imbalance to determine if fuel is being lost.

If an engine fuel leak is confirmed (either visually or by flight deck indications), shut down the affected engine to stop the leak and retain the remaining fuel. After shutdown of the affected engine, resume normal fuel management procedures. All remaining fuel can be used for the operating engine. Use the FQIS to determine the fuel remaining.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 1, 1994.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-17197 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-ANE-23; Amendment 39-8916; AD 94-10-09]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that requires initial and repetitive inspections of the sixth stage low pressure turbine (LPT) inner airseal, and modification of the sixth stage LPT inner airseal to reduce the potential for two failure modes. This amendment is prompted by reports of thermal mechanical interference inducing low cycle fatigue (LCF) cracks at two locations on the sixth stage LPT inner airseal, resulting in five uncontained failures. The actions specified by this AD are intended to prevent an uncontained failure of the sixth stage LPT inner airseal, which can result in damage to the aircraft.

DATES: Effective September 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publication Department, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803-5299; telephone (617) 238-7130, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D series turbofan engines was published in the *Federal Register* on June 7, 1993 (58 FR 31920). That action proposed to require initial and repetitive on-wing borescope or eddy current inspections of the sixth stage low pressure turbine (LPT) inner airseal rear retaining wing, initial and repetitive on-wing eddy current inspections of the sixth stage LPT inner airseal knife edges, rework of the sixth stage inner airseal knife edges, which is a terminating action to the repetitive knife edge inspections, and rework of the sixth stage LPT inner airseal rear retaining wing, in accordance with the following service bulletins (SB's):

PW SB No. 5978, Revision 3, dated May 20, 1992; PW SB No. 5979, Revision 2, dated April 28, 1992; PW SB No. 5847, Revision 2, dated October 31, 1990; and PW SB No. 5745, Revision 2, dated October 24, 1990.

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

The comment requests the inclusion of PW SB No. 6054, Revision 1, dated April 24, 1992, in the proposed rule. This SB describes installation of a new 6th stage LPT inner airseal as a terminating action to the required inspections and rework. The FAA concurs. This final rule includes the option of installing a new, improved 6th stage LPT inner airseal, in accordance with PW SB No. 6054, Revision 1, dated April 24, 1992, as a terminating action to the inspections and rework required by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 602 Pratt & Whitney Model JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 121 engines installed on aircraft of U.S. Registry would be affected by this proposed AD, that it would take approximately 153 work hours per engine to accomplish

the required actions, and that the average labor rate is \$55 per work hour. The FAA estimates that approximately 50% of affected engines have already incorporated the knife edge modification described in PW SB No. 5847, Revision 2, dated October 31, 1990, and that approximately 5% of affected engines have already incorporated the retaining wing modification described in PW SB No. 5745, Revision 2, dated October 24, 1990. The average utilization of these engines is 2 cycles per day, and the program duration is estimated to be 20 years. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$981,479 over a 20 year period.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-10-09 Pratt & Whitney: Amendment 39-8916. Docket 92-ANE-23.

Applicability: Pratt & Whitney (PW) Model JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines, installed on but not limited to Boeing 747 series, McDonnell Douglas DC-10 series, and Airbus A300 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the sixth stage low pressure turbine (LPT) inner airseal, which can result in damage to the aircraft, accomplish the following:

(a) For engines that have not had the sixth stage LPT inner airseal reworked in accordance with PW Service Bulletin (SB) No. 5847, Revision 2, dated October 31, 1990, eddy current inspect the sixth stage LPT inner airseal knife edges for cracks in accordance with the Accomplishment Instructions of PW SB No. 5979, Revision 2, dated April 28, 1992, and remove cracked sixth stage LPT inner airseals, as follows:

(1) For sixth stage LPT inner airseals identified by Part Number (P/N) in PW SB No. 5979, Revision 2, dated April 28, 1992, with greater than 2,500 cycles since new (CSN) on the effective date of this AD, accomplish an initial eddy current inspection prior to accumulating more than 250 cycles in service (CIS) after the effective date of this AD, or within 1,000 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(2) For sixth stage LPT inner airseals listed by P/N in PW SB No. 5979, Revision 2, dated April 28, 1992, with less than or equal to 2,500 CSN on the effective date of this AD, accomplish an initial eddy current inspection prior to accumulating more than 2,750 CSN, or within 1,000 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, thereafter eddy current inspect the sixth stage LPT inner airseal knife edges for cracks in accordance with the Accomplishment Instructions of PW SB No. 5979, Revision 2, dated April 28, 1992, at intervals not to exceed 1,000 CIS since the last eddy current inspection in accordance with this AD.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (b) of this AD.

(b) Rework the sixth stage LPT inner airseal knife edge diameters in accordance with the Accomplishment Instructions of PW SB 5847, Revision 2, dated October 31, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible,

or not later than January 1, 1996, whichever occurs first. Accomplishment of this rework constitutes a terminating action to the initial and repetitive inspection requirements of paragraph (a)(1), (a)(2), and (a)(3) of this AD.

(c) Eddy current or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992, and remove cracked sixth stage LPT inner airseals, as follows:

(1) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with greater than 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating more than 250 CIS after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, thereafter eddy current or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (b) of this AD.

(b) Rework the sixth stage LPT inner airseal knife edge diameters in accordance with the

Accomplishment Instructions of PW SB 5847, Revision 2, dated October 31, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible, or not later than January 1, 1996, whichever occurs first. Accomplishment of this rework constitutes a terminating action to the initial and repetitive inspection requirements of paragraph (a)(1), (a)(2), and (a)(3) of this AD.

(c) Eddy current or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992, and remove cracked sixth stage LPT inner airseals, as follows: (1) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with greater than 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating more than 250 CIS after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later. (2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later. (3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, thereafter, eddy current or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992. (4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (d) of this AD.

(5) Thereafter, inspect initially, reinspect, and remove from service, if necessary, the replacement sixth stage LPT inner airseals in accordance with paragraph (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(d) Rework the sixth stage LPT inner airseal rear retaining wing in accordance with the Accomplishment Instructions of PW SB 5745, Revision 2, dated October 24, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible, or not later than January 1, 1996, whichever occurs first.

NOTE: Rework of the sixth stage LPT inner airseal rear retaining wing in accordance with paragraph (d) of this AD does not exempt sixth stage LPT inner airseals from initial and repetitive inspections in accordance with paragraph (c)(1), (c)(2), (c)(3) of this AD.

(e) Installation of a new, improved 6th stage LPT inner airseal, in accordance with PW SB No. 6054, Revision 1, dated April 24, 1992, constitutes terminating action to the inspections and rework required by this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(h) The inspections and modifications shall be done in accordance with the following service bulletins:

| Document No. | Pages | Revision | Date |
|---|------------------|----------------------|---------------------|
| PW SB No. 5978 | 1 | 3 | May 20, 1992. |
| | 2 | Original | December 19, 1990. |
| | 3-4 | 2 | April 28, 1992. |
| | 5-11 | 1 October 10, 1991.. | |
| | 12 | 3 October 10, 1991.. | |
| | 13-18 | 1 | October 10, 1991. |
| | 19 | 3 | May 20, 1991. |
| | 20-33 | 1 | October 10, 1991. |
| | 34 | 2 | April 28, 1992. |
| | Total Pages: 34. | | |
| PW SB No. 5979 | 1 | 2 | April 28, 1992. |
| | 2 | Original | December 20, 1990. |
| | 3-4 | 1 | September 27, 1991. |
| | 5-33 | Original | December 19, 1990. |
| | 34 | 1 | September 27, 1991. |
| | 35-36 | Original | December 19, 1990. |
| | 37 | 2 | April 28, 1992. |
| | Total Pages: 37. | | |
| PW SB No. 5847 1-4 2 October 31, 1990.. | 5 | Original | April 11, 1989. |
| | 6 | 2 | October 31, 1990. |
| | 7 | Original | April 11, 1989. |
| | | | |

| Document No. | Pages | Revision | Date |
|--|-------|----------------|-------------------|
| | 8 | 2 | October 11, 1989. |
| | 9 | Original | April 11, 1989. |
| | 10 | 2 | October 11, 1989. |
| Total Pages: 10. PW SB No. 5745 | 1-9 | 2 | October 24, 1990. |
| Total Pages: 9. PW SB No. 6054 | 1-4 | 1 | April 24, 1992. |
| | 5-7 | Original | November 6, 1991. |
| | 8 | 1 | April 24, 1992. |
| Total Pages: 16. | 9-16 | Original | November 6, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 13, 1994.

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

Michael H. Borfritz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-17068 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71

[Airspace Docket No. 94-ASO-9]

Amend Establishment of Class E Airspace Areas, Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: This action corrects errors in a final rule published on May 23, 1994, (59 FR 26598) Airspace Docket Number 94-ASO-9. The Class E airspace at Jacksonville, Craig Municipal Airport, Florida and Montgomery, Dannelly Field, Alabama are removed. The Class E airspace at Orlando, Executive Airport, Florida is amended. The latitudes and longitudes at the following airports are corrected; Florence, Regional Airport, SC, Wilmington, New Hanover International Airport, NC, Miami, Kendall-Tamiami Executive Airport, FL, St. Petersburg-Clearwater International Airport, FL and Atlanta, Fulton County Airport, GA.

DATES: Effective date: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT:

Wade T. Carpenter, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, Docket Number 94-ASO-9, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94-12531, Airspace Docket 94-ASO-9 published on May 23, 1994, [59 FR 26598] established Class E airspace areas at numerous locations in South Carolina, North Carolina, Florida, Georgia, Tennessee, and Alabama. The Jacksonville, Craig Municipal Airport, FL and Montgomery, Dannelly Field, AL were inadvertently included as locations to establish Class E airspace areas. This action corrects those errors by removing the Class E airspace designation for Jacksonville, Craig Municipal Airport, FL and Montgomery, Dannelly Field, AL. This action also corrects the legal description for Orlando, Executive Airport, FL Class E airspace by including a sentence that was inadvertently left out of the final rule. Finally, the latitudes and longitudes published for Florence, Regional Airport, SC, Wilmington, New Hanover International Airport, NC, Miami, Kendall-Tamiami Executive Airport, FL, St. Petersburg-Clearwater International Airport, FL, and Atlanta, Fulton County Airport, GA are corrected.

Correction to Final Rule

Accordingly, pursuant to the Authority delegated to me, the aforementioned airspace designations as published in the **Federal Register** on May 23, 1994 [59 FR 26598] (Federal Register Document 94-12531, page 26597, column 3) are corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

ASO AL E2 Mobile, AL [Remove]

Mobile Downtown Airport, AL
(lat. 30°37'35" N, long. 88°04'05" W)

ASO FL E2 Jacksonville Craig Municipal Airport, FL [Remove]

Jacksonville, Craig Municipal Airport, FL
(lat. 30°20'11" N, long. 81°30'52" W)

ASO SC E2 Florence, SC [corrected]

Florence Regional Airport, SC
(lat. 34°11'07" N, long. 79°43'26" W)

That airspace extending upward from the surface within a 4.2-mile radius of Florence Regional Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

ASO NC E2 Wilmington, NC [corrected]

Wilmington, New Hanover International Airport, NC
(lat. 34°16'14" N, long. 77°54'09" W)

That airspace extending upward from the surface within a 5-mile radius of New Hanover International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

ASO FL E2 Orlando, FL [Amended]

Orlando, Executive Airport, FL
(lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC
(lat. 28°32'34" N, long. 81°20'06" W)

That airspace extending upward from the surface within a 4-mile radius of Orlando Executive Airport and within 3.6 miles each side of the Orlando VORTAC 254° radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

ASO FL E2 Miami, FL [Corrected]

Miami, Kendall-Tamiami Executive Airport, FL

(lat. 25°38'52" N, long. 80°25'58" W)

That airspace extending upward from the surface within a 3.5-mile radius of the Kendall-Tamiami Executive Airport, FL; excluding that airspace within the Miami, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

ASO FL E2 St. Petersburg, FL [Corrected]

St. Petersburg-Clearwater International Airport, FL

(lat. 27°54'39" N, long. 82°41'15" W)

That airspace extending upward from the surface within a 4.2-mile radius of St. Petersburg-Clearwater International Airport; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

ASO GA E2 Atlanta, GA [Corrected]

Atlanta, Fulton County Airport, GA

(lat. 33°46'45" N, long. 84°31'17" W)

Dobbins AFB

(lat. 33°54'54" N, long. 84°31'00" W)

That airspace extending upward from the surface within a 4-mile radius of Fulton County Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on June 20, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 94-17217 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 341**

[Docket No. 89P-0040]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the *Federal Register* of June 3, 1994 (59 FR 29172). The document amended the final monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: June 5, 1995.

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

In FR Doc. 94-13586, appearing on page 29172 in the *Federal Register* of Friday, June 3, 1994, the following corrections are made:

§ 341.74 [Corrected]

1. On page 29174, in the third column, in § 341.74 *Labeling of antitussive drug products*, paragraphs (d)(1)(iv) and (d)(1)(v) are corrected by removing the quotation marks.

§ 341.90 [Corrected]

2. On page 29174, in the third column, in § 341.90 *Professional labeling*, paragraphs (r) and (s) are corrected by removing the quotation marks.

Dated: July 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94-17150 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Part 658**

[FHWA Docket No. 93-35]

RIN 2125-AD26

Truck Size and Weight; National Network

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA has modified the National Network for commercial motor vehicles by adding routes in Georgia. The National Network was established by a final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This rulemaking adds 26 segments to the National Network as requested by the State of Georgia.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis (202-366-2212), or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C. App. 2311 *et seq.*, may operate, was established by the final rule published in the *Federal Register* on June 5, 1984 (49 FR 23302). These highways are located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed in appendix A of Part 658. Additional routes not on the network but available for STAA vehicles are also identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking. The NPRM listing Georgia's proposed changes to the National Network was published on December 16, 1993 [58 FR 65677].

The State of Georgia, under authority of the Governor, requests the addition of 26 route segments to the National Network. The segments have been

reviewed by State and FHWA offices for general adherence to the criteria of 23 CFR 658.9 and found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce.

The segments requested are generally described as:

1. US 19 (GA 300) from Florida State Line to Pelham, 27.6 miles;
2. US 27 (GA 1) from GA 53 south of Rome to US 278 in Cedartown, 12.0 miles;
3. US 27 (GA 1) from Florida State Line to GA 38 in Bainbridge, 19.0 miles;
4. US 41 (GA 3) from GA 5 Connector to County Road 633 near Emerson, 15.2 miles;
5. US 78 (GA 10) from Stone Mountain Freeway to Monroe Bypass, 25.9 miles;
6. US 80 (GA 22) from Alabama State Line to GA 85 in Columbus, 9.9 miles;

7. US 84 (GA 38) from Alabama State Line to I-75, 124.4 miles;
8. US 84 (GA 38) from GA 520 in Waycross to GA 32 in Patterson, 18.1 miles;
9. US 129 (GA 11) from I-85 to I-985, 14.9 miles;
10. US 319 (GA 35) from GA 300 in Thomasville to US 82 in Tifton, 55.7 miles;
11. US 441 (GA 31) from GA 520 in Pearson to GA 135 in Douglas, 13.2 miles;
12. US 441 (GA 24) from I-20 to GA 22 in Milledgeville, 40.1 miles;
13. US 441 (GA 15 Alternate) from Athens Bypass to I-85, 21.1 miles;
14. GA 5 Connector from I-75 to U. S. 41 (GA 3), 1.3 miles;
15. GA 6 from I-20 to GA 6 Bypass near Dallas, 13.8 miles;
16. GA 6 Bypass around Dallas, 6.0 miles;
17. GA 10 Loop (East and South Bypass) in Athens, 11.6 miles;

18. GA 61 from I-20 to GA 166 near Carrollton, 8.6 miles;
19. GA 166 from GA 61 to the end of the 4 lane divided section west of GA 1 at Carrollton, 7.8 miles;
20. GA 247 Connector from I-75 to GA 247 in Warner Robins, 8.5 miles;
21. GA 316 from GA 120 to U S 29 (GA 8), 6.0 miles;
22. GA 515 from I-575 to Blairsville, 63.4 miles;
23. GA 520 from Cusseta to Dawson, 45.7 miles;
24. GA 520 from I-75 to Waycross, 74.8 miles;
25. GA 520 from I-95 to GA 25, 5.4 miles;
26. GA 25 from GA 520 to GA 25 Spur, 6.0 miles.

Eight segments of the current and requested NN routes have been combined for clarity and to better describe the termini. The changes are as follows:

| Route | From | To |
|------------------------------|--------------------------|------------------------|
| Segments listed in the NPRM: | | |
| US 19 | US 82 Albany | Near Pelham. |
| US 19 | Florida State Line | Pelham. |
| Replaced by: | | |
| US 19 | FL State Line | US 82 Albany. |
| Segments listed in the NPRM: | | |
| US 82 | Dawson | I-75 Tifton. |
| US 82 | US 84 Waycross | I-95 Exit 6 Brunswick. |
| GA 520/US 82 | I-75 | Waycross. |
| Replaced by: | | |
| US 82/GA 520 | Dawson | I-95 Exit 6 Brunswick. |
| Segments listed in the NPRM: | | |
| US 280 | Alabama State Line | Cusseta. |
| GA 520/US 280 | Cusseta | Dawson. |
| Replaced by: | | |
| US 280/GA 520 | Alabama State Line | Dawson. |
| Segments listed in the NPRM: | | |
| GA 316 (5 miles) | I-85 | Near Lawrenceville. |
| GA 316 | GA 120 | US 29. |
| Replaced by: | | |
| GA 316 | I-85 | US 29. |
| Segments listed in the NPRM: | | |
| US 441/GA 15 Alternate | Athens Bypass | I-85. |
| Replaced by: | | |
| US 441/GA 15 | Athens Bypass | I-85. |

The word "Alternate" has been removed from the listing contained in the NPRM as a technical correction because Alternate 15 does not coincide with US 441.

With these changes the FHWA is adding the segments requested to the existing route descriptions for Georgia. We are publishing the new Georgia listing in its entirety because of the extent of the revisions.

Rulemaking Analyses and Notices

No comments were received, and FHWA is therefore adopting the rule as proposed. Eight segments have been combined for clarity and to better describe the termini. The changes are described in the Supplementary

Information section. The word "Alternate" has been removed as a technical correction because Alternate 15 does not coincide with US 441.

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

The FHWA has determined that this action does not constitute a "significant regulatory action," within the meaning of E.O. 12866, nor is it considered "significant" under the regulatory policies and procedures of the DOT. It

is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking proposes technical amendments to 23 CFR 658, adding certain highway segments in accordance with statutory provisions. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), FHWA has evaluated the effects of this proposal on small entities. As stated in the preceding paragraph, this rulemaking proposes technical amendments to 23 CFR 658, adding certain highway segments in accordance with statutory provisions. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. This rulemaking would, however, allow motor carriers, including small carriers, access to highways not available to them at the present time.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environment Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Chapter 1, by amending appendix A to Part 658 for the State of Georgia as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. app. 2311, 2312, and 2316; 49 CFR 1.48 (b)(19) and (c)(19).

Appendix A [Amended]

2. Appendix A to Part 658 is amended for the State of Georgia by revising the route listing to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

GEORGIA

| Route | From | To |
|-----------------------|--------------------------------|-----------------------------------|
| US 19 | FL State Line | US 82 Albany. |
| US 23/GA 365 | I-985 near Gainesville | US 441 near Cornelia. |
| US 25 | I-16 | N. of Statesboro. |
| US 27 | GA 53 Rome | US 278 Cedartown. |
| US 27 | FL State Line | GA 38 Bainbridge. |
| US 27 Alternate GA 85 | I-185 Columbus | Ellerslie. |
| US 29 | US 78 W. Interchange | US 129/441 E. Interchange Athens. |
| US 41 | I-75 W. of Morrow | Near Barnesville. |
| US 41 | GA 5 Connector | County Road 633 Emerson. |
| US 76 | I-75 Dalton | US 411 Chatsworth. |
| US 78—US 29 | GA 138 Monroe | US 29 W. Interchange Athens. |
| US 78/GA 410 | Valleybrook Rd. Scottsdale | GA 10 Stone Mountain. |
| US 78/GA 10 | Stone Mountain Freeway | Monroe Bypass. |
| US 80/GA 22 | AL State Line | GA 85 Columbus. |
| US 82/GA 520 | Dawson | I-95 Exit 6 Brunswick. |
| US 84/GA 38 | Alabama State Line | I-75. |
| US 84/GA 38 | GA 520 Waycross | GA 32 Patterson. |
| US 129 | I-16 | Gray. |
| US 129 | GA 247 Connector Warner Robins | I-75 Macon. |
| US 129/GA 11 | I-85 | I-985. |
| US 280/GA 520 | Alabama State Line | Dawson. |
| US 319/GA 35 | US 19/GA 300 Thomasville | US 82/GA 520 Tifton. |
| US 411—US 41 | US 27 Rome | I-75 near Emerson. |
| US 441/GA 31 | US 82/GA 520 Pearson | GA 135 Douglas. |
| US 441/GA 24 | I-20 | GA 22 Milledgeville. |
| US 441/GA 15 | Athens Bypass | I-85. |
| GA 2 | US 27 Fort Oglethorpe. | I-75. |
| GA 5 Connector | I-75 | US 41. |
| GA 6 | I-20 | GA 6 Bypass near Dallas. |
| GA 6 Bypass | E. of Dallas | W. of Dallas. |
| GA 10 Loop | E. and S. Bypass in Athens | |
| GA 14 Spur | US 29/Welcome All Road | I-85/285 S. Interchange Atlanta. |
| GA 21 | I-95 Monteith | GA 204 Savannah. |
| GA 25 | GA 520 | GA 25 Spur. |

GEORGIA—Continued

| Route | From | To |
|------------|-----------------------|--|
| GA 25 Spur | US 17 N. of Brunswick | I-95 Exit 8. |
| GA 53 | Rome | I-75 Calhoun. |
| GA 61 | I-20 | GA 166 near Carrollton. |
| GA 85 | Fayetteville | I-75. |
| GA 138 | I-20 Conyers | US 78 Monroe. |
| GA 166 | GA 61 | End of 4-lane section of W. GA 1 Carrollton. |
| GA 247C | I-75 | GA 247 Warner Robins. |
| GA 300 | US 82 Albany | I-75 near Cordele. |
| GA 316 | I-85 | US 29. |
| GA 400 | I-285 near Atlanta | GA 60. |
| GA 515 | I-575 | Blairsville. |
| GA 520 | I-95 | GA 25. |

Note: Atlanta area—Interstate highways within the I-285 beltway are not available to through trucks with more than 6 wheels because of construction.

* * * * *
[FR Doc. 94-17174 Filed 7-14-94; 8:45 am]
BILLING CODE 4910-22-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1994. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May 1994 through July 1994. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; telephone 202-326-4024 (202-326-4179 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement

Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1994, the interest charged on the underpayment of taxes will be at a rate of 8 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1, 1994, through September 30, 1994, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in May of 1994 through July of 1994.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these actions is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

| From— | Through— | Interest rate (percent) |
|------------------|---------------------|-------------------------|
| July 1, 1994 ... | September 30, 1994. | 8 |

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in May of 1994 through July of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

| For premium payment years beginning in— | Required interest rate ¹ |
|---|-------------------------------------|
| May 1994 | 5.82 |
| June 1994 | 5.93 |
| July 1994 | 5.92 |

¹ The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

| From— | Through— | Interest rate (percent) |
|------------------|---------------------|-------------------------|
| July 1, 1994 ... | September 30, 1994. | 8 |

Issued in Washington, DC, this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-17250 Filed 7-14-94; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in August 1994, and to multiemployer plans with valuation dates in August 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the August 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard

termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during August 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during August 1994.

For annuity benefits, the interest rates will be 7.00% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.75% for the period during which benefits are in pay status, 5.00% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of \$25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding \$25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions.) The above annuity interest assumptions represent an increase (from those in effect for July

1994) of .10 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for July 1994) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the *Federal Register* by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during August 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during August 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility

Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 10 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form V^n (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the value of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years; interest rate i_2 shall apply for the following n_2 years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|----------|---------------------------------|--------|----------------------------------|------------------------------|-------|-------|-------|-------|
| | On or after | Before | | i_1 | i_2 | i_3 | n_1 | n_2 |
| 10 | 8-1-94 | 9-1-94 | 5.75 | 5.00 | 4.00 | 4.00 | 7 | 8 |

Annuity Valuations

In determining the value of interest factors of the form $V: \ddot{n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor

used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof. The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, \dots , and referred to

generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

| For valuation dates occurring in the month— | The values of i_t are: | | | | | |
|---|--------------------------|----------|-------|----------|-------|----------|
| | i_t | for $t=$ | i_t | for $t=$ | i_t | for $t=$ |
| August 1994 | .0700 | 1-25 | .0525 | >25 | N/A | N/A |

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 10 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V: \ddot{n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years; interest rate i_2 shall apply for the following n_2 years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|----------|---------------------------------|--------|----------------------------------|------------------------------|-------|-------|-------|-------|
| | On or after | Before | | i_1 | i_2 | i_3 | n_1 | n_2 |
| 10 | 8-1-94 | 9-1-94 | 5.75 | 5.00 | 4.00 | 4.00 | 7 | 8 |

Annuity Valuations

In determining the value of interest factors of the form $V: \ddot{n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in

determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, \dots , and referred to generally as i_t) assumed to be in effect

between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are

specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

| For valuation dates occurring in the month— | The values of i_t are: | | | | | |
|---|--------------------------|----------|-------|----------|-------|----------|
| | i_t | for $t=$ | i_t | for $t=$ | i_t | for $t=$ |
| August 1994 | .0700 | 1-25 | .0525 | >25 | N/A | N/A |

Issued in Washington, DC, on this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-17251 Filed 7-14-94; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. This amendment adds to the appendix of that regulation a new interest rate to be effective from July 1, 1994, to September 30, 1994. The effect of the amendment is to advise the public of the new rate.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; telephone 202-326-4024 (202-326-4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates,

subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 7.25 percent, which will be effective from July 1, 1994, through September 30, 1994. This rate represents an increase of 1.25 percent from the rate in effect for the second quarter of 1994. This rate is based on the prime rate in effect on June 15, 1994.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

| From— | To— | Date of quotation | Rate (percent) |
|----------|----------|-------------------|----------------|
| 07/01/94 | 09/30/94 | 6/15/94 | 7.25 |

Issued in Washington, DC, on this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-17249 Filed 7-14-94; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93-3) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning delegation of authority, ultimate authority, conduct of certain proceedings and record keeping by the administrative law judge (ALJ). The amendment is intended to revise the Indiana Administrative Code (IAC) rules to implement statutory changes contained in the 1991 Senate Enrolled Act (SEA) 154.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of

approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated June 4, 1991 (Administrative Record Number IND-0894), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program concerning statutes enacted by Indiana under SEA 154 from the 1991 Indiana Legislative Session. The amendments included provisions concerning requirements for hearings, and changes in the responsibilities of the director of the IDNR and the Natural Resources Commission (NRC). OSM approved the proposed amendments on June 23, 1992 (57 FR 27928).

By letter dated April 2, 1993 (Administrative Record Number IND-1217), Indiana submitted proposed program amendment number 93-3. Program amendment 93-3 consists of changes to the Indiana rules concerning delegation of authority, ultimate authority, conduct of certain proceedings, and record keeping by the ALJ. The changes to the Indiana rules reflect the statutory changes contained in the 1991 SEA 154 discussed above.

OSM announced receipt of the proposed amendment in the April 23, 1993, **Federal Register** (58 FR 21693), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 24, 1993. Upon review of the proposed amendments, OSM identified additional changes to the rules which had not been previously reviewed and approved by OSM. On September 21, 1993, OSM reopened the public comment period and invited public comment on those changes which were not previously identified as amendments subject to public comment (58 FR 48996). The public comment period closed on October 6, 1993. OSM reopened the public comment period on March 28, 1994 (59 FR 14375), after Indiana submitted a version of the amendment which differed from the original submittal. The public comment period closed on April 12, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 0.6-1-2 Applicability of Rule

(a) Subsection 2(a) is amended by replacing the term "department" with the term "commission." In effect, under this amendment, administrative law judges conduct proceedings for the NRC rather than the IDNR. Under Public Law 28-199, SEA 362 (referred to as the "Sunset" law), Indiana amended Indiana Code (IC) IC 14-3-3-3(e) to provide that the Indiana NRC shall appoint administrative law judges. The proposed amendment, therefore, is consistent with IC 14-3-3-3(e) as amended by SEA 362. OSM approved the amendments to IC 14-3-3-3(e) made by SEA 362 on August 2, 1991 (56 FR 37016). While there is no direct Federal counterpart to the proposed provision at subsection 2(a), the Director finds the proposed amendment is not inconsistent with SMCRA section 503 concerning the establishment of State programs.

(b) Subsection 2(b) is amended to provide that 310 IAC 0.6-1-8 and 310 IAC 0.6-1-12 do not apply if the ALJ is the NRC. The proposed language does not render the Indiana program less effective for the following reasons. 310 IAC 0.6-1-8 pertains to automatic changes of the ALJ. Since the NRC is the ultimate authority for the IDNR, the provision at 310 IAC 0.6-1-8 concerning automatic changes of the ALJ would not apply. 310 IAC 0.6-1-12 also would not apply because section 310 IAC 0.6-1-12 only pertains to orders from other than the ultimate authority. While there is no direct Federal counterpart to the proposed provision at 2(b), the Director finds the proposed amendment is not inconsistent with SMCRA section 503.

(c) This new subsection provides that 310 IAC 0.6-1-12, concerning objections to recommendations of an ALJ, does not apply if IC 4-21.5-4 concerning emergency orders, or if sections 310 IAC 0.6-1-2.5(b) concerning administrative reviews by an ALJ, or (c) concerning final orders by an ALJ apply. Additionally, the proposed language provides that a party may seek judicial review under IC 4-21.5-5 of a final order made by an ALJ under 310 IAC 0.6-1-2.

There is no direct Federal counterpart to the proposed language. The Director finds, however, that the proposed language is not inconsistent with SMCRA because the public has the right

to appeal decisions by the regulatory authority under IC 4-21.5-5 concerning judicial review.

2. 310 IAC 0.6-1-2.5 Ultimate Authority

This new section is added to provide at subsection 2.5(a) that the NRC is the ultimate authority for the IDNR for proceedings under rule 310 IAC 0.6-1, except as provided in subsections 2.5 (b) and (c). In subsection 2.5(b), the ALJ is the ultimate authority for administrative reviews under IC 13-4.1 or 310 IAC 12, except for proceedings concerning the approval or disapproval of a permit application or permit renewal under IC 13-4.1-4-5 and proceedings for suspension or revocation of a permit under IC 13-4.1-11-6. In subsection 2.5(c), an order made by an ALJ granting or denying temporary relief from a decision of the director of the IDNR is a final order of the department.

The proposed language is consistent with the Indiana provisions contained in its "Sunset law" (Pub. L. 28-199, SEA 362). While there is no Federal counterpart to section 2.5, the Director finds that the proposed language is not inconsistent with SMCRA section 503 concerning the establishment of State programs.

3. 310 IAC 0.6-1-17 Record of Proceedings

This new section is added to provide (in subsection 17(a)) that the record required to be kept by an ALJ under IC 4-21.5-3-14 commences with the filing of one of the following with the director of the IDNR: (1) A petition for administrative review under IC 4-21.5-3-7; (2) a complaint under IC 4-21.5-3-8; (3) a proceeding before an ALJ under IC 4-21.5-4.

New subsection 17(b) provides that the record required to be kept by an ALJ consists of the official record as set forth in IC 4-21.5-3-33.

New subsection 17(c) provides that in addition to subsections 17 (a) and (b), subsection 17(c) applies to proceedings concerning the approval or disapproval of a permit application, permit revision application, or permit renewal under IC 13-4.1-4-5.

Upon a timely objection before or during a hearing, the ALJ shall exclude testimony or exhibits which are offered but which identify or otherwise address matters which were not part of the "record before the director" under IC 13-4.1-4-5. The "record before the director" includes each of the following: (1) The permit; (2) the permit application; (3) documentation tendered or referenced in writing by the applicant or an interested person for the purposes

of evaluating, or used by the IDNR to evaluate the application; (4) the analyses of the IDNR in considering the application, including the expertise of the IDNR's employees and references used to evaluate the application; (5) documentation received under IC 13-4.1-4-2, including the conduct and results of any informal conference or public hearing under IC 13-4.1-4-2(c); (6) correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

Upon review of the amendment, OSM informed Indiana that the proposed language at subsection 17(c) appears to limit the record before the director of the IDNR (director) to a degree which would prevent a full public hearing on the application. In response to OSM's concerns, Indiana stated that the State differs with OSM's interpretation of both the intent and application of the proposed language (Administrative Record Number IND-1311).

Indiana stated that the Division of Reclamation of the IDNR agrees with OSM that evidence "created after an agency decision, or otherwise not fairly available to the proponent prior to that decision, is important in determining the propriety of the issuance or denial of a permit." Indiana further stated that "[E]xclusion of valid evidence which was not fairly available prior to the agency action would deny aggrieved individuals a fair opportunity to present evidence and arguments regarding a particular permit application" and would "thwart the fundamental protection purpose of SMCRA."

In order to clarify the Division's interpretation, Indiana stated that "[i]t is not our interpretation that a party should be afforded unlimited license to submit any and all 'evidence' which that party believes relevant." "Clearly," the State asserted, "any information before the agency during the initial decision making process is relevant in a subsequent administrative review proceeding." "However," the State added, "a party should not be permitted to 'sit on their rights' during the entire permit review and public comment periods, thereby denying the reviewing agency the benefit of crucial information, and subsequently challenge the propriety of the agency decision based upon information withheld by the 'aggrieved' party." (Administrative Record No. IND-1311).

In a letter to Indiana dated February 2, 1994 (Administrative Record Number IND-1353), OSM stated its agreement with Indiana's concerns as noted above.

However, despite the Division's interpretation of what should or should not be included in the record before the director, OSM stated that it appears that it would be the ALJ, and not the Division of Reclamation, which would decide what evidence could or could not be considered at a hearing or a pre-hearing conference. The ALJ's would decide these issues when presented with objections to the admission of evidence alleged to be outside of the record made before the director.

In response, Indiana stated in a letter dated February 18, 1994 (Administrative Record Number IND-1337), that it disagreed with OSM's interpretation that a plain language reading of the proposed language at 310 IAC 0.6-1-17(c) requires exclusion of evidence generated after a decision, or not fairly available in advance of the agency decision. Instead, Indiana offered reasons why it believes the proposed language affords sufficient flexibility to permit the introduction of such evidence.

Indiana asserted that the proposed language provides that subsections 17 (a) and (b) apply to permit review proceedings. Subsection 17(b) states that the "record" includes the "official record" under IC 4-21.5-3-33. IC 4-21.5-3-33(b)(4) provides, in part, that the agency record includes "evidence received or considered." "Similarly," the State asserts, "IC 4-21.5-3-33(b)(6) provides that the agency record includes proffers of proof and objections and rulings on them." The Division of Reclamation interprets the above-referenced provisions as being sufficiently general to allow the introduction of evidence generated after, or not fairly available in advance of the agency decision under review.

Indiana noted that 310 IAC 0.6-1-17(c) provides that " * * * nothing in this subsection precludes the admission of testimony or exhibits which are limited to an explanation or analysis of materials included in the record before the director, or the manner in which the materials were applied, used, or relied upon in evaluating the application." The Division of Reclamation interprets this provision "as providing sufficient flexibility to permit the introduction of evidence generated after, or not fairly available in advance of the agency decision as explanation or analysis evidence." (Administrative Record No. IND-1337).

The Director agrees that the provisions cited by Indiana could indeed be interpreted as to allow the introduction of some evidence generated after, or not fairly available in advance of the agency decision. Again,

however, the ALJ's will be charged with interpreting this regulation, not the IDNR.

Subsection 514(c) of SMCRA and 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana meets those standards. Consequently, Indiana's proposed language is no less stringent than SMCRA and no less effective than the Federal regulations. The Director understands that under this rule some evidence and documentation could be ruled inadmissible by an ALJ in a post-decisional hearing. However, this rule does not prevent such evidence and documentation from being remanded by an ALJ to the regulatory authority for analysis and reconsideration of its permit decision. In this way, evidence submitted which is deemed relevant and important to a permit decision can be considered, while at the same time assuring that permit decisions remain in the hands of the regulatory authority.

4. 310 IAC 0.6-1-9 Defaults, Dismissals, Agreed Orders, and Consent Decrees

Subsection 9(a) has been amended to provide that an ALJ may, on its own motion or the motion of a party, enter a nonfinal order of default or dismissal, as appropriate, and submit the nonfinal order to the secretary of the NRC for final action if any of the described conditions are met. Prior to this amendment, the rule only provided for nonfinal orders of dismissal by the ALJ. New subsection 9(a)(3) is added to provide that the ALJ may enter a nonfinal order of default or dismissal where the party which initiated the administrative review requests the proceeding be dismissed, and every other party joins or acquiesces in the dismissal. In addition, new subsection 9(a)(4) is added to provide that where the ALJ may enter a nonfinal default or dismissal order, a default or dismissal could be entered in a civil action.

New subsection 9(b) provides that an ALJ shall approve an agreed order or consent decree entered by the parties, if it is: (1) Clear and concise; and (2) lawful.

New subsection 9(c) provides that an ALJ may enter a nonfinal order of default or a nonfinal order of involuntary dismissal only following the issuance of a proposed order of default or proposed order of dismissal under IC 4-21.5-3-24.

New subsection 9(d) provides that the secretary of the NRC, as the designee of the NRC under IC 4-21.5-3-28(b), may affirm the entry of a nonfinal default

order, dismissal order, or consent decree. The secretary of the NRC has exclusive authority to approve, remand, or submit to the commission for final action, any nonfinal order or decree entered by an ALJ under section 310 IAC 0.6-1-9. A party which opposes the entry of a final order by the secretary of the NRC must file a written objection, and the ALJ and any other party may file a written response to the objection.

Subsection 9(e) is amended to provide that an order of default, order of dismissal, agreed order, or consent decree made by the secretary of the NRC is a final order of the IDNR and is made with prejudice, unless otherwise specified in the order or decree. Prior to the proposed amendment, the rule did not include an order of default by the Secretary as a final order of the IDNR, nor did it specify the secretary of the NRC as the designee of the IDNR for purposes of issuing final orders.

New subsection 9(f) provides that an order of default, order of dismissal, agreed order, or consent decree made by an ALJ, where acting as the ultimate authority for the IDNR under section 310 IAC 0.6-1-2.5(b), is a final order of the department unless otherwise specified in the order or decree. A person may seek judicial review of a final order entered under 310 IAC 0.6-1-9(f) as provided in IC 4-21.5-5.

There are no direct counterparts to the proposed rules. The Director finds, however, that the proposed rules are not inconsistent with SMCRA at section 514 concerning decisions of the regulatory authority and appeals, and the Federal regulations at 30 CFR Part 775 concerning administrative and judicial review of decisions.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received concerning the proposed amendments to the Indiana program.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the April 23, 1993, **Federal Register** (58 FR 21693). The comment period closed on May 24, 1993. The public comment period was reopened on September 21, 1993 (58 FR 48996) and again on March 28, 1994 (59 FR 14375). These comment periods closed on October 6, 1993, and April 12, 1994, respectively. No one requested an opportunity to testify at the scheduled

public hearing so no hearing was held. The Indiana Coal Council, Inc. (ICC) commented in support of the proposed amendments.

Ms. F. K. Harris commented that the proposed amendment at 310 IAC 0.6-1-17(c), which authorizes the ALJ to exclude testimony or exhibits which are offered but which identify matters which were not part of the "record before the director," inappropriately limits the evidence which can be introduced at a permit review hearing. The Director disagrees. As discussed above in Finding 3, SMCRA at section 514(c) and the Federal regulations at 30 CFR 775.11(b)(1) provide that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana meets those standards. The proposed language may allow some information or documentation to be excluded from post-decisional hearings. However, this proposal does not prevent an ALJ at a permit hearing from remanding relevant and important information and documentation to the regulatory authority for analysis and reconsideration of its permit decision. Such a remand would benefit the State in its interest in issuing only those permits, revisions, and renewals which should be issued.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND-1221). EPA did not respond to OSM's request.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 93-3 as submitted by Indiana on April 2, 1993, and clarified by OSM on September 21, 1993, and March 28, 1994.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana 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

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).

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, to the extent allowed by law, 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 1255) and 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.

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)).

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.*).

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 which 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 Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern 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 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. In § 914.15, paragraph (aaa) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(aaa) The following amendment (Program Amendment Number 93-3) to the Indiana program as submitted to OSM on April 2, 1993, and clarified on September 21, 1993, and March 28, 1994, is approved effective July 15, 1994: 310 IAC 0.6-1-2 concerning applicability of the rule; 310 IAC 0.6-1-2.5 concerning ultimate authority for the Indiana Department of Natural Resources; 310 IAC 0.6-1-9 concerning defaults, dismissals, agreed orders, and consent decrees, and 310 IAC 0.6-1-17 concerning record of the director for surface coal mining permits.

[FR Doc. 94-17283 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09-94-019]

RIN 2115-AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the I-75 highway drawbridge, mile 14.5 across the Saginaw River at Zilwaukee, Michigan, because a fixed span replacement bridge has been constructed and the bascule bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because the bascule bridge is no longer in existence, eliminating the need for regulation.

EFFECTIVE DATE: This rule becomes effective on August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, at (216) 522-3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Mr. Fred H. Mieser, Project Manager.

Background and Purpose

The bascule bridge across the Saginaw River, mile 14.5, at Zilwaukee, Michigan, was replaced by a high level fixed bridge at mile 14.61 from the mouth of the river. The bascule bridge has been removed; therefore, the need for 33 CFR 117.647(c) has been eliminated. This action has no economic consequences. It merely removes regulations for a bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.647 (d), (e), and (f) for the Sixth Avenue bridge, mile 17.1, Chessie System railroad bridge, mile 18.0, and Grand Trunk Western railroad bridge, mile 19.2 all across the Saginaw River within the State of Michigan.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the rule which is being changed is for a drawbridge that has been removed from the waterway and no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the I-75 drawbridge has been removed and replaced by a fixed bridge, the rule governing the I-75 drawbridge is no longer appropriate. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.647, paragraph (c) is removed and paragraphs (d), (e), and (f) are redesignated as paragraphs (c), (d), and (e) respectively.

Dated: July 5, 1994.

Rudy K. Peschel,

*Rear Admiral, U.S. Coast Guard Commander,
Ninth Coast Guard District.*

[FR Doc. 94-17274 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska; Customary and Traditional Use Eligibility Determinations; Review Policies

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Review policies.

SUMMARY: Pursuant to the regulatory authority found at 36 CFR 242.10(a), 242.18(b), 50 CFR 100.10(a), and 100.18(b), the Federal Subsistence Board (Board) provides notice of a priority list and associated schedule for reviewing customary and traditional use eligibility determinations, and details the associated administrative process, under the Federal Subsistence Management Program.

EFFECTIVE DATE: The Federal Subsistence Board policies shall be effective July 15, 1994.

ADDRESSES: Any comments concerning this notice may be sent to the Chair, Federal Subsistence Board, c/o Richard S. Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact

Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628; telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the Board assumed subsistence management responsibilities on Federal public lands and adopted the existing State of Alaska customary and traditional use eligibility determinations. Such determinations identified customary and traditional subsistence uses of certain fish and wildlife resources by specific communities and areas in Alaska. Due to changes in the rural status of some communities, public comments on the draft environmental impact statement "Subsistence Management for Federal Public Lands in Alaska" (October 7, 1991), comments received on temporary and implementing subsistence regulations, and customary and traditional use eligibility determination appeals submitted under the temporary subsistence regulations, the Board recognized the need for new assessments of existing customary and traditional use eligibility determinations. However, the Board deferred action on customary and traditional use eligibility until after July 1, 1992 (the effective date of final implementing rules for the Federal subsistence program) and indicated that a customary and traditional use determination process and schedule would be developed and published. Customary and traditional use eligibility determination assessments were begun in regard to the Kenai Peninsula and Upper Tanana areas in 1992, and the Copper River Basin more recently. These areas were prioritized based upon public comments received during the environmental impact statement process and subsequent Board meetings. This notice sets forth an initial customary and traditional use eligibility determination schedule to be updated on a routine basis dependent upon input from the public and Federal Subsistence Regional Advisory Councils (Regional Councils). Details of the administrative process involved in customary and traditional assessments, public and advisory council input opportunities, and decision making steps, are also set forth.

Customary and Traditional Use Eligibility Determination Procedures

The Board will implement a systematic program for review of customary and traditional use eligibility

determinations. As a priority consideration, the Board will focus its determinations on community or area uses of large mammals (ungulates and bears). Nevertheless, the Board recognizes that subsistence is in large part exemplified by reliance upon, and traditional use of, a multitude of fish and wildlife species, and consequently even the Board's initial large mammal assessments will examine information on subsistence uses of varied species. Furthermore, the Board retains the authority to initiate assessments and make eligibility determinations related to the customary and traditional use of any species as recommended by Regional Councils or as necessary for proper administration of the program. The Board will examine uses of species of large mammals by communities or areas rather than focus on individual herds.

The Board recognizes that subsistence resource use patterns of neighboring communities are often interrelated and should be analyzed concurrently. The Board has identified 26 areas in Alaska where neighboring communities are thought to have similar patterns of resource uses. In identifying these "analysis areas" the distribution of Federal public lands and associated jurisdictions of Regional Councils were taken into account. The 26 analysis areas constitute geographically distinct regions of Alaska within which customary and traditional use patterns of a community or communities will be documented and analyzed. Within each analysis area, the determinations will focus primarily on the customary and traditional uses of large mammals by the communities located within that analysis area. Existing eligibility determinations regarding communities and areas adjacent to the area under analysis will not be revised unless a full assessment and review of those areas or communities have occurred.

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that exemplify customary and traditional subsistence uses of a community or area. The Board will base its determination of customary and traditional use eligibility on the extent to which a community, group of communities, or area meet the characteristics of these identified factors. The eight factors are as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;
2. A pattern of use recurring in specific seasons for many years;
3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and

economy of effort and cost, conditioned by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

To reach final decisions on customary and traditional use eligibility, several steps in the process of initiating, preparing, reviewing, noticing, evaluating public comments, and acting on each customary and traditional use assessment will have to be accomplished. All participating Federal agencies and the Regional Councils have substantial roles in the completion of these tasks and eventual customary and traditional use eligibility determinations. In addition, customary and traditional use eligibility determinations will be subject to Federal rulemaking procedures for which considerable public review and comment opportunities are afforded.

The following steps form the framework of the administrative process which will be applied in reaching customary and traditional use eligibility determinations:

Scoping—Define, in consultation with pertinent Regional Councils, affected rural communities within or adjacent to the analysis area that will be part of the assessment. Consult with local residents, Regional Councils, and local advisory committees for input on methodology of assessment, special public participation needs, and other local insight.

Information Collection—Collect and analyze available literature, harvest reports, interviews, and other available information. Determine if available information is adequate to make determinations. Recommend and/or plan for additional information gathering or studies if needed.

Analysis—Analyze information as related to eight regulatory factors identified in the Federal Subsistence Management Program regulations. Prepare and present an assessment report including conclusions on needed changes to existing determinations to pertinent Regional Council, and other entities as requested, and take comments on adequacy of analysis; revise analysis as necessary.

Regional Council Review—Prepare and present to the pertinent Regional Council, initial staff recommendations relative to use eligibility determinations. These recommendations will be reviewed by all affected Regional Councils.

Proposed Rule—Revise the staff recommendations in consideration of the Regional Council comments and publish a proposed rule in the *Federal Register*.

Public Review—Hold public meetings and accept comments from the public, Regional Councils, local advisory committees, and affected communities. Regional Councils will review public comments and develop recommendations for Board consideration.

Board Decision—Board receives Regional Council recommendations and makes customary and traditional use eligibility determinations, subsequently published as a final rule in the *Federal Register*. New, customary and traditional use eligibility determinations will be scheduled to take effect at the beginning of a Federal subsistence regulatory year (July 1).

These steps have been developed as a result of experience, and Regional Council input regarding the Kenai Peninsula and Upper Tanana areas' customary and traditional use eligibility determinations which were begun in 1992. The determination process for both of those areas is well along, with determinations expected to be completed during 1995.

Depending on the complexity of the issues and area under review, the scoping, information collection, and analysis portions of each customary and traditional use eligibility determination action are expected to take at least a year. In most instances it is foreseen that public involvement may extend the period required for each determination to greater than a year.

Customary and Traditional Use Determination Priorities

In order to provide for an adequate review of customary and traditional use eligibility, the Board recognizes that not all customary and traditional use eligibility determination requests and

agency assessments could be addressed at the same time. Consequently, the Board has established customary and traditional use eligibility determination priorities which are based on public requests, recommendations of Regional Councils and Federal land management agencies, and the availability of personnel and financial resources to conduct the work. At the present time, the Board has established priorities for customary and traditional use assessments for 1994-1995.

Assessments begun in 1992 regarding the Kenai Peninsula and Upper Tanana areas are nearing completion. In contemplation of those customary and traditional use eligibility determinations which will be completed after 1995, the Board intends to continue to review requests submitted from the public, and recommendations from the Regional Councils and Federal agencies, and any additional information which might be pertinent. As necessary, an updated customary and traditional use eligibility

determination schedule will be published in the *Federal Register* in ensuing years. In addition, the Board retains the flexibility to respond to management problems as needed, including those instances in which customary and traditional use eligibility determinations may need modification on an urgent basis.

The current schedule and priority list for making customary and traditional use eligibility determinations is as follows:

| Analysis area and priority order | Regional advisory council | Unit | Year of completion |
|---|---------------------------|------------------------------------|--------------------|
| 1. Upper Tanana | Eastern Interior | 12 | 1995 |
| 2. Kenai Peninsula | Southcentral | 7, 15 | 1995 |
| 3. Copper River Basin | Southcentral | 11, 13(A-D) | 1996 |
| 4. Yukon-Kuskokwim Delta | Western Interior | 18 | 1995 |
| 5. Minto | Eastern Interior | 20(A), (B), (D), (F); 25 (C) | 1996 |
| 6. Yukon Flats | Eastern Interior | 25(A), (B), (D) | 1995 |
| 7. Eastern North Slope | North Slope | 26(B), (C) | 1995 |
| Completion dates of the following prioritized areas to be determined: | | | |
| Stikine | Southeast | 1(B), 3 | |
| Denali/Parks Highway | Eastern Interior | 20(A), (C), 13(E), 16 | |
| Eastern Interior | Eastern Interior | 20(E) | |
| Iditarod-George | Western Interior | 19, 21(E) | |
| Chatham | Southeast | 1(C), (D), 4; 5(A), (B) | |
| Prince William Sound | Southcentral | 6 | |
| Ketchikan | Southeast | 1(A), 2 | |
| Bristol Bay | Bristol Bay | 17 | |
| Middle Yukon | Western Interior | 21(A), (B), (C), (D) | |
| Kodiak | Kodiak/Aleutians | 8 | |
| Brooks Range | Western Interior | 24 | |
| Lake Clark | Bristol Bay | 9(A), (B), (C) | |
| Alaska Peninsula | Bristol Bay | 9(D) & (E) | |
| Seward Peninsula | Seward Peninsula | 22(C), (D), (E) | |
| Kotzebue Sound | Northwest Arctic | 23 | |
| Norton Sound | Seward Peninsula | 22(A), (B) | |
| Western North Slope | North Slope | 26(A) | |
| Aleutians | Kodiak/Aleutians | 10 | |
| Talkeetna | Southcentral | 14 | |

Drafting Information

This policy was drafted under the guidance of Richard S. Pospahala, U.S. Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary authors were Taylor Brelsford and William Knauer of the same office; John Hiscock of the National Park Service, Alaska Regional Office; Tom Boyd, Bureau of Land Management, Alaska State Office; and Norm Howse, USDA-Forest Service, Alaska Regional Office.

Dated: June 16, 1994.

William L. Hensley,
Chair, Federal Subsistence Board.

Dated: June 24, 1994.

Robert W. Williams,
Acting Regional Forester, USDA-Forest Service.

[FR Doc. 94-17041 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-5013-2]

Outer Continental Shelf Air Regulations; Delegation of Authority; South Coast Air Quality Management District, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has delegated authority to implement and enforce the requirements of the Outer Continental Shelf (OCS) program within 25 miles of the state's seaward boundary to the South Coast Air Quality Management District (SCAQMD or District), California. EPA reviewed the

District's rules and regulations and has found them to be adequate for delegation, provided that the District meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124 by amending Rule 212, Standards for Approving Permits, to incorporate public notice and comment procedures for permitting of OCS facilities.

EFFECTIVE DATES: The effective date of the delegation of authority for SCAQMD is May 9, 1994.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region 9 office during normal business hours and at the following location:

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744-1197.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated the authority to implement and enforce the requirements of the OCS rule (40 CFR part 55) to the SCAQMD. The final OCS rule was promulgated by EPA on September 4, 1992 pursuant to section 328 of the Clean Air Act (the Act). (57 FR 40792).

Under section 328(a) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources and the District's regulations have been reviewed by EPA. The following criteria for delegation are set forth at 40 CFR 55.11:¹ (1) the state has adopted the appropriate portions of 40 CFR part 55 into law; (2) the state has adequate authority under state law to implement and enforce the requirements of part 55; (3) the state has adequate resources to implement and enforce the requirements of part 55; and (4) the state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures.

The following delegation agreement represents the terms and conditions of the delegation to the SCAQMD:

U.S. EPA—South Coast Air Quality Management District, Agreement for Delegation of Authority for Outer

Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the South Coast Air Quality Management District ("SCAQMD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to the SCAQMD to implement and enforce the requirements of the Outer Continental Shelf ("OCS") Air Regulations (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SCAQMD's request for delegation and has found that SCAQMD's regulations meet the requirements for delegation set forth at 40 CFR 55.11, provided that the District meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124 by amending Rule 212, Standards for Approving Permits, to incorporate public notice and comment procedures for permitting of OCS facilities. Until the District Board approves an amended Rule 212 that meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124, the District shall interpret the current Rule 212 to incorporate the requirements of 40 CFR 51.161(b) and 40 CFR part 124. In addition, the District shall provide a copy of its Rule 212 interpretation to all OCS sources regulated by the District, and a copy to the Administrator through the EPA Regional Office (Attn: A-5-1). The public notice distribution, for purposes of all major modifications to off-shore sources, shall be to the broadest possible scope of interested parties and shall include as a minimum:

- Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;
 - A 30-day period for submittal of public comment; and
 - A notice by prominent advertisement in the area affected of the location of the source information and the analysis of the effect on air quality.
- This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

| Section | Title |
|---------|--|
| 55.1 | Statutory authority and scope. |
| 55.2 | Definitions. |
| 55.3 | Applicability. |
| 55.4 | Requirements to submit a notice of intent. |
| 55.6 | Permit requirements. |
| 55.7 | Exemptions. |

| Section | Title |
|---------|--|
| 55.8 | Monitoring, reporting, inspections, and compliance. |
| 55.9 | Enforcement. |
| 55.10 | Fees. |
| 55.13 | Federal requirements that apply to OCS sources. |
| 55.14 | Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state. |

EPA is not delegating the authority to implement and enforce sections 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. The District has also adopted Appendix A to 40 CFR part 55, Listing of State and Local Requirements Incorporated by Reference into part 55, by State. The authority to revise or amend this section is reserved to EPA Region 9. In addition, SCAQMD has not yet received delegation of authority from EPA for implementation and enforcement of the federal Prevention of Significant Deterioration Program (PSD). Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the South Coast has been designated the corresponding onshore area (COA), the State has submitted SCAQMD's regulations to EPA and requested that EPA delegate to SCAQMD authority to implement and enforce the OCS air regulations. SCAQMD's regulations have been reviewed by EPA and, in conjunction with the District's commitment to amend Rule 212 to (1) incorporate public notice and comment procedures for OCS facilities; and (2) to interpret the current Rule 212 to incorporate public notice and comment procedures for OCS facilities until Rule 212 is amended, EPA determined the regulations to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

- (1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SCAQMD adopted Rule

¹ The term "state" as used in the delegation criteria refers to the local air pollution permitting agency—SCAQMD.

1183, Outer Continental Shelf Air Regulations, on March 12, 1993. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District. (NOTE: §§ 55.5 (corresponding onshore area designations), 55.11 (delegation), 55.12 (consistency updates), Appendix A (Listing of State and Local Requirements) were adopted by SCAQMD but EPA will not delegate authority for these sections, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—

According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SCAQMD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SCAQMD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and

comment procedures—SCAQMD's administrative procedures have been reviewed by EPA and found to be adequate assuming that the District: (1) amends Rule 212 for OCS sources in accordance with 40 CFR § 51.161(b) and 40 CFR 124; and (2) interprets the current Rule 212 for OCS sources in accordance with 40 CFR 51.161(b) and 40 CFR 124.

EPA is delegating authority to implement and enforce part 55 pursuant to the SCAQMD's use of the following administrative and procedural rules:

Regulation I—General Provisions

| | | |
|--------------|---|------------------|
| Rule 104 ... | Reporting of Source Test Data and Analysis | January 9, 1976. |
| Rule 105 ... | Authority to Arrest | January 9, 1976. |
| Rule 106 ... | Increments of Progress | January 9, 1976. |
| Rule 109 ... | Recordkeeping for Volatile Organic Compounds | March 6, 1992. |
| Rule 110 ... | Rule Adoption Procedure to Assure Protection and Enhancement of The Environment | October 7, 1988. |

Regulation II—Permits

| | | |
|--------------|--|--------------------|
| Rule 201 ... | Permit to Construct | January 5, 1990. |
| Rule 203 ... | Permit to Operate | January 5, 1990. |
| Rule 204 ... | Permit Conditions | March 6, 1992. |
| Rule 210 ... | Applications | January 5, 1990. |
| Rule 212 ... | Standards for Approving Permits (provided the Rule is interpreted and implemented to require public notice and comment for OCS sources). | September 6, 1991. |
| Rule 214 ... | Denial of Permits | January 5, 1990. |
| Rule 216 ... | Appeals | January 5, 1990. |
| Rule 221 ... | Plans | January 4, 1985. |

Regulation III—Fees

| | | |
|--------------|--------------------------|----------------|
| Rule 301 ... | Permit Fees | June 11, 1993. |
| Rule 303 ... | Hearing Board Fees | June 6, 1992. |
| Rule 306 ... | Plan Fees | July 6, 1990. |

Regulation IV—Prohibitions

| | | |
|--------------|----------------------------|--------------|
| Rule 430 ... | Breakdown Provisions | May 5, 1978. |
|--------------|----------------------------|--------------|

Regulation V—Procedure Before the Hearing Board

| | | |
|----------------|--|-------------------|
| Rule 501 ... | General | February 5, 1988. |
| Rule 502 ... | Filing Petitions | July 10, 1992. |
| Rule 503 ... | Petitions for Variances and Appeals | February 5, 1988. |
| Rule 503.1 ... | Ex Parte Petitions for Variances | February 5, 1988. |
| Rule 504 ... | Rules from which Variances are not allowed | January 5, 1990. |
| Rule 506 ... | Failure to Comply with Rules | February 5, 1988. |
| Rule 507 ... | Pleadings | August 1, 1995. |
| Rule 510 ... | Notice of Hearing | February 5, 1988. |
| Rule 511 ... | Evidence | February 5, 1988. |
| Rule 511.1 ... | Subpoenas | February 5, 1988. |
| Rule 513 ... | Administrative Notice | February 5, 1988. |
| Rule 514 ... | Continuances | February 5, 1988. |
| Rule 515 ... | Findings and Decisions | March 6, 1992. |
| Rule 517 ... | Emergency Variances—Procedures—Breakdown | February 5, 1998. |

Regulation VII—Emergencies

| | | |
|--------------|----------------------------|----------------|
| Rule 703 ... | Episode Criteria | April 4, 1980. |
| Rule 704 ... | Episode Declaration | July 9, 1982. |
| Rule 706 ... | Episode Notification | April 4, 1980. |
| Rule 708 ... | Plans | July 9, 1982. |

Regulation VIII—Orders for Abatement

| | | |
|--------------|----------------------------------|-------------------|
| Rule 802 ... | Order of Abatement | August 1, 1975. |
| Rule 803 ... | Filing Petitions | February 5, 1988. |
| Rule 806 ... | Findings | February 5, 1988. |
| Rule 814 ... | Official Notice | August 1, 1975. |
| Rule 816 ... | Order and Decisions | February 5, 1988. |
| Rule 817 ... | Effective Date of Decision | August 1, 1975. |

Regulation IX—New Source Performance Standards

April 9, 1993.

Regulation XII—Rules of Practice and Procedures Health and Safety Code Section 40509

June, 1985.

Regulation XIII—New Source Review

June 28, 1990.

Regulation XVII—Prevention of Significant Deterioration

January 6, 1989.

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SCAQMD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A-5-1) at the same time as the application is submitted to SCAQMD.

(2) SCAQMD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A-5-1) and to the Minerals Management Service.

(3) SCAQMD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A-5-1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SCAQMD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS regulations or any other provision of 40 CFR part 55 to the extent that

implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 1183 is consistent with the time frames and requirements of the Federal regulations (40 CFR part 55).

Exemptions

Pursuant to § 55.7:

(1) SCAQMD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SCAQMD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If SCAQMD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SCAQMD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SCAQMD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and

any other information considered or developed during the consultation process.

(4) SCAQMD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SCAQMD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SCAQMD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SCAQMD to conduct unannounced inspections.

General Conditions

(1) SCAQMD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21. The District shall notify sources that may be subject to part C of the Act and 40 CFR 52.21 that they must apply to EPA for a permit. The District's failure to notify sources shall not affect EPA's exercise of its enforcement and implementation authority.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SCAQMD. Nothing in this

agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from the state's seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the SCAQMD and EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If SCAQMD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) This delegation, after consultation with the SCAQMD, may be revoked in whole or in part if EPA determines that the SCAQMD no longer meets the requirements for delegation set forth at 40 CFR 55.11(b)(1-4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SCAQMD. In addition, this agreement shall be revoked if: (1) the District does not amend Rule 212, Standards for Approving Permits, to incorporate public notice and comment requirements for OCS sources by August 15, 1994; (2) the District fails to interpret the current Rule 212 to

incorporate public notice and comment for OCS sources.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register**.

Dated: May 9, 1994.

John Wise,

Acting Regional Administrator, Region 9.

Dated: May 3, 1994.

Dr. James Lents,

Executive Officer, South Coast Air Quality Management District.

Dated: May 2, 1994.

Peter M. Greenwald,

District Counsel, SCAQMD.

EPA Action

The EPA hereby notifies the public that it has delegated the authority to implement and enforce the requirements of the OCS air regulations (40 CFR part 55) promulgated by EPA on September 4, 1992 to the above-referenced local agency.

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

This notice is issued under the authority of section 328 of the Clean Air Act, 42 U.S.C. 7627.

Dated: June 16, 1994.

John Wise,

Acting Regional Administrator, Region 9.

[FR Doc. 94-17296 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 414

[BPD-770-CN]

RIN 0938-AG22

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994

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

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on December 2, 1993 (58 FR 63626) entitled "Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994."

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966-1309.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document [93-29362] beginning on page 63626; in the issue of December 2, 1993, make the following corrections:

A. Page 63626

1. In the **ADDRESSES** section, in column 2, in line 12, the telephone number is corrected to read "(202) 690-7890."

2. In column 3, in line 10, the **Federal Register** citation is corrected to read "(57 FR 55914)."

B. Page 63628

In column 3, in line 4, the **Federal Register** citation is corrected to read "(56 FR 59502)."

C. Page 63642

In column 2, in the paragraph designated I., the number of the fourth code in the listing is corrected to read "84182."

D. Page 63652

In column 2, in the paragraph designated 2.a., the **Federal Register** citation is corrected to read "(57 FR 55938)."

E. Pages 63653 and 63662, Table 3

1. On page 63653, the following codes are corrected to read:

| HCPCS+ | MOD description | RUC recommended work RVUs | Specialty recommended work RVUs | HCFA decision |
|--------|------------------------------------|---------------------------|---------------------------------|---------------|
| *15788 | Chemical peel, face, epiderm | None | 5.00 | Decreased. |
| *15789 | Chemical peel, face, dermal | None | 6.59 | Decreased. |

| HCPCS+ | MOD description | RUC recommended work RVUs | Specialty recommended work RVUs | HCFA decision |
|--------|--------------------------------|---------------------------|---------------------------------|---------------|
| *15792 | Chemical peel, nonfacial | None | 4.00 | Decreased. |
| *15793 | Chemical peel, nonfacial | None | 5.34 | Decreased. |

2. On page 63662, the following codes are corrected to read:

| HCPCS+ | MOD description | RUC recommended work RVUs | Specialty recommended work RVUs | HCFA decision |
|--------|----------------------|---------------------------|---------------------------------|---------------|
| 97545 | Work hardening | None | 1.70 | (b). |
| 97546 | Work hardening | None | .85 | (b). |

F. Pages 63722 through 63836,
Addendum B

1. On page 63722, the following codes are corrected to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|------------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 33401 | C | Valvuloplasty, open | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33403 | C | Valvuloplasty, w/cp bypass | .00 | .00 | .00 | .00 | 090 | S |
| 33406 | C | Replacement, aortic valve | .00 | .00 | .00 | .00 | 090 | S |
| 33413 | C | Replacement, aortic valve | .00 | .00 | .00 | .00 | 090 | S |
| 33414 | C | Repair, aortic valve | .00 | .00 | .00 | .00 | 090 | S |
| 33471 | C | Valvotomy, pulmonary valve | .00 | .00 | .00 | .00 | 090 | S |
| 33475 | C | Replacement, pulmonary valve | .00 | .00 | .00 | .00 | 090 | S |
| 33505 | C | Repair artery w/tunnel | .00 | .00 | .00 | .00 | 090 | S |
| 33506 | C | Repair artery, translocation | .00 | .00 | .00 | .00 | 090 | S |
| 33600 | C | Closure of valve | .00 | .00 | .00 | .00 | 090 | S |
| 33602 | C | Closure of valve | .00 | .00 | .00 | .00 | 090 | S |
| 33606 | C | Anastomosis/artery-aorta | .00 | .00 | .00 | .00 | 090 | S |
| 33608 | C | Repair anomaly w/conduit | .00 | .00 | .00 | .00 | 090 | S |
| 33610 | C | Repair by enlargement | .00 | .00 | .00 | .00 | 090 | S |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

2. On page 63723, the following codes are corrected to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|------------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 33611 | C | Repair double ventricle | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33612 | C | Repair double ventricle | .00 | .00 | .00 | .00 | 090 | S |
| 33615 | C | Repair (simple fontan) | .00 | .00 | .00 | .00 | 090 | S |
| 33617 | C | Repair by modified fontan | .00 | .00 | .00 | .00 | 090 | S |
| 33619 | C | Repair single ventricle | .00 | .00 | .00 | .00 | 090 | S |
| 33692 | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33697 | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33698 | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33722 | C | Repair of heart defect | .00 | .00 | .00 | .00 | 090 | S |
| 33732 | C | Repair heart-vein defect | .00 | .00 | .00 | .00 | 090 | S |
| 33736 | C | Revision of heart chamber | .00 | .00 | .00 | .00 | 090 | S |
| 33766 | C | Major vessel shunt | .00 | .00 | .00 | .00 | 090 | S |
| 33767 | C | Atrial septectomy/septostomy | .00 | .00 | .00 | .00 | 090 | S |
| 33770 | C | Repair great vessels defect | .00 | .00 | .00 | .00 | 090 | S |
| 33771 | C | Repair great vessels defect | .00 | .00 | .00 | .00 | 090 | S |
| 33853 | C | Repair septal defect | .00 | .00 | .00 | .00 | 090 | S |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

3. On page 63724, the following codes are corrected to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|---------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 33917 | C | Repair pulmonary artery | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33918 | C | Repair pulmonary atresia | .00 | .00 | .00 | .00 | 090 | S |
| 33919 | C | Repair pulmonary atresia | .00 | .00 | .00 | .00 | 090 | S |
| 33920 | C | Repair pulmonary atresia | .00 | .00 | .00 | .00 | 090 | S |
| 33922 | C | Transect pulmonary artery | .00 | .00 | .00 | .00 | 090 | S |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

4. On page 63733, HCPCS code 43248 is corrected to read as follows:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|--------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 43248 | A | Upper GI endoscopy/guidewire . | 3.18 | *4.14 | 0.34 | 7.66 | 000 | N |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

5. On page 63749, the third appearance of HCPCS code 59020 is corrected to read as follows:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|----------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 59020 | A | Fetal contract stress test | 0.67 | *0.87 | 0.19 | 1.73 | 000 | S |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

6. On page 63764, the following code is corrected to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|-----------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 70551 | A | Magnetic image, brain (MRI) | 1.50 | 0.67 | 0.10 | 2.27 | XXX | N |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

7. On page 63799, the following code is added to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|--------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| 86423 | D | Radioimmunosorbent test IGE .. | 0.00 | 0.00 | 0.00 | 0.00 | XXX | O |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

8. On page 63836, the following codes are corrected to read:

| HCPCS ¹ | MOD status | Description | Work RVUs | Practice expense RVUs ² | Malpractice RVUs | Total | Global period | Update |
|--------------------|------------|------------------------------------|-----------|------------------------------------|------------------|-------|---------------|--------|
| J7030 | E | Infusion, normal saline solution . | 0.00 | 0.00 | 0.00 | 0.00 | XXX | O |
| J7040 | E | Infusion, normal saline solution . | .00 | .00 | .00 | 0.00 | XXX | O |
| J7042 | E | 5% dextrose/normal saline | .00 | .00 | .00 | 0.00 | XXX | O |
| J7050 | E | Infusion, normal saline solution . | .00 | .00 | .00 | 0.00 | XXX | O |
| J7051 | E | Sterile saline or water | .00 | .00 | .00 | 0.00 | XXX | O |
| J7060 | E | 5% dextrose/water | .00 | .00 | .00 | 0.00 | XXX | O |
| J7070 | E | Infusion, d5w | .00 | .00 | .00 | 0.00 | XXX | O |
| J7120 | E | Ringers lactate infusion | .00 | .00 | .00 | 0.00 | XXX | O |

¹ All numeric CPT HCPCS Copyright 1993 American Medical Association.

² Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w-4))

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

Dated: July 5, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94-17222 Filed 7-14-94; 8:45 am]

BILLING CODE 4120-01-P

Office of the Secretary

42 CFR Parts 417, 431, 434, and 1003

RIN 0991-AA44

Medicare and State Health Care Programs: Fraud and Abuse, Civil Money Penalties and Intermediate Sanctions for Certain Violations by Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG) and the Health Care Financing Administration (HCFA).

ACTION: Final rule.

SUMMARY: This final rule implements sections 9312(c)(2), 9312(f), and 9434(b) of Public Law 99-509, section 7 of Public Law 100-93, section 4014 of Public Law 100-203, sections 224 and 411(k)(12) of Public Law 100-360, and section 6411(d)(3) of Public Law 101-239. These provisions broaden the Secretary's authority to impose intermediate sanctions and civil money penalties on health maintenance organizations (HMOs), competitive medical plans, and other prepaid health plans contracting under Medicare or Medicaid that (1) substantially fail to provide an enrolled individual with required medically necessary items and services; (2) engage in certain marketing, enrollment, reporting, or claims payment abuses; or (3) in the case of Medicare risk-contracting plans, employ or contract with, either directly or indirectly, an individual or entity excluded from participation in Medicare. The provisions also condition Federal financial participation in certain State payments on the State's exclusion of certain prohibited entities from participation in HMO contracts and waiver programs. This final rule is intended to significantly enhance the protections for Medicare beneficiaries and Medicaid recipients enrolled in a HMO, competitive medical plan, or other contracting organization under titles XVIII and XIX of the Social Security Act.

EFFECTIVE DATE: These rules are effective September 13, 1994.

FOR FURTHER INFORMATION, CONTACT:

Zeno W. St. Cyr, II, Legislation, Regulations, and Public Affairs Staff, OIG, (202) 619-3270 or

Marty Abeln, Office of Managed Care, HCFA, (202) 205-9582 or

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SUPPLEMENTARY INFORMATION:**I. Background****A. Introduction**

Managed care plans, such as health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs) are entities that provide enrollees with comprehensive, coordinated health care in a cost-efficient manner. Payment for these plans is generally made on a prepaid, capitation basis. The goal of prepaid health care delivery is to control health care costs while at the same time providing enrollees with affordable, coordinated, quality health care services. Titles XVIII and XIX of the Social Security Act (the Act) authorize contracts with managed health care plans for the provision of covered health services to Medicare beneficiaries and Medicaid recipients.

B. Medicare

Section 1876 of the Act provides for Medicare payment at predetermined rates to eligible organizations that have entered into risk contracts with HCFA, or for payment of reasonable costs to eligible organizations that have entered into cost contracts. Eligible organizations include HMOs that have been federally qualified under section 1310(d) of title XIII of the Public Health Service Act, and CMPs that meet the requirements of section 1876(b)(2) of the Act.

Medicare enrollees of risk-contracting CMPs or HMOs are required to receive covered services only through the organization, except for emergency services and urgently needed out-of-area services. In the case of a cost contract, the Medicare beneficiary may also receive services outside the organization, with Medicare paying for the services through the general Medicare fee-for-service system. If an HMO or CMP fails to comply with a contract provision, the Secretary may decide to not renew or to terminate the contract. Regulations governing nonrenewal of a contract are found at 42 CFR 417.492, and regulations governing termination of a contract are at 42 CFR 417.494.

C. Medicaid

Section 1903(m) of the Act contains requirements that apply to State Medicaid contracts for the provision, on a risk basis, either directly or through arrangements, of at least certain specified services ("comprehensive services"). HCFA regulations at 42 CFR part 434 implement the requirements in section 1903(m) and contain other requirements applicable to Medicaid

contracts generally. Section 434.70 provides that HCFA may withhold Federal matching payments, known as Federal financial participation (FFP), for State expenditures for services provided to Medicaid recipients when either party to a contract substantially fails to carry out the terms of the contract.

D. New Legislation**1. The Omnibus Budget Reconciliation Act of 1986**

Section 9312(c)(2) of Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), added section 1876(f)(3) to the Act. This provision authorizes the Secretary to suspend enrollment of Medicare beneficiaries by an HMO/CMP or to suspend payment to the HMO/CMP for individuals newly enrolled, after the date the Secretary notifies the organization of noncompliance with the requirement in section 1876(f)(1) that limits enrollment to no more than 50 percent Medicare beneficiaries and Medicaid recipients. Prior to OBRA 86, HCFA's only recourse against an organization for noncompliance with any contract provisions was to non-renew or initiate termination of the contract. The new authority provides alternative remedies that may be used in place of or in addition to contract nonrenewal or termination for organizations that do not comply with the enrollment composition requirement.

Additionally, sections 9312(f) and 9434(c) of OBRA 86 added sections 1876(i)(6) and 1903(m)(5), respectively, to the Act. These provisions authorize a civil money penalty not greater than \$10,000 for each instance of failure by an organization with a Medicare risk contract, or certain organizations with a comprehensive risk contract under Medicaid, to provide required medically necessary items or services to Medicare or Medicaid enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee.

2. The Medicare and Medicaid Patient and Program Protection Act of 1987

Section 7 of Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987 (MMPPPA), added section 1902(p) of the Act, which grants States the authority to exclude individuals or entities from participation in their Medicaid programs for any of the reasons that constitute a basis for exclusion from Medicare under sections 1128, 1128A, or 1866(b)(2) of the Act. In addition, section 7 of MMPPPA established a new condition that States must meet in order to receive FFP for

payments to HMOs or entities furnishing services under a waiver approved under section 1915(b)(1) of the Act. The latter provision conditioned FFP upon a State's providing that it will exclude from participation, as an HMO or an entity furnishing services under a section 1915(b)(1) waiver, any entity that could be excluded under section 1128(b)(8) of the Act (that is, any individual or entity against whom criminal or civil penalties have been imposed). FFP is also conditioned upon a State excluding an entity that has, directly or indirectly, a substantial contractual relationship with a person described in section 1128(b)(8)(B) of the Act.

3. The Omnibus Budget Reconciliation Act of 1987

Section 4014 of Public Law 100-203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), provides the Department with increased penalty amounts and greater statutory authority and flexibility to take action against HMOs or CMPs that commit certain abuses. This authority also may be exercised in addition to or in place of initiating contract termination proceedings. Section 4014 of OBRA 87 amends section 1876(i)(6) of the Act to authorize the Secretary to impose civil money penalties, suspend enrollment, and suspend payments for newly enrolled individuals in the case of an organization with a Medicare contract (both risk and cost contract) that the Secretary determines has (1) failed substantially to provide required medically necessary items and services to Medicare enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; (2) imposed premiums on Medicare enrollees in excess of permitted premium amounts; (3) acted to expel or refused to reenroll an individual in violation of section 1876 of the Act; (4) engaged in any practice that can reasonably be expected to deny or discourage enrollment (except as permitted under section 1876) by Medicare enrollees whose medical condition or history indicates a need for substantial future medical services; (5) misrepresented or falsified information provided under section 1876 to the Secretary, an individual, or any other entity; or (6) fails to comply with the requirements of section 1876(g)(6)(A) regarding prompt payment of claims. Under OBRA 87, the maximum allowable civil money penalty that can be imposed for each determination of a violation is increased to \$25,000, or \$100,000 in the case of a HMO or CMP determined to have committed acts in

(4) above or for misrepresenting or falsifying information furnished to the Secretary under section 1876.

4. The Medicare Catastrophic Coverage Act of 1988

The Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100-360, amended sections 1876 and 1903(m) of the Act by adding new civil money penalty authority for violations occurring within the Medicare program and by applying the OBRA 87 HMO and CMP intermediate sanction and civil money penalty authority to the Medicaid program.

Section 224 of MCCA amended section 1876(i)(6)(B)(i) of the Act. In addition to other civil money penalties, in cases where Medicare enrollees are charged more than the allowable premium, section 224 imposes a penalty which doubles the amount of excess premium charged by the HMO or CMP. The excess premium amount is deducted from the penalty and returned to the Medicare enrollee. Section 224 also imposes a \$15,000 penalty for each individual not enrolled if it is determined that the HMO or CMP engaged in any practice which denied or discouraged enrollment (except as permitted under section 1876 of the Act) by Medicare enrollees whose medical condition or history indicated a need for substantial future medical services.

Section 411(k)(12) of MCCA amended section 1903(m)(5) of the Act to provide the Secretary with authority to impose civil money penalties on contracting organizations, and to deny payments for new enrollees of contracting organizations, in cases where the Secretary determines that an organization has (1) failed substantially to provide required medically necessary items and services to Medicaid enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; (2) imposed premiums on Medicaid enrollees in excess of premium amounts permitted under title XIX of the Act; (3) discriminated among individuals in violation of the provisions of section 1903(m)(2)(A)(v) of the Act, including expelling or refusing to reenroll an individual or engaging in any practice which could reasonably be expected to deny or discourage enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicates a need for substantial future medical services; or (4) misrepresented or falsified information provided under section 1903 of the Act to the Secretary, State, an individual, or any other entity.

Under the amendments to section 1903(m)(5) made by MCCA, the

maximum allowable civil money penalty that can be imposed for each determination of a violation is increased to \$25,000, or \$100,000 in the case of a determination that a contracting organization has (1) violated the provisions of section 1903(m)(2)(A)(v) by expelling or refusing to reenroll an individual or by engaging in a practice which denied or discouraged enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicated a need for substantial future medical services; or (2) misrepresented or falsified information furnished to the Secretary or State under section 1903(m).

Additionally, in cases where Medicaid enrollees are charged more than the allowable premium, section 411(k)(12) of MCCA amended section 1903(m)(5) of the Act to authorize imposition of an additional penalty which doubles the amount of excess premium charged by the contracting organization, with the excess premium amount deducted from the penalty and returned to the Medicaid enrollee. Imposition of an additional \$15,000 penalty is authorized for each individual not enrolled if it is determined that the contracting organization has violated the provisions of section 1903(m)(2)(A)(v) by expelling or refusing to reenroll an individual or by engaging in any practice which denied or discouraged enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicated a need for substantial future medical services.

5. The Omnibus Budget Reconciliation Act of 1989

Public Law 101-239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), amended sections 1876 and 1902(p) of the Act to provide the Secretary with an additional civil money penalty and intermediate sanction authority for violations occurring within the Medicare program and with additional conditions for FFP.

Section 6411(d)(3)(A) of OBRA 89 amended section 1876(i)(6)(A) of the Act to authorize the Secretary to restrict enrollment in, suspend payment to, and impose a civil money penalty against an organization with a risk contract that (1) employs or contracts with any individual or entity excluded from Medicare participation under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or (2) employs or contracts with any entity for the

provision of such services (directly or indirectly) through an excluded individual or entity. The maximum allowable civil money penalty that may be imposed for each determination of a violation of this nature is \$25,000.

Section 6411(d)(3)(B) of OBRA 89 amended section 1902(p)(2) of the Act to condition FFP in payments to HMOs, or to entities furnishing services under a § 1915(b)(1) waiver, upon the State's barring the following entities from participation as HMOs or section 1915(b)(1) waiver participants: (1) Any organization that employs or contracts with any individual or entity excluded from Medicaid participation under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or (2) any organization that employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

II. Provisions of the Proposed Rule

On July 22, 1991, we published a proposed rule with a 60-day comment period (56 FR 33403) that would amend 42 CFR Part 417, Subpart C; Part 431, Subpart B; Part 434, Subparts C, D, E, and F; and Part 1003 specifically by establishing sanctions and civil money penalties which may be imposed on contracting organizations that substantially fail to provide an enrollee with required medically necessary items and services or that engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses.

In the July 1991 proposed rule, we proposed to incorporate the Medicare sanction provisions of OBRA 86, OBRA 87, MCCA, and OBRA 89 into agency regulations largely without substantial modifications. Under the proposed regulations, after HCFA (or a State) determines that a contracting organization has committed a violation under sections 1876(i)(6)(A) or 1903(m)(5)(A), information pertaining to the violation would be provided to the OIG.

Briefly, our proposed changes to the regulations were designed to implement the Department's new authorities by detailing HCFA's (and States') role in imposing intermediate sanctions, and the OIG's role in imposing civil money penalties, for certain abuses committed by contracting organizations providing health care items or services to Medicare beneficiaries or Medicaid recipients. We proposed that—

• Once it is determined that a Medicare contracting organization has committed a violation, and in place of

initiating contract termination proceedings, HCFA may:

—Require the contracting organization to suspend enrollment of Medicare beneficiaries;

—Suspend payments to the contracting organization for individuals enrolled after a specified date.

• If a State Medicaid agency determines that a Medicaid contracting organization has committed a violation, it may, in place of terminating the contract, recommend to HCFA that HCFA's intermediate sanction authority be exercised to deny payment to the contracting organization for Medicaid recipients enrolled with the organization after a specified date. This recommendation takes effect absent HCFA action.

• In addition to or in place of other remedies available under law, the OIG may:

—Impose a penalty of up to \$25,000 for each determination that a contracting organization has—

(1) Failed substantially to provide an enrollee with required medically necessary items and services, if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; or

(2) Committed enrollment, marketing, claims payment, or certain reporting violations;

—Impose a penalty of up to \$25,000 for each determination that a contracting organization with a Medicare risk-sharing contract employs or contracts with—

(1) Individuals or entities excluded from participation in Medicare, under sections 1128 or 1128A of the Act, for the provision of health care, utilization review, medical social work, or administrative services; or

(2) Any entity for the provision of such services (directly or indirectly) through an excluded individual or entity; and

—Impose a penalty of up to \$100,000 for each determination that a contracting organization has—

(1) Misrepresented or falsified information furnished under the provisions of the statute to the Secretary or State; or

(2) Expelled or refused to reenroll an individual or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by statute) by enrollees whose medical condition or history indicates a need for substantial future medical services.

• In cases where a civil money penalty is imposed against a plan for

charging enrollees more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

• The OIG will impose an additional \$15,000 penalty for each individual not enrolled if it is determined that a contracting organization expelled or refused to reenroll an individual or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by statute) by enrollees whose medical condition or history indicates a need for substantial future medical services.

• The provisions also condition FFP in certain State payments on the State's exclusion of certain entities excluded (or excludable) from Medicare.

III. Analysis of and Responses to Public Comments

In response to the July 22, 1991 proposed rule, we received 14 timely items of correspondence. The comments were from group health associations, State agencies, health insurance plans, and law firms. A summary of these comments are discussed below:

A. Intermediate Sanctions

Comment: Several commenters wanted clarification on how § 417.495(a)(1), which describes the first basis for the imposition of intermediate sanctions, will be defined. There was particular interest expressed about the criteria by which the terms "fails substantially" and "medically necessary" will be evaluated.

Response: In determining if an organization has violated § 417.495(a)(1), HCFA and State Medicaid agencies will make a comprehensive three-part evaluation. Specifically, this will involve determining if the organization has: (1) *Failed substantially* to provide *medically necessary* items or services and this has (3) *adversely affected* (or has the *substantial likelihood* of adversely affecting) the enrollee. To determine if the three principal requirements of § 417.495(a)(1) have been violated, HCFA and State Medicaid agencies will have recourse to a number of sources of information and guidance. For Medicare, the information sources include the attending physician, other health care personnel, the HMO or CMP, utilization reviewers, the Peer Review Organization (PRO), the Medicare enrollee or authorized representatives, and internal or possibly

third-party expertise. Additional sources of guidance will include clinical practice standards; guidelines or advisories promulgated by authoritative bodies; and Medicare law, regulations, and manuals.

States, in making an initial finding on Medicaid contractor violations, also have a number of sources of information available to them. These include health care experts conducting the required periodic medical audits; the health professionals under contract to the State to perform the annual quality review of services delivered by HMOs and HIOs; other health consultants to the State agency; clinical practice standards, guidelines, or advisories promulgated by authoritative bodies; and Medicaid law, regulations, and manuals.

In making determinations of "substantial failure," consideration will be given to the impact on the health status of a Medicare or Medicaid enrollee of not having received covered items and services and, in cases where patterns of withholding items and services are identified, the frequency of the events and the resulting impact on the health status of enrollees.

In making determinations of "medical necessity," HCFA and the States will rely on their respective coverage or payment requirements but will also utilize various sources of expert opinion (as described above) in order to determine if required medically necessary care has either been denied or inappropriately provided.

Comment: A commenter asked whether the same criteria used for "medical necessity" for Medicare and Medicaid coverage of services will be used to determine medical necessity under the final rule.

Response: In making medical necessity decisions, Medicare and Medicaid will continue to utilize the current oversight processes and coverage and payment criteria. Under the intermediate sanction, however, HCFA and States will also have recourse, on a case by case basis, to other sources of expert information and guidance (as described in the previous response) in making medical necessity decisions.

Comment: A number of commenters wanted changes made to the definition of "adverse effect." One commenter suggested that the definition is too narrow, and unreasonably requires the patient to suffer a high degree of risk to his or her health before a sanction can be applied. Another commenter said that the definition was too vague and suggested amending the definition to indicate that adverse effect is limited to the withholding of or failure to provide

medically necessary care covered by the contract. Another commenter expressed concern that the definition of adverse affect appears to be lacking in that it addresses only those instances in which care has been withheld and fails to address those instances where substandard or inappropriate care has been delivered. Still another commenter believed the regulation should provide a definition for "adverse effect" that specifically includes sanctions against HMOs that fail to provide timely and adequate prenatal and children's preventive care.

Response: The expertise needed to determine what constitutes "adverse effect" are similar to those previously discussed which are needed to evaluate "substantial failure" and "medically necessary." HCFA and States will rely on the same sources of information and guidance (as previously described) to determine when an enrollee has been adversely affected by the failure to provide the required medically necessary services.

It should be noted that in addition to a substantial failure to provide medically necessary services, "adverse effect" may also be found to be the result of providing inappropriate or substandard care. Specifically, for medical services that are Medicare or Medicaid approved and are found to be medically necessary, if HCFA or the State determines that a failure to appropriately provide required services has adversely affected (or has a substantial likelihood of adversely affecting) an enrollee, then this will constitute a violation. This includes Medicaid required prenatal and children's preventive care.

Comment: One commenter stated that "adversely affects" should be defined in terms of a detrimental effect on the condition(s) for which the person is seeking treatment.

Response: HCFA and State Medicaid agencies will not limit a determination of adverse effect to only those conditions for which the person is seeking treatment. For example, instances may arise where beneficiaries are seeking treatment for one condition and the physician will determine that another condition is actually the cause of their symptoms.

Comment: One commenter stated that the penalties should apply only to instances where the plan acts negligently or with intent to wrongfully deny medically necessary services. Similarly, a few commenters believed that any sanctions and/or civil money penalties should apply only when an organization has knowingly and willfully violated the law. Two of those

commenters suggested that we add a requirement that any violations must be "knowingly and willfully" committed before we impose a sanction.

Response: Sanctions will not be limited to instances where plans act negligently or with wrongful intent. Aggravating and mitigating factors, such as the degree of culpability of the organization, will be considered in determining any sanction or civil money penalty. As in all our determinations on intermediate sanctions, the scope, and duration of the violation, as well as the level of threat to enrollee health and safety, will be evaluated in determining the severity of a particular sanction. Further, we believe that an absolute requirement for "knowingly and willfully" violations is more stringent than the law anticipated. We will consider evidence that an organization has willfully violated the statute as an aggravating circumstance. Nevertheless, we will not add the requirement that violations must be "knowingly and willfully" committed before the imposition of a sanction.

Comment: One commenter asked whether it would be considered a failure to provide medically necessary services if an HMO determined, according to its standard procedures, that a particular service did not qualify as an emergency or out-of-area urgently needed care and denied the service. This commenter recommended that the regulation exclude from any definition of "substantial failure to provide medically necessary services" those circumstances in which care is not provided based upon a medical judgment made in accord with the HMO's standard operating policies determining coverage. In addition, the commenter asked under what circumstances the failure of a physician, with whom the HMO contracts on an independent contractor basis, to furnish a medically necessary item or service can be imputed to the HMO, absent a clear showing that the HMO knowingly contracted with a physician (or other provider) with a history of improper treatment of patients.

Response: In general, an organization which reasonably follows approved guidelines and policies in making medical care decisions will not be found to have denied medically necessary services. It is important to emphasize that we expect medical care decisions to be made judiciously and appropriately. There may be instances when the organization's rules are inadequate; in such circumstances we expect the organization to protect the welfare of the beneficiary.

With respect to an HMO contracting with an independent contractor physician, we consider the HMO responsible for the quality of care its members receive. The HMO has a duty to ensure that the care enrollees receive is appropriate, whether the physician or provider is an employee of the HMO or an independent contractor. If a HMO knowingly contracts with a provider that has a history of improper treatment toward patients, we would consider this a serious aggravating circumstance in determining a sanction or civil money penalty.

Comment: One commenter pointed out that not all HMOs offer all routine covered services in their own health care centers, and therefore must contract out with other providers to offer those services. If it occurs that routine services cannot be scheduled without some minor delay, under what circumstances would such a delay result in a determination that the HMO failed substantially to provide medically necessary services?

Response: Such a situation will be evaluated based on the judgement of experts with whom HCFA will consult and in accordance with Medicare law and regulations. As previously noted, these experts include physicians, other medical personnel, the PRO, and utilization reviewers. Factors such as the effect of delays on the beneficiary's health and whether such delays are reasonable given the type of service and the needs of the beneficiary will be considered. An HMO that contracts for various services remains responsible for the quality and timeliness of those services.

Comment: Several commenters wanted more guidance as to what constitutes an excess premium for purposes of imposing intermediate sanctions in § 434.67(a)(2). One commenter suggested that the regulation include language stating that HCFA approval of the premium amount is consistent with the statutory requirement. Another commenter believed that penalties in premium setting should be limited to instances in which plans knowingly and intentionally seek to overcharge beneficiaries.

Response: In Medicare contracting organizations the premiums and other charges for Medicare enrollees are required to be the actuarial equivalent of what a Medicare beneficiary would pay in fee-for-service for Medicare covered services (section 1876(e)). Premium charges in excess of the HCFA approved amount would be considered excessive.

Although premiums are not typically employed for Medicaid contracting

HMOs for Medicaid enrollees, if the State and the HMO/HIO agreed to do so, the use of the premiums would have to be explicitly described in the HMO/HIOs contract with the State. The use of premiums in this way would also have to be described in the State plan, and could not exceed the actual value of deductibles and co-payment amounts provided for under the State plan. Both the State plan provision and the contract terms are required to have the approval of HCFA. Therefore any use of premiums which is not explicitly provided for in an HMO's or HIO's contract with the State, which has been approved by HCFA, would be in excess of a permitted premium.

Comment: Proposed § 417.495(a)(8), which we have designated as § 417.500(a)(8) in this final rule, prohibits Medicare risk contractors from employing or contracting with or through individuals or entities (either directly or indirectly) which have been excluded from participating in Medicare. One commenter believed this provision placed an onerous burden on the risk contractor to conduct extensive inquiries into the background of each of its participating providers and subcontractors, as well as imposing an obligation to obtain from HCFA the most recent information regarding excluded entities. In addition, this commenter wanted clarification of the meaning of "employing or contracting * * * (directly or indirectly) through an excluded individual or entity," so the risk contractor will know the extent of background information it must require of participating providers and others. Further, the commenter suggested that HCFA implement this provision by, (1) providing the risk contractor with a periodic listing of all excluded entities; and (2) specifying that the statutory obligation is satisfied if the risk contractor requests the background information, checks the information furnished by the subcontractor against the most recent list of excluded entities provided by HCFA, and the contracting entity or entities are not on the list.

Response: As part of its current operating procedures, HCFA makes available to Medicare contractors the Medicare/Medicaid Sanction-Reimbursement Report, which lists entities, contractors, and providers excluded from Medicare. While we consider review of the sanction report a critical step in complying with the requirement prohibiting contracting with an excluded individual or entity, it is not conclusive proof of having satisfied the legal obligation. In general, beyond reviewing the sanction report, we expect a reasonable effort to comply

with this requirement. This would include reasonable activities to verify provider credentials, and review of other relevant State and professional records. We do not require or expect contracting organizations to go beyond making a reasonable and conscientious effort to comply with this requirement.

Comment: Many commenters wanted more than 15 days to respond to the notice of intermediate sanctions. The suggested time limits ranged from 30 to 60 days with the option of additional extensions.

Response: We agree that allowing more time for an organization to respond to a notification of sanction may be necessary in some instances. We have revised our regulations at § 417.500(b)(2) and § 434.67(c) to permit a 15 day extension to the original 15 days if HCFA approves a written request from the organization. The request for an extension must provide a credible explanation of why additional time is needed and must be received by HCFA or the State agency, as appropriate, before the end of the 15 day period following the organization's date of notification of sanction. An extension will not be available in instances where HCFA, or HCFA in consultation with the State agency, finds that the organization's conduct poses a serious threat to an enrollees' health and safety or if HCFA or the State agency, as appropriate, judges the additional 15 days to be unnecessary for the organization to respond.

Comment: Two commenters wanted the regulation to specify the information that would be provided in the notice of intermediate sanctions. Another commenter suggested the following information be provided: (1) The sanction or sanctions to be imposed; (2) the effective date and duration of the sanction; (3) the authority for the sanction; (4) the reason for the sanction; (5) specific information regarding the organization's right to contest the determination, including timeframes for submission of the organization's request for reconsideration, the permissible content of the request and supporting materials, and to whom the request should be submitted; and (6) information regarding any rights to hearing or appeal, including judicial review, that the organization may have if the sanction is imposed. In addition, the organization should be provided with copies of any documents on which HCFA or the State Agency relied in determining that a violation occurred.

Response: Confidentiality may not allow the release of certain documents which have influenced HCFA's decision to impose a sanction. However, most of

the information listed above will be provided to an organization in the notification of sanction. Specifically, the notice of sanction will provide: (1) The sanction or sanctions to be imposed, (2) the reason for the sanction, (3) the authority for the sanction, (4) the effective date of the sanction, and (5) the time available for submission of the request for reconsideration and to whom the request should be submitted.

HCFA will specify the above information in operating procedures rather than in the regulations. Under the intermediate sanctions, appeal rights will be limited to the reconsideration period.

Comment: One commenter wanted the following information provided by HCFA following a reconsideration: (1) Whether the intermediate sanction will be imposed; (2) the reasons for imposing the sanction, addressing the evidence and arguments submitted by the organization; (3) the effective date and duration of the sanction; and (4) specific information regarding the organization's right to appeal the imposition of a sanction.

Response: We will provide this information at the conclusion of a reconsideration, with two exceptions. First, the duration of the sanction will depend largely on the organization's corrective action plan and willingness and ability to resolve the problem(s). An organization that cannot immediately correct a deficiency for which it has been sanctioned, will be expected to submit a corrective action plan to HCFA. This plan will be the organization's description of how and when it will resolve the problems that caused the sanctions to be imposed. Because each corrective action plan is unique, the duration of the sanction cannot be specified at the time it is imposed. Second, there will not be additional appeal steps beyond the initial reconsideration. HCFA will, however, act as quickly as possible when an organization believes it has resolved the violation(s) and wishes to be re-evaluated.

Comment: One commenter recommended that the Medicaid regulations contain minimum standards for the State review procedure. In addition, this commenter believed that an organization sanctioned by a State should have an opportunity for a separate review determination on the Federal level which would supersede any State determination.

Response: State Medicaid agencies are currently responsible for establishing and implementing procedures to monitor HMO and HIO contracts. The areas States monitor through these

procedures are broader than the areas identified in this rule. Because States already have these monitoring and review procedures in place, we prefer to allow States to implement these additional responsibilities within their current activities. We will not, in these regulations, specify national standards for this one aspect of the overall monitoring and review of HMO and HIO contracts conducted by States.

In response to the second comment, the Medicaid program is administered by States as opposed to the Federal government. We stated in the preamble of the proposed rule that we believe that States are in the best position to monitor the identified violations and to make a determination as to whether a violation has occurred. The proposed rule and this final rule offer an additional opportunity for an HMO or HIO to receive a reconsideration of a State's determination. We do not see the need for a third level of review and determination.

Comment: A commenter recommended that HCFA require States to collect information quarterly from Medicaid participating HMOs on the timeliness and frequency of prenatal visits for each Medicaid enrollee. The commenter also recommended requiring States to annually submit data to HCFA demonstrating that the State's rates for prenatal and Early Periodic Screening Diagnosis and Testing (EPSDT) services are adequate to ensure access under Medicaid's statutory requirements.

Response: This comment goes beyond the scope of this rulemaking, which implements legislative authority for intermediate sanctions and civil money penalties for HMOs (and some HIOs). HMOs and HIOs are not yet obligated to pay EPSDT providers State rates. The adequacy of such State rates is not relevant in the case of HMO enrollees. Note, however, section 1926(a) of the Social Security Act requires that State Medicaid agency payments must be sufficient to enlist enough providers to ensure that obstetric and pediatric services are available to Medicaid recipients at least to the same extent available to the general population. HCFA is developing a proposed rule which would implement the provisions of section 1926(a) in regulations.

Comment: One commenter believed that, without additional FFP, the Federal requirements mandating additional specific monitoring functions under this regulation would be burdensome for the States.

Response: HCFA expects States to integrate these new areas of monitoring into their existing monitoring and review activities; for example, those

required for monitoring an HMO's enrollment and termination practices and grievance procedures. There will continue to be FFP in the costs for conducting these activities at each State's current Federal matching rate.

Comment: One commenter recommended that HCFA affirmatively adopt those State decisions with which it agrees. The commenter believes this will mean that HCFA will more closely examine State agency determinations or decisions if it is required to formally adopt them.

Response: The regulation at § 434.67(b) provides for a mechanism whereby HCFA must uphold or reject a State decision that a sanction be or not be imposed. We believe that HCFA's consequent imposition of a sanction or decision not to impose a sanction provides sufficient formal affirmative adoption or rejection of a State's recommendation.

Comment: One commenter recommended that the final regulation should specify that the informal appeal must be conducted by an official "experienced and knowledgeable" about contracting under sections 1876 or 1903(m) of the Act.

Response: HCFA will ensure that sanction reconsiderations are evaluated by qualified HCFA officials. However, we do not believe it is necessary to mandate specific qualifications in the regulation.

Comment: A number of commenters were interested in HCFA's approach to beneficiary complaints. HCFA was encouraged to add provisions to the intermediate sanctions establishing timeframes and methodologies for the investigation of complaints. A specific recommendation was made to amend 42 CFR part 417 to require HCFA to have procedures to monitor and investigate violations of section 1876 of the Act. Other commenters believed that HCFA should require contracting organizations to publicize the availability of intermediate sanctions along with information on how to file complaints. Another commenter suggested the rules specify that the complainant receive: (1) Verification of receipt of the complaint; (2) a copy of the notice of intermediate sanction; (3) a copy of the HMOs response, if any, and; (4) a copy of the reconsideration determination. Finally, two commenters wanted a time limit placed on HCFA's investigation and review of beneficiary complaints, suggesting a 60-day deadline for processing the initial complaint and informing the complainant on the outcome of the investigation.

Response: The purpose of the intermediate sanction is to provide more

tools and authority to protect the Medicare beneficiary or Medicaid recipient. HCFA already has procedures in the regional offices and State Medicaid agencies for reporting and responding to beneficiary or recipient complaints. In addition, we already require that HMOs have a formal appeals process through which Medicare enrollees may submit complaints to HCFA. Information about this process must be included in written marketing materials, as set forth in § 417.426. Thus, if an HMO or competitive medical plan denies a service or payment for a service to a Medicare enrollee, the HMO or competitive medical plan must advise the enrollee of his or her rights under Medicare that afford the beneficiary the right to appeal the denial to HCFA. Establishing a separate complaint mechanism for the intermediate sanctions regulation would only serve to divert scarce resources from oversight and enforcement activities. Nevertheless, enrollee complaints will continue to be used as a key indicator of potential problems in Medicare or Medicaid contracting plans as well as identifying potential problems where intermediate sanctions or civil money penalties would be effective.

Comment: One commenter stated that an appropriate sanction for marketing abuse would be to require future marketing materials and/or membership materials to publicize the imposition of sanctions.

Response: This goes beyond our legislative authority. We are constrained, by the provisions of the enabling legislation, in the sanctions we may apply.

Comment: Two commenters were concerned that if the informal reconsideration results in a reversal of the initial determination, there is no provision to ensure that notice of the decision to reverse is provided to the OIG.

Response: We agree that it is important that OIG be notified by HCFA if, in the course of reconsideration or at a later time, a sanction is rescinded. The single determination applies to the initial determination and HCFA will promptly forward to the OIG information on reversals or termination of sanctions. Generally, HCFA will only notify OIG of an intermediate sanction after HCFA has confirmed the imposition of a sanction. This confirmation of sanction will occur at the conclusion of the notification of sanction period or at the end of a reconsideration.

Comment: One commenter believed that the sanctions available to HCFA

were too limited and recommended that this final regulation include a third category of sanctions to include such additional sanctions as HCFA considers appropriate and as justice requires. Another commenter specifically suggested we broaden the intermediate sanctions to include sanctions for inappropriate marketing activities and noncompliance with appeal timeframes.

Response: We cannot broaden the intermediate sanctions regulation by introducing a third new category of sanctions that would be determined by what HCFA would consider "appropriate and as justice requires." To do so would exceed our statutory authority.

With regard to applying the intermediate sanctions to marketing violations, section 1876(i)(6)(A)(V) of the Act authorizes HCFA to impose sanctions if an HMO/CMP misrepresents or falsifies information that it furnishes under section 1876 of the Act to HCFA, an individual, or to any other entity. We believe this provides us authority to address a wide range of potential marketing abuses. One of the sanctions provided by the statute is the suspension of enrollment Medicare beneficiaries by the HMO/CMP (section 1876(i)(B)(ii)). Because we consider marketing activities to be an integral part of the enrollment process, we believe the statute gives HCFA the authority to require the offending HMO/CMP to suspend marketing activities directed to Medicare beneficiaries. Therefore, in this final rule, we clarify this by adding a new § 417.500(d)(3). Accordingly, §§ 417.500 (d)(1)–(d)(3) require the sanctioned HMO/CMP to stop accepting applications for enrollment made by Medicare beneficiaries, suspend payment to the HMO/CMP for Medicare beneficiaries enrolled during the sanction period, and, finally, requires the HMO/CMP to suspend all marketing activities to Medicare beneficiaries.

Additionally, we believe that, even in cases where HCFA imposes the suspension of payment sanction, HCFA may require the HMO/CMP to suspend marketing activities to Medicare beneficiaries. We believe that, if HCFA could suspend all enrollment entirely at its discretion, conditions could be attached to a decision to permit an HMO/CMP to continue to enroll new members—namely that actual marketing to new members cease until the sanction is lifted.

Noncompliance with appeal time frames may also be a violation of section 1876(i)(6)(A)(v) if, for example, HCFA finds that an HMO/CMP is misrepresenting information regarding

its appeal process or is providing beneficiaries inaccurate information regarding appeal time frames. In addition, since the Medicare appeals process protects the Medicare enrollee's right to appeal an HMO's or competitive medical plan's decision not to furnish or pay for services, a violation of the appeals process is a failure to substantially provide required medically necessary items and services.

Comment: One commenter requested that an organization which is under the sanction of suspension of new enrollment applications also be prohibited from any new subscriber marketing activities. Another commenter asked what the implications for the organization are if an intermediate sanction of suspension of enrollment is imposed. Does the organization still have an obligation to conduct the annual open enrollment period if it occurs during the sanction period? Also, if the sanction is the suspension of payments for new enrollees, will the organization still be required to accept new enrollees and provide health services for which they may not be paid?

Finally, one commenter asked for a specific definition of "suspension." For example, if payments are suspended, the commenter wanted to know whether the organization can recover for services furnished during the sanction period after the sanction is lifted. The commenter also asked whether the organization may engage in marketing activities during the suspension period, holding applications in abeyance until the sanction is removed.

Response: Based on the authority granted the Secretary under section 1876(f)(3) of the Act and established in this regulation at §§ 417.500 (d)(1) through (d)(3), HCFA has the authority to impose the following penalties on offending HMOs or CMPs:

1. Require the HMO or CMP to suspend the enrollment of Medicare beneficiaries during the sanction period;

or

2. Suspend payments to the organization for Medicare beneficiaries enrolled during the sanction period.

Depending on the severity and nature of the violation, HCFA will determine which of the two penalties available under the intermediate sanctions is appropriate. A discussion of the two penalties under the intermediate sanctions available to HCFA follows.

Suspension of new Medicare enrollments: Under this sanction, HCFA requires the HMO or CMP to cease all enrollments of Medicare beneficiaries. On the date the sanction is effective, the plan would be prohibited from

accepting applications or otherwise enrolling any new Medicare beneficiaries in the plan. However, individuals already enrolled in the plan and who become Medicare-eligible (age in) while the plan is under the suspension of new enrollments, may be enrolled, if they choose, in the plan during the sanction period. Under this sanction, the plan would also be prohibited from engaging in any marketing activities directed to Medicare beneficiaries.

The organization would continue to be paid by HCFA for beneficiaries enrolled before the imposition of this sanction.

Suspension of payments: Under the suspension of payments penalty, the HMO or CMP may continue to enroll beneficiaries but would not be paid for those beneficiaries during the sanction period. Once the sanction period ends, there will be a retroactive payment for beneficiaries enrolled during the sanction period. Thus, this penalty is purely a financial one, affecting only the withholding of the HMO's or competitive medical plan's capitation payment for new Medicare enrollees during the sanction period.

Enrollment of new members would be allowed to continue; thus the plan would not necessarily "lose" potential enrollees who would enroll with another HMO or CMP if enrollment was suspended under section 1876(i)(6)(B)(iii) of the Act. As was described in a previous response to a comment, at the time an HMO or CMP is notified that it is subject to the intermediate sanctions, the notice of sanction will inform the plan what specific intermediate sanction has been imposed, including what the plan must do to comply with the sanction, and the effective date of the sanction. In addition to whatever sanction HCFA imposes, the HMO or CMP may also be subject to civil money penalties levied by the Office of Inspector General.

Comment: Several commenters suggested that the informal reconsideration be required to be conducted promptly, for example, within 30 or 60 days of receipt of the organization's evidence. In addition, one commenter requested that the review be expedited if the organization demonstrates that there is a pressing need for swift action.

Response: It is our intent to conduct reconsiderations promptly. The purpose of an intermediate sanction is to allow us to resolve a problem quickly. Nevertheless, we do not choose to specify a time limit. We encourage organizations to inform us of any

circumstances that require expedited reconsideration.

Comment: One commenter stated that the language in proposed § 417.495(e)(1), now designated as § 417.500(e)(1), implies that HCFA's reconsideration will inevitably result in upholding the initial determination. They recommended the language of this paragraph be revised to clarify that the sanctions are effective only if HCFA decides to uphold the initial determination.

Response: We disagree with the commenters' interpretation of § 417.500(e)(1) and we do not believe the recommended clarification is necessary. We believe it is clear that the provision on the effective date for a sanction only applies when a final decision to impose a sanction is made. The reconsideration process is meant to be a serious assessment of the response by the sanctioned organization. As such, HCFA will not inevitably uphold its initial decision. If HCFA reverses its initial decision, § 417.500(e)(1) would have no applicability.

Comment: One commenter noted that the regulation allows HCFA to make the intermediate sanction effective immediately if the organization's conduct poses a serious threat to an enrollee's health and safety. The commenter stated that if the health and safety of enrollees is at issue, HCFA should take steps to terminate the contract in its entirety, and that intermediate sanctions are not appropriate in such critical circumstances.

Response: There may be instances in which HCFA will impose the intermediate sanction to stop the organization from enrollment and marketing activities at the same time a termination action is being initiated. We believe it is in the best interest of the enrollee that we maintain our authority to respond simultaneously with both actions.

Comment: Three commenters wanted to know if the intermediate sanctions could be imposed retroactively.

Response: Intermediate sanctions will always be imposed prospectively. Civil money penalties, on the other hand, may be imposed for conduct which has already occurred.

Comment: One commenter asked that we clarify what "generally" means as it appears in proposed §§ 417.495(e)—now § 417.500(e)—and 434.67(f)(1). These sections specify that if an HMO seeks reconsideration of a HCFA sanction, "the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision."

Response: The notice of intermediate sanction, (or notice of reconsideration of an intermediate sanction) will specify the effective date. Usually this will be on the date of the reconsideration notice. We have revised these sections, however, to more clearly state that the sanction is effective on the date specified in the sanction notice or reconsideration notice, respectively.

Comment: One commenter suggested a definition of "substantial" contractual relationship under a Medicaid contract. The commenter proposed that the regulation define "substantial" as greater than 5 percent of the total annual volume of payments for categories of services under the program.

Response: We considered use of a quantitative approach to defining a "substantial" contractual relationship—either a numerical dollar amount or, as suggested by the commenter, expressed as a percent. We dismissed such approaches because contracts of seemingly small financial value could still have a significant effect on Medicare or Medicaid enrollees.

Furthermore, if an organization is large, with a substantial contracting budget, even a small percent, such as 5 percent, could involve substantial sums of money. We are therefore adhering to the definition of a "substantial" contractual relationship contained in the proposed rule. Nevertheless, we will consider relative size as a factor in our determination of whether to impose intermediate sanctions or civil money penalties.

Comment: A number of commenters believed that the imposition and duration of sanctions in both Medicare and Medicaid should be subject to a formal review instead of the proposed informal review process. One commenter stated that the formal review steps should consist of an independent review by an administrative law judge (ALJ), with review by the Departmental Appeals Board and, finally, judicial review; with sanctions not taking effect until all appeals are exhausted.

Response: The legislative intent for the intermediate sanctions is to provide HCFA with the authority to respond in a flexible and timely manner to violations of contracting organizations. Allowing the sanction process to become linked to extended review procedures would not serve the interests of the beneficiary or meet the intent of legislation. We believe that the reconsideration process will provide organizations ample opportunity to explain their position.

Comment: Two commenters stated that, if a pre-sanction hearing was not allowed, there should be a post-sanction

hearing before an ALJ or other impartial body, held as soon as possible after the imposition of any sanctions.

Response: As was stated previously, the intent of the statutory provisions implemented in this regulation is to allow HCFA to respond quickly to a problem. During the reconsideration process the decision to impose or not impose a sanction will be made judiciously. In the event a sanction is applied, HCFA will work with the organization to resolve the problem as rapidly as possible. We expect sanctions to be of short duration. If the violation persists, the likely outcome would be termination of the contract rather than an indefinite sanction. We believe that additional hearings would only serve to delay the resolution of problems.

Comment: One commenter stated that an organization should have an "opportunity to cure" by which the organization could avoid the imposition of sanctions by demonstrating not only that the alleged violation had not occurred, but that any prior violation already had been remedied.

Response: We agree that an organization which has received a notice of sanction should have a reasonable opportunity to present its position. In the event the risk contractor demonstrates during the reconsideration period that the sanction is not appropriate, the sanction will not be imposed. The organization's prior contract performance will be considered as we determine whether to impose a sanction and the amount of any civil money penalty.

Comment: One commenter requested that an organization be allowed to submit both documentary evidence, including statements and affidavits, and written arguments in response to a notice that HCFA intends to impose an intermediate sanction.

Response: We agree. The rule provides for the submission of such information as part of the reconsideration process. (See §§ 417.500 (b) (proposed § 417.495(b)) and 434.67(c))

Comment: One commenter expressed concern about the potential duration of an intermediate sanction and recommended a procedure by which, once a sanction is imposed, it will remain in effect until the organization submits a credible allegation of compliance. The commenter defined this as a senior officer's written statement that the organization has taken steps to ensure alleged violations have been examined and, where necessary, corrected. The commenter stated that HCFA should then have 14 days to determine whether the sanction

should be terminated. If HCFA is unable to make a determination within 14 days, then the commenter believes that the intermediate sanction should be removed.

Response: We disagree with the recommendation. Our review and decision if we should end a sanction will be done as quickly as possible, but the timing will depend largely on the complexity of the problem and responsiveness of the organization. If a sanction is imposed, the sanctioned organization will develop a corrective action plan, effectively setting their own timetable for the removal of sanctions. HCFA will respond as quickly as possible to review an organization that believes it has corrected its deficiencies.

Comment: Several commenters wanted some means available to ensure prompt reevaluation of an existing sanction and a time limit placed on the duration of a sanction. A related comment was that any renewal of a contract should constitute ratification of the organization's performance under the contract and, thus, the end of the sanction period.

Response: In the event a sanction is applied to an organization, HCFA will respond as quickly as possible to their request for a re-evaluation. We, however, will not set specific limits on the timing or frequency of our reevaluations, or view contract renewal as HCFA's acknowledgement that sufficient corrective action has been taken.

Comment: One commenter pointed out what was believed to be an error in proposed § 434.67(f)(1). The last sentence of this citation in the proposed rule referred to "the date the organization is notified of HCFA's decision under paragraph (d)(1)(ii) of this section." However, paragraph (d)(1)(ii) of that section does not relate to a notification of a decision following reconsideration by HCFA, but rather to a decision by a State agency.

Response: We have modified § 434.67(d)(2) to clarify that the State agency decision to impose a sanction becomes HCFA's decision except in instances where HCFA decides to modify or reverse that agency decision. We also have revised § 434.67(f) so that it, (1) refers in paragraph (f)(1) to the date the HMO is "notified * * * under paragraph (c)," rather than "under paragraph (d)(1)(ii);" and, (2) refers in paragraph (f)(2) to "the date specified in HCFA's reconsideration notice."

B. Factors To be Considered in Levying Civil Money Penalties

Comment: One commenter believed that the proposed "Factors To Be

Considered in Levying Civil Money Penalties" greatly dilutes the effectiveness of the penalties by creating many opportunities for HMOs to argue for minimal fines. The commenter stated that the imposition of a full penalty is tied to proof that the HMO engaged in prohibited behavior on a repeated and knowing basis—which is excessively difficult to prove. The commenter suggested that the deterrent effect of the civil money penalties should be preserved by imposing maximum fines for all violations that come to light.

Response: The intent of penalties is to quickly bring about corrective action on the part of a sanctioned organization and to deter further violations. The OIG will use the "Factors to Be Considered in Levying Civil Money Penalties" as a guide in determining the appropriate amount of any civil money penalty. Organizations that have made honest errors and are responsive to HCFA regulators will face less severe penalties than organizations that demonstrate a pattern of knowingly committing violations. We believe that, in performing our oversight responsibilities, it is important to retain flexibility in responding to violations. However, once all evidence has been evaluated and weighed, the OIG will act on the facts of the case in the manner it believes will best achieve the objectives of enrollee protection and regulatory compliance.

Comment: One commenter had several suggestions regarding the enumeration of specific mitigating and aggravating circumstances for the imposition of civil money penalties.

The commenter stated that the statute and regulation establish sanctions that can be imposed against organizations that charge enrollees premiums in excess of those permitted. The commenter believed it should be a mitigating circumstance if the premiums were only incidentally in excess of those permitted; it should be an aggravating circumstance if the premiums were greatly in excess of those permitted.

The commenter stated that the statute and regulations also provide sanctions for contracting with excluded individuals or entities. The commenter believed it should be an aggravating circumstance if the entity was excluded because of its dealings with the HMO and the excluded entity is contracting with the HMO for health care services. The commenter believed it should be a mitigating circumstance if the—

(1) Entity was excluded because of activities unrelated to its dealings with the HMO.

(2) Contract with the excluded entity is unrelated to the delivery of health care services.

(3) Violation is confined to a particular service area of the HMO.

Response: We do not agree with these comments. We believe that the current factors listed under proposed § 1003.106(a)(4) provide for sufficient consideration of the circumstances surrounding violations where premiums in excess of the allowable amount are charged by a contracting organization. Therefore, a separate factor addressing such a violation is unnecessary. With regard to the second comment, we believe that this goes beyond the scope of the statute. The enabling legislation provides for imposition of a civil money penalty without regard to the specific activities which resulted in an individual being excluded from the Medicare program. Additionally, since the statute provides that the penalty may be imposed in instances where excluded individuals are contracted to provide other than patient care, we see no need to mitigate this circumstance. Finally, we believe that the current factors listed under § 1003.106(a)(4) provide for sufficient consideration of the scope of a violation. Therefore, an amendment addressing violations that may be confined to a particular service area is not necessary.

Comment: One commenter wanted the OIG to consider prior offenses for which the organization was not assessed any sanctions or money penalties. The commenter believed that even if prior violations had not been sanctioned, a pattern of violations should be considered more serious and dealt with more harshly. The commenter also suggested that proposed § 1003.106(a)(4)(vii), which concerns the history of prior offenses, should be amended to include, in the list of factors to be considered, whether there were any prior offenses by the organization, regardless of administrative or civil sanctions assessed.

Response: In making a determination on the imposition of sanctions we will consider an organization's pattern of conduct. A background of repeated violations would be considered an aggravating circumstance. We believe the current provisions in proposed § 1003.106 allow the OIG to consider the prior conduct of an organization in levying civil money sanctions. Therefore, an amendment is unnecessary.

Comment: One commenter stated that the standards in § 1003.106 relating to determinations regarding the amount of the penalty and assessment are

subjective criteria which could result in arbitrary determinations by the OIG.

Response: We disagree with this comment. Congress authorized a maximum penalty amount for certain violations contained in the underlying statutes. The proposed factors listed in § 1003.106 represent an attempt to provide a measure for impartially determining a penalty amount against a culpable organization. Moreover, the public is afforded an opportunity to comment on the proposed factors before their adoption in final regulations. This process is intended to inform the public about what factors will be used in determining penalty amounts, and, to the extent possible, remove subjectivity from penalty determination decisions.

Comment: One commenter wanted to add the "enrollee's compliance with rules and protocols of the contracting organization" as a factor in our determination of imposing civil money penalties.

Response: We believe that the current factors listed under proposed § 1003.106(a)(4) provide for sufficient consideration of the commenter's concerns. Specifically, in paragraph (a)(4)(ii) the factor is the degree of culpability of the contracting organization. Under this factor, in determining whether or not to impose a penalty, as well as in determining the amount of any penalty which may be imposed, consideration will be given to the enrollee's culpability for the violation, including compliance with rules and protocols of the contracting organization. Therefore, a separate factor addressing this issue is unnecessary.

Comment: One commenter asked if proposed § 1003.103(c)(1)(iv), now designated as § 1003.103(e)(1)(iv), establishes degrees or levels of misrepresentation and falsification of information that will be subject to varying amounts of civil money penalties. In addition, the commenter wanted a distinction to be made in the regulation between a misrepresentation and falsification and a mistake with no fraudulent intent.

Response: Concerning a violation of this nature, we believe that once all pertinent information is examined, any reasonable person could discern the difference between a "misrepresentation" and "a mistake with no fraudulent intent." Therefore, we believe that the language in § 1003.103(c)(1)(iv) is sufficient as written.

Comment: Section 1003.103(c)(1)(v) specifies that the failure to comply with prompt payment of claims as established in section 1876(g)(6)(A) of

the Act is the basis for a money penalty. A commenter asked what constitutes a violation of timely claims payment, whether it is one late claim or a percentage of claims beyond the standard. In addition, this commenter questioned whether late claims will be determined from a monthly report, Medicare carriers, on-site review, or beneficiary or provider complaints and asked whether this includes claims from nonparticipating providers.

Response: Section 1876(g)(6)(A) of the Act contains a cross-reference to sections 1816(c)(2) and 1842(c)(2) of the Act, which describe prompt payment. These sections require that 95 percent of claims be paid within a specified time period (currently 24 calendar days after receipt). As a result, a definition in this regulation is unnecessary.

Comment: One commenter questioned whether Qualified Medicare Beneficiaries (QMBs) are subject to this rule.

Response: This rule applies to plans that have a Medicare or Medicaid contract. QMBs could be enrolled (or want to enroll) in these plans, and thus, could be affected by these rules.

Comment: One commenter wanted to know what constitutes "discouraging enrollment." Another commenter stated that a penalty should be imposed for discouraging enrollment only if a beneficiary is discouraged from enrolling because of a medical condition or a future need for substantial services.

Response: It is not possible to set out all the possible ways that enrollments in a contracting organization might be discouraged. Essentially, such a determination would be made after judging all the facts and circumstances surrounding an alleged violation. We agree, however, that violations of this nature pertain to certain circumstances. The statute specifically authorizes imposition of a penalty in those instances in which, except as permitted by law, a contracting organization expels or refuses to reenroll an individual or engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by enrollees whose medical condition or history indicate a need for substantial future medical services.

Comment: One commenter stated that § 434.80 would require a State agency to exclude from participation, as a Medicaid contractor, any HMO that is controlled or owned by an individual who has been convicted of a criminal offense relating to financial misconduct. The commenter said that this provision amounts to a lifetime ban on participation in Medicaid for

individuals who may have committed an offense only marginally related to the delivery of health care. The commenter recommended that this prohibition not be a lifetime ban, but that the prohibitions be restricted in their effect to criminal offenses which occurred within the past 10 years. The commenter also stated that the relationship of the criminal offense to the delivery of health care services should be a factor applied by the State agency in determining the fitness of the HMO contractor.

Response: This requirement is based on the requirement in 1902(p)(2) of the Act. The law does not provide authority for the Department to either grant exceptions to this requirement or make this requirement effective for only a specified time period.

Comment: A commenter noted that proposed § 1003.106(a)(1) refers to determining the amount of a penalty under § 1003.103(a), (b) and (c)(1) through (c)(3), and proposed § 1003.106(a)(4) refers to factors for the OIG to consider in determining the penalty under § 1003.103(b)(4) [sic]. The commenter states that there is no § 1003.103(b)(4), and believes that both of these references are incorrect.

Response: We agree. Several sections were incorrectly referenced in §§ 1003.106(a)(1) and 1003.106(a)(4) and we are revising the regulations accordingly. Numerous revisions to referenced sections are made in this final rule because of the publication of final OIG regulations since this HMO regulation was published as a proposed rule.

IV. Provisions of the Final Regulations

After consideration of the comments received and our further analysis of specific issues, we are publishing as final the July 22, 1991, proposed regulations with the revisions identified below. We have also made numerous editorial changes to improve the readability of the proposed text, without changing its substance.

On October 17, 1991 HCFA published a final rule (56 FR 51984) that amended part 417 to simplify, clarify, and update regulations on prepaid health care. Among other changes, that rule designated the contents of Subpart C—Health Maintenance Organization and Competitive Medical Plans as Subpart L—Medicare Contract Requirements. In the July 1991 proposed rule, we proposed to add a new § 417.495, "Sanctions against the organizations" to subpart C. Therefore, as a change from the proposed rule, we are designating proposed § 417.495 as 417.500 and adding it to subpart L.

As discussed in section III of this preamble, we have revised proposed §§ 417.495(b) and 434.67(c), which concern the time limit for seeking a reconsideration, to allow an additional 15 days under certain circumstances. (Proposed § 417.495(b) is now § 417.500(b).)

In addition to changes to improve its readability, proposed § 417.495(e), which concerns the effective date of a sanction, is revised to replace the inexplicit phrase "generally will be effective on the date the organization is notified of HCFA's decision." In this final rule, we specify that, if an organization seeks a reconsideration, the sanction is effective on the date specified in HCFA's notice of reconsidered determination. (Proposed § 417.495(e) is now § 417.500(e). Proposed § 431.55 is revised to improve its readability.)

On January 29, 1992, the OIG published a final rule (57 FR 3298) that amended, among other parts, part 1003. As a result of the publication of the January 29, 1992 rule, we have made changes from our July 22, 1991 proposed rule as follows:

- The substance of proposed §§ 1003.100(b)(1)(i) and (b)(1)(ii), which concern the purpose of part 1003, were incorporated into regulations at §§ 100.100(b)(1)(i) and (b)(1)(iv), respectively, by the January 29 rule. Therefore, proposed § 1003.100(b)(1)(i) is not included in this final rule. Section 1003.100(b)(1)(iv) is included in this final rule solely to make technical corrections.

- Proposed § 1003.100(b)(1)(iii), which also concerns the purpose of part 1003, is designated as § 1003.100(b)(1)(vi) by this final rule.

- The substance of proposed § 1003.102(b)(1), which identifies those individuals against whom the OIG may impose a penalty, was incorporated at §§ 1003.102(b)(1) through (b)(3) by the January 29, 1992 rule. Therefore, it is not included in this rule.

- Proposed § 1003.102(b)(2), which concerns the imposition of penalties against contracting organizations, is designated as § 1003.102(b)(8) by this final rule.

- In § 1003.103, which concerns the amount of a penalty, proposed paragraph (c) is designated as paragraph (e). Further, paragraph (a) as established by the January 29 rule is revised to include a reference to the newly-established paragraph (e).

- Also in § 1003.103, subparagraph (e)(3)(ii) is revised to more clearly reflect the penalty amount stipulated under the statute.

- In § 1003.106, which concerns determining the amount of a penalty and assessment, we have replaced the phrase "person or contracting organization" with the phrase "person." "Person," as it is broadly defined in § 1003.101, includes contracting organizations. Therefore, the phrase was replaced in the final rule.

As discussed in section III of this preamble, we have included, at § 1003.106(d), provisions regarding mitigating and aggravating circumstances to be considered in determining the amount of any penalty.

V. Information Collection Requirements

This final rule contains no information collection requirements. Consequently, this final rule need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

This final rule implements sections of OBRA 1986, sections of the Medicare and Medicaid Patient and Program Protection Act of 1987, sections of the Medicare Catastrophic Coverage Act of 1988, and a section of OBRA 1989. This final rule will implement the Secretary's broadened authority to impose intermediate sanctions and civil money penalties on HMOs and other prepaid health plans contracting under Medicare or Medicaid that substantially fail to provide an enrolled individual with required medically necessary items and services, engage certain marketing, enrollment, reporting, or claims payment abuses, or, in the case of Medicare, employ or contract with, either directly or indirectly, an individual or entity excluded from participation in Medicare.

This regulation is the result of statutory changes and serves to clarify departmental policy with respect to the imposition of intermediate sanctions and civil money penalties. We believe the majority of plans, practitioners and providers do not engage in the prohibited activities and practices discussed in this final rule. In addition, we believe this final rule will have a deterrent effect upon providers and practitioners. Therefore, we expect that the aggregate economic impact would be minimal, affecting only those engaged in the prohibited behavior in violation of this final rule.

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866.

We generally prepare a regulatory flexibility analysis that is consistent

with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, competitive medical plans and other contracting organizations to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We do not have data to assist us in estimating the number of contracting organizations that will be affected by this final rule or the magnitude of any penalties that will be imposed. Nevertheless, any impact will be minimal because we believe the number of providers and practitioners engaged in prohibited activities are few. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 417

Administrative practice and procedure; Grant programs—health; Health care; Health facilities; Health insurance; Health Maintenance Organizations (HMO); Loan programs—health; Medicare; Reporting and recordkeeping requirements.

42 CFR Part 431

Grant Programs—Health; Health facilities; Medicaid; Privacy; Reporting and recordkeeping requirements.

42 CFR Part 434

Grant Programs—Health; Health Maintenance Organizations (HMO); Medicaid; Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure; Fraud; Grant Programs—Health; Health facilities; Health professions; Maternal and child health; Medicaid; Medicare; Penalties.

A. 42 CFR part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); section 9312(c) of Pub. L. 99-509 (42 U.S.C. 1395mm note); and secs. 215, 353, and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216, 263a, and 300e through 300e-17) and 31 U.S.C. 9701, unless otherwise noted.

Subpart L—Medicare Contract Requirements

2. In subpart L, a new section 417.500 is added to read as follows:

§ 417.500 Sanctions against HMOs and CMPs.

(a) *Basis for imposition of sanctions.* HCFA may impose the intermediate sanctions specified in paragraph (d) of this section, as an alternative to termination, if HCFA determines that an HMO or CMP with a contract under this subpart does one or more of the following:

(1) Fails substantially to provide the medically necessary services required to be provided to a Medicare enrollee and the failure adversely affects (or has a substantial likelihood of adversely affecting) the enrollee.

(2) Requires Medicare enrollees to pay amounts in excess of premiums permitted.

(3) Acts, in violation of the provisions of this part, to expel or to refuse to reenroll an individual.

(4) Engages in any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.

(5) Misrepresents or falsifies information that it furnishes under this part to HCFA, an individual, or to any other entity.

(6) Fails to comply with the requirements of section 1876(g)(6)(A) of the Act relating to the prompt payment of claims.

(7) Fails to meet the requirement in section 1876(f)(1) of the Act that not more than 50 percent of the organization's enrollment be Medicare beneficiaries and Medicaid recipients.

(8) Has a Medicare risk contract and—
(i) Employs or contracts with individuals or entities excluded from participation in Medicare under section 1128 or section 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of those services (directly or indirectly) through an excluded individual or entity.

(b) *Notice of sanction.* (1) Before imposing the intermediate sanctions specified in paragraph (d) of this section, HCFA—

(i) Sends a written notice to the HMO or CMP stating the nature and basis of the proposed sanction; and

(ii) Sends the OIG a copy of the notice (other than a notice regarding the restriction on Medicare and Medicaid enrollees as described in paragraph (a)(7) of this section), once the sanction has been confirmed following the notice period or the reconsideration.

(2) HCFA allows the HMO or CMP 15 days from receipt of the notice to provide evidence that it has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable. HCFA may allow a 15-day addition to the original 15 days upon receipt of a written request from the HMO or CMP. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date of receipt of the sanction notice. HCFA does not grant an extension if it determines that the HMO's or CMP's conduct poses a threat to an enrollee's health and safety.

(c) *Informal reconsideration.* If, consistent with paragraph (b)(2) of this section, the HMO or CMP submits a timely response to HCFA's notice of sanction, HCFA conducts an informal reconsideration that:

(1) Consists of a review of the evidence by a HCFA official who did not participate in the initial decision to impose a sanction; and

(2) Gives the HMO or CMP a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(d) *Specific sanctions.* If HCFA determines that an HMO or CMP has acted or failed to act as specified in paragraph (a) of this section and affirms this determination in accordance with paragraph (c) of this section, HCFA may—

(1) Require the HMO or CMP to suspend acceptance of applications for

enrollment made by Medicare beneficiaries during the sanction period;

(2) Suspend payments to the HMO or CMP for Medicare beneficiaries enrolled during the sanction period; and

(3) Require the HMO or CMP to suspend all marketing activities to Medicare enrollees.

(e) *Effective date and duration of sanctions*—(1) *Effective date*. Except as provided in paragraph (e)(2) of this section, a sanction is effective 15 days after the date that the organization is notified of the decision to impose the sanction or, if the HMO or CMP timely seeks reconsideration under paragraph (c) of this section, on the date specified in the notice of HCFA's reconsidered determination.

(2) *Exception*. If HCFA determines that the HMO's or CMP's conduct poses a serious threat to an enrollee's health and safety, HCFA may make the sanction effective on a date before issuance of HCFA's reconsidered determination.

(3) *Duration of sanction*. The sanction remains in effect until HCFA notifies the HMO or CMP that HCFA is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur.

(f) *Termination by HCFA*. In addition to or as an alternative to the sanctions described in paragraph (d) of this section, HCFA may decline to renew a HMO's or CMP's contract in accordance with § 417.492(b), or terminate the contract in accordance with § 417.494(b).

(g) *Civil money penalties*. If HCFA determines that a HMO or CMP has committed an act or failed to comply with a requirement described in paragraph (a) of this section (with the exception of the requirement to limit the percentage of Medicare and Medicaid enrollees described in paragraph (a)(7) of this section), HCFA notifies the OIG of that determination. HCFA also conveys to the OIG information when it reverses or terminates a sanction imposed under this subpart. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the HMO or CMP in addition to or in place of the sanctions that HCFA may impose under paragraph (d) of this section.

B. 42 CFR part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.55 is amended by adding a sentence at the end of paragraph (a) and adding new paragraph (h) to read as follows:

§ 431.55 Waiver of other Medicaid requirements.

(a) Statutory basis. * * *. Section 1902(p)(2) of the Act conditions FFP in payments to an entity under a section 1915(b)(1) waiver on the State's provision for exclusion of certain entities from participation.

* * * * *

(h) *Waivers approved under section 1915(b)(1) of the Act*—(1) *Basic Rules*.

(i) An agency must submit, as part of its waiver request, assurance that the entities described in paragraph (h)(2) of this section will be excluded from participation under an approved waiver.

(ii) FFP is available in payments to an entity that furnishes services under a section 1915(b)(1) waiver only if the agency excludes from participation any entity described in paragraph (h)(2) of this section.

(2) Entities that must be excluded. The agency must exclude an entity that meets any of the following conditions:

(i) Could be excluded under section 1128(b)(8) of the Act as being controlled by a sanctioned individual.

(ii) Has a substantial contractual relationship (direct or indirect) with an individual convicted of certain crimes, as described in section 1128(b)(8)(B) of the Act.

(iii) Employs or contracts directly or indirectly with one of the following:

(A) Any individual or entity that, under section 1128 or section 1128A of the Act, is precluded from furnishing health care, utilization review, medical social services, or administrative services.

(B) Any entity described in paragraph (h)(2)(i) of this section.

(3) *Definitions*. As used in this section, substantial contractual relationship means any contractual relationship that provides for one or more of the following services:

(i) The administration, management, or provision of medical services.

(ii) The establishment of policies, or the provision of operational support, for the administration, management, or provision of medical services.

C. 42 CFR part 434 is amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Contracts with HMOs and PHPs: Contract Requirements

2. In subpart C, a new § 434.22 is added to read as follows:

§ 434.22 Application of sanctions to risk comprehensive contracts.

A risk comprehensive contract must provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by HCFA under § 434.67(e).

Subpart D—Contracts With Health Insuring Organizations

3. In subpart D, a new § 434.42 is added to read as follows:

§ 434.42 Application of sanctions to risk comprehensive contracts.

A risk comprehensive contract must provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by HCFA under § 434.67(e).

Subpart E—Contracts With HMOs and PHPs: Medicaid Agency Responsibilities

4. In subpart E, § 434.63 is revised to read as follows:

§ 434.63 Monitoring procedures.

The agency must have procedures to do the following:

- Monitor enrollment and termination practices.
- Ensure proper implementation of the contractor's grievance procedures.
- Monitor for violations of the requirements specified in § 434.67 and the conditions necessary for FFP in contracts with HMOs specified in § 434.80.

Subpart E—Contracts With HMOs and PHPs: Medicaid Agency Responsibilities

5. In subpart E, a new § 434.67 is added to read as follows:

§ 434.67 Sanctions against HMOs with risk comprehensive contracts.

(a) *Basis for imposition of sanctions*. The agency may recommend that the intermediate sanction specified in paragraph (e) of this section be imposed if the agency determines that an HMO with a risk comprehensive contract does one or more of the following:

- (1) Fails substantially to provide the medically necessary items and services required under law or under the contract to be provided to an enrolled recipient and the failure has adversely

affected (or has substantial likelihood of adversely affecting) the individual.

(2) Imposes on Medicaid enrollees premium amounts in excess of premiums permitted.

(3) Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1903(m) of the Act) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.

(4) Misrepresents or falsifies information that it furnishes, under section 1903(m) of the Act to HCFA, the State agency, an individual, or any other entity.

(b) *Effect of an agency determination.*
(1) When the agency determines that an HMO with a risk comprehensive contract has committed one of the violations identified in paragraph (a) of this section, the agency must forward this determination to HCFA. This determination becomes HCFA's determination for purposes of section 1903(m)(5)(A) of the Act, unless HCFA reverses or modifies the determination within 15 days.

(2) When the agency decides to recommend imposition of the sanction specified in paragraph (e) of this section, this recommendation becomes HCFA's decision, for purposes of section 1903(m)(5)(B)(ii) of the Act, unless HCFA rejects this recommendation within 15 days.

(c) *Notice of sanction.* If a determination to impose a sanction becomes HCFA's determination under paragraph (b)(2) of this section, the agency must send a written notice to the HMO stating the nature and basis of the proposed sanction. A copy of the notice is forwarded to the OIG at the same time it is sent to the HMO. The agency allows the HMO 15 days from the date it receives the notice to provide evidence that it has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable. The agency may allow a 15-day addition to the original 15 days upon receipt of a written request from the organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date the organization received the sanction notice. An extension is not granted if HCFA determines that the organization's

conduct poses a threat to an enrollee's health and safety.

(d) *Informal reconsideration.* (1) If the HMO submits a timely response to the agency's notice of sanction, the agency conducts an informal reconsideration that includes—

(i) Review of the evidence by an agency official who did not participate in the initial recommendation to impose the sanction; and

(ii) A concise written decision setting forth the factual and legal basis for the decision.

(2) The agency decision under paragraph (d)(1)(ii) of this section is forwarded to HCFA and becomes HCFA's decision unless HCFA reverses or modifies the decision within 15 days from the date of HCFA's receipt of the agency determination. In the event HCFA modifies or reverses the agency decision, the agency sends the HMO a copy of HCFA's decision under this paragraph.

(e) *Denial of payment.* If a HCFA determination that a HMO has committed a violation described in paragraph (a) of this section is affirmed on review under paragraph (d) of this section, or is not timely contested by the HMO under paragraph (c) of this section, HCFA, based upon the recommendation of the agency, may deny payment for new enrollees of the HMO under section 1903(m)(5)(B)(ii) of the Act. Under §§ 434.22 and 434.42, HCFA's denial of payment for new enrollees automatically results in a denial of agency payments to the HMO for the same enrollees. A new enrollee is an enrollee that applies for enrollment after the effective date in paragraph (f)(1) of this section.

(f) *Effective date and duration of sanction.* (1) Except as specified in paragraphs (f)(2) and (f)(3) of this section, a sanction is effective 15 days after the date the HMO is notified of the decision to impose the sanction under paragraph (c) of this section.

(2) If the HMO seeks reconsideration under paragraph (d) of this section, the sanction is effective on the date specified in HCFA's reconsideration notice.

(3) If HCFA, in consultation with the agency, determines that the HMO's conduct poses a serious threat to an enrollee's health and safety, the sanction may be made effective on a date prior to issuance of the decision under paragraph (d)(1)(ii) of this section.

(g) *Civil money penalties.* If a determination that an organization has committed a violation under paragraph (a) of this section becomes HCFA's determination under paragraph (b)(1) of

this section, HCFA conveys the determination to the OIG. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the organization in addition to or in place of the sanctions that may be imposed under this section.

(h) *HCFA's role.* HCFA retains the right to independently perform the functions assigned to the agency in paragraphs (a) through (f) of this section.

(i) *State Plan requirements.* The State Plan must include a plan to monitor for violations specified in paragraph (a) of this section and for implementing the provisions of this section.

6. In subpart F, a new § 434.80 is added to read as follows:

Subpart F—Federal Financial Participation

§ 434.80 Condition for FFP in contracts with HMOs.

(a) *Basic rule.* FFP in payments to an HMO is available only if the agency excludes from participation as such an entity any entity described in paragraph (b) of this section.

(b) *Entities that must be excluded.* (1) An entity that could be excluded under section 1128(b)(8) of the Act as being controlled by a sanctioned individual.

(2) An entity that has a substantial contractual relationship as defined in § 431.55(h)(2), either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Act.

(3) An entity that employs or contracts, directly or indirectly, with one of the following:

(i) Any individual or entity excluded from Medicaid participation under section 1128 or section 1128A of the Act for the furnishing of health care, utilization review, medical social work, or administrative services.

(ii) Any entity for the provision through an excluded individual or entity of services described in paragraph (b)(3)(i) of this section.

D. 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7a, 1320b-10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a); republishing paragraph (b)(1) introductory text; revising paragraphs (b)(1)(iv) and

(b)(1)(v); and adding a new paragraph (b)(1)(vi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1882(d), and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99-660 (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7(c), 1320b-10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99-660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and social security program words, letters, symbols and emblems; or

(vi) Substantially fail to provide an enrollee with required medically necessary items and services, or that engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses.

3. Section 1003.101 is amended by adding, in alphabetical order, definitions for the terms "adverse effect," "contracting organization," and "enrollee" to read as follows:

§ 1003.101 Definitions.

Adverse effect means medical care has not been provided and the failure to provide such necessary medical care has presented an imminent danger to the health, safety, or well-being of the patient or has placed the patient unnecessarily in a high-risk situation.

Contracting organization means a public or private entity, including of a health maintenance organization (HMO), competitive medical plan, or health insuring organization (HIO) which meets the requirements of section 1876(b) of the Act or is subject to the requirements in section 1903(m)(2)(A) of the Act and which has contracted with the Department or a State to furnish services to Medicare beneficiaries or Medicaid recipients.

Enrollee means an individual who is eligible for Medicare or Medicaid and who enters into an agreement to receive services from a contracting organization

that contracts with the Department under title XVIII or title XIX of the Act.

4. Section 1003.102, paragraph (b) introductory text is republished and a new paragraph (b)(8) is added to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

(8) Is a contracting organization that HCFA determines has committed an act or failed to comply with the requirements set forth in § 417.500(a) or § 434.67(a) of this title or failed to comply with the requirement set forth in § 434.80(c) of this title.

5. Section 1003.103 is amended by revising paragraph (a) and adding new paragraph (e) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (e) of this section, the OIG may impose a penalty of not more than \$2,000 for each item or service that is subject to a determination under § 1003.102.

(e)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to \$25,000 for each determination by HCFA that a contracting organization has:

(i) Failed substantially to provide an enrollee with required medically necessary items and services and the failure adversely affects (or has the likelihood of adversely affecting) the enrollee;

(ii) Imposed premiums on enrollees in excess of amounts permitted under section 1876 or Title XIX of the Act;

(iii) Acted to expel or to refuse to reenroll a Medicare beneficiary in violation of the provisions of section 1876 of the Act and for reasons other than the beneficiary's health status or requirements for health care services;

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or section 1903(m) of the Act; or

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of the Act regarding prompt payment of claims.

(2) The OIG may, in addition to or in lieu of other remedies available under

law, impose a penalty of up to \$25,000 for each determination by HCFA that a contracting organization with a contract under section 1876 of the Act:

(i) Employs or contracts with individuals or entities excluded, under section 1128 or section 1128A of the Act, from participation in Medicare for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of services (directly or indirectly) through an excluded individual or entity.

(3) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to \$100,000 for each determination that a contracting organization has:

(i) Misrepresented or falsified information furnished to the Secretary under section 1876 of the Act or to the State under section 1903(m) of the Act; or

(ii) Acted to expel or to refuse to reenroll a Medicaid recipient because of the individual's health status or requirements for health care services, or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1876 or section 1903(m) of the Act) with the contracting organization by Medicare beneficiaries and Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.

(4) If enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional \$15,000 penalty for each individual not enrolled when HCFA determines that a contracting organization has committed a violation described in paragraph (e)(3)(ii) of this section.

(6) For purposes of paragraph (e) of this section, a violation is each incident where a person has committed an act listed in § 417.500(a) or § 434.67(a) of this title or failed to comply with a requirement set forth in § 434.80(c) of this title.

6. Section 1003.106 is amended by adding new paragraph (a)(4); redesignating paragraph (d) as paragraph (e) and republishing it; and adding a new paragraph (d) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(4) In determining the appropriate amount of any penalty in accordance with § 1003.103(e), the OIG will consider as appropriate—

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under section 1876(i)(6) or section 1903(p)(2) of the Act, from contracting with or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to reenroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee, or other entity under section 1876 or section 1903(m) of the Act;

(vii) The history of prior offenses by the contracting organization or principals of the contracting organization, including whether, at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted of a criminal charge or was held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(viii) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(4) of this section, for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) Nature and circumstances of the incident. It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were:

(i) Few in number, or

(ii) Of the same type and occurred within a short period of time.

It would be considered an aggravating circumstance if such items or services were of several types and occurred over a lengthy period of time, or if there were many such items or services (for the nature and circumstances indicate a pattern of such items or services not being provided).

(2) Degree of culpability. It would be considered a mitigating circumstance if the violation was the result of an unintentional, unrecognized error, and corrective action was taken promptly after discovery of the error.

(3) Failure to provide required care. It would be considered an aggravating circumstance if the failure to provide required care was attributable to an individual or entity that the contracting organization is expressly prohibited by law from contracting with or employing.

(4) Use of excluded individuals. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in the prohibited practice of contracting or employing, either directly or indirectly, individuals or entities excluded from the Medicare program under section 1128 or section 1128A of the Act.

(5) Routine practices. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in any discriminatory or other prohibited practice which has the effect of denying or discouraging enrollment by individuals whose medical condition or history indicates a need for substantial future medical services.

(6) Prior offenses. It would be considered an aggravating circumstance if at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted on criminal charges or held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services. The lack of prior liability for criminal, civil, or administrative sanctions by the contracting organization, or the principals of the contracting organization, would not necessarily be considered a mitigating circumstance in determining civil money penalty amounts.

(e) (1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and

costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

Dated: March 30, 1994.

June Gibbs Brown,
Inspector General.

Dated: April 12, 1994.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

Approved: July 7, 1994.

Donna E. Shalala,
Secretary, Department of Health and Human Services.

[FR Doc. 94-17221 Filed 7-14-94; 8:45 am]
BILLING CODE 4110-60-P

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 322**

RIN 3067-AC27

Defense Production: Priorities and Allocations Authority; Removal of CFR Part

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule removes 44 CFR 322, Defense Production: Priorities and Allocations Authority (DMO-3), the authority for which was superseded by Executive Order 12919 of June 3, 1994.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3520.

SUPPLEMENTARY INFORMATION: On June 3, 1994, the President signed Executive Order 12919, National Defense Industrial Resources Preparedness, 59 FR 29525, June 7, 1994, which delegated authorities under the Defense Production Act and revoked and superseded certain authorities that were the basis for 44 CFR part 322. This rule removes part 322 to comply with Executive Order 12919.

List of Subjects in 44 CFR Part 322

Authority delegations (Government agencies), National defense.

PART 322—[REMOVED]

Accordingly, 44 CFR part 322 is removed.

Dated: July 11, 1994.

James L. Witt,
Director.

[FR Doc. 94-17232 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-20-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 68**

[CGD 94-050]

Deep Frames in Vessel Admeasurement

AGENCY: Coast Guard, DOT.

ACTION: Policy statement.

SUMMARY: The Coast Guard is issuing this policy statement to address the variances in its practices related to the use of deep-frames in vessel admeasurement. Recent decisions applying the rules of practice regarding deep-frames to existing vessels during remeasurement have raised questions of fairness in application of the practices. This policy addresses the acceptance of deep-frames used in the construction of vessels under previously accepted practices.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Hixson, Vessel Documentation and Tonnage Survey Branch at (202) 267-1492.

SUPPLEMENTARY INFORMATION: The admeasurement of vessels has a long history. Indeed, the earliest admeasurement statute was enacted by the First Congress in 1789. Over the years, as the Nation's maritime law developed, various Federal statutes used vessel tonnage as a parameter for certain requirements. As a vessel's tonnage became increasingly important as a parameter, the marine industry developed a number of artificial construction techniques which had the effect of reducing tonnage. The use of deep-frames was one of these techniques.

The method of measuring under the standard or regulatory tonnage system allows deep-frames to work as a tonnage reduction technique. This method calls for the hull dimension measurements to be taken from the inner face of the deep-frame rather than the interior wall of the hull. Therefore, a deep-frame excludes more space from the tonnage calculation and lowers the resulting tonnage. In this

manner a vessel may avoid having to meet certain regulatory requirements that are based on the vessel's tonnage.

In the past, several different interpretations existed regarding the use of deep-frames in tonnage measurement. Some interpretations permitted deep-frames to be notched in a way that permitted more area to be excluded, resulting in lower tonnage, others did not permit notching in the same manner; some required deep-frames to begin and terminate on a bulkhead, others did not; and so forth. Each of these interpretations served as a local rule of practice for constructing a deep-frame in the particular Coast Guard District where used. Vessel owners, as a matter of business practice, constructed their vessels with deep-frames meeting the least onerous locally acceptable practice. Although deep-framing techniques were developed with the general intent that they be consistently applied, no effort was ever made to achieve consistency in application or to disseminate the existing interpretations or practices. In addition, since the nuances of the practices did not detract from nor contribute to the safe construction of the vessel, no urgency was present to make the practices consistent. Therefore, numerous vessels were constructed using different practices regarding deep-frames, each of which was locally acceptable as a deep-frame technique for tonnage measurement purposes. Many of those vessels are still in service today.

On December 23, 1983, the Coast Guard entered into a Memorandum of Understanding (MOU) that delegated certain aspects of the tonnage measurement function to the American Bureau of Shipping (ABS). Since that time, the rules of practice regarding the use of deep-frames in construction have been applied with greater consistency.

A vessel which was constructed before the 1983 MOU recently underwent extensive shipyard work. The scope of the work performed resulted in a requirement that the vessel be readmeasured. During the measurement process, existing deep-frames in the vessel were not accepted as deep-frames for tonnage measurement purposes because they did not conform to the rules of practice as currently interpreted. To modify the deep-frames on this one vessel to conform to the current rules of practice would cost approximately \$250,000. Since the deep-frames on the vessel as configured at construction were accepted as such for tonnage measurement purposes, and since modification of the deep-frames would not contribute to the safe construction

or operation of the vessel, the Coast Guard will not require the deep-frames to be modified to meet the current interpretation of the rules of practice.

The purpose of this policy statement is to preserve the acceptance of deep-frames used in the construction of vessels under previously accepted practices. The Coast Guard's opinion is that to require vessel owners to now modify deep-frames that met acceptable practices when originally installed, would subject them to unnecessary costs. The alternative for the vessel owners is to remeasure their vessels without the benefit of the deep-frames. This alternative could subject the vessel to various regulatory and operational requirements for which it was not designed.

The Coast Guard's policy is that all deep-frames installed during construction of a vessel delivered before December 23, 1983, and accepted under local rules of practice as deep-frames for original measurement of the vessel, will be accepted as deep-frames for all tonnage measurement purposes under current rules of practice. Any vessel delivered on or before December 23, 1983, must meet the current rules of practice for deep-frames. In addition, any new or additional deep-frames installed after the effective date of this policy statement on vessels delivered before December 23, 1983, must meet the current rules of practice for deep-frames.

Dated: July 11, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-17275 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE**48 CFR Parts 206, 222, 226, 237, and 262****Defense Federal Acquisition Regulation Supplement; Services at Installations Being Closed**

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting with local governments for police, fire protection, airfield operation, or other community services. The interim rule adds a clause which restricts

performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

DATES: *Effective Date:* July 8, 1994.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before September 13, 1994 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 604-5971. Please cite DFARS Case 93-D323 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 604-5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2907 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services.

The Director, Defense Procurement, issued Departmental Letter 94-011, July 8, 1994, to require that all solicitations and contracts with local governments for police, fire protection, airfield operation, or other community services must include a clause restricting performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will, to the extent such authority is exercised by the Secretary of Defense, reduce competitive participation by any entities, large or small, which perform, or are interested in performing police, fire protection, airfield operation, or other community services. These solicitations shall be restricted to local governments at military installations being closed. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Mrs. Linda S.

Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93-D323 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 206, 222, 226, 237, and 252.

Government procurement.
Nancy L. Ladd,
Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 206, 222, 226, 237, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 206, 222, 226, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.302-5 is amended by revising paragraph (b) to read as follows:

§ 206.302-5 Authorized or required by statute

(b) *Application.*

Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United State in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b).

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Subpart 222.71 is amended by revising the title to read:

"Subpart 222.71—Right of First Refusal of Employment"

PART 226—OTHER SOCIOECONOMIC PROGRAMS

4. A new subpart 226.72 is added to read as follows:

Subpart 226.73—Base Closures and Realignments

Sec.
226.7200 Scope.

Subpart 226.72—Base Closures and Realignments

226.7200 Scope.

This subpart identifies the various policies and statutory authorities that affect contracts associated with the closure and realignment of military installations. These policies and authorities are—

(a) *Right of first refusal of employment.* This authority is embodied in a clause for use in solicitations and contracts arising from the closure of a military installation. The clause established employment rights for Government employees who are adversely affected by closure of the installation (see subpart 222.71).

(b) *Preference for local and small business.* This authority allows contracting officers, when entering into a contract as part of the closure or realignment of a military installation, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small and small disadvantaged business concerns (see subpart 226.71).

(c) *Services at installations being closed.* This authority allows DoD, under certain conditions, to contract with local governments for police, fire protection airfield operations and other community services at installations being closed (see subpart 237.74).

PART 237—SERVICE CONTRACTING

5. A new subpart 237.74 is added to read as follows:

Subpart 237.74—Services at Installations Being Closed

Sec.
237.7400 Scope.
237.7401 Policy.
237.7402 Contract clause.

Subpart 237.74—Services at Installations Being Closed

237.7400 Scope.

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection,

airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-536), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended.

237.7401 Policy.

The authority in 206.302-5(b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government is in the best interests of the Department of Defense.

237.7402 Contract clause.

Use the clause at 252.237-7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subject.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.237-7022 is added to read as follows:

252.237-7022 Services at Installations Being Closed.

As prescribed in 237.7402, use the following clause:

Services at Installations Being Closed (July 1994)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of the local government.

(End of clause)

[FR Doc. 94-17265 Filed 7-14-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140; I.D. 071294A]

Atlantic Swordfish Fishery

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

ACTION: Closure.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. NMFS has determined that the semiannual quota for swordfish that may be harvested by drift gillnet during July through December will be reached on or before July 20, 1994. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATE: Closure is effective 0001 hours, local time, July 20, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.24(b)(1)(i)(A) establish a quota of 69,286 lb (31,428 kg) of swordfish that may be harvested by drift gillnet during the period July 1 through December 31, each year. NMFS may adjust the July 1 through December 31, 1994, drift gillnet quota to reflect actual catches made in the January 1 through June 30, 1994, semiannual period as specified in 50 CFR 630.24. Available data indicate that the January through

June quota was exceeded by 3034 lb (1376 kg) when the fishery was closed on June 25, 1994. Therefore, the adjusted quota for the July through December period is 66,252 lb (30,051 kg).

Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a document with the Office of the Federal Register at least 8 days before the closure is to become effective.

Based on reported catch, NMFS has determined that the drift gillnet quota for the July 1 through December 31 period will be reached on or before July 20, 1994. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours, local time, July 20, 1994, through December 31, 1994.

During this closure of the drift gillnet fishery: (1) A person aboard a vessel using or having aboard a drift gillnet may not fish for swordfish from the North Atlantic swordfish stock; (2) no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat; and (3) no more than two swordfish per trip may be landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: July 12, 1994.

David S. Crestin,

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

[FR Doc. 94-17305 Filed 7-12-94; 3:26 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 59, No. 135

Friday, July 15, 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 Parts 925 and 944

[Docket No. FV93-925-1PR]

Table Grapes Grown In Southeastern California and Table Grapes Imported Into the United States; Revision in Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes in the minimum quality requirements currently in effect for table grapes grown in southeastern California under Marketing Order No. 925 and for table grapes imported into the United States. This proposed rule would allow for the handling of grapes which satisfy all the requirements of the U.S. No. 1 Institutional grade except for bunch size tolerance. The objective of this proposal is to aid handlers and importers in the marketing of grapes which do not meet the U.S. No. 1 Institutional grade because of a greater variance in bunch size.

DATES: Comments must be received by August 1, 1994.

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

FOR FURTHER INFORMATION CONTACT: Peter I. Parks, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno,

California 93721, telephone (209) 487-5901; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, telephone (202) 720-5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 925 [7 CFR part 925], regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders. Table grapes were added to the list of commodities specified in section 8e in 1982.

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

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

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

on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 20 handlers of California desert grapes subject to regulation under the marketing order, and approximately 90 producers. In addition, there are approximately 70 importers of table grapes subject to the requirements of the table grape import regulation. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$3,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of the table grape handlers, producers and importers may be classified as small entities.

Under the marketing order, table grapes grown in southeastern California are currently subject to a minimum grade requirement of U.S. No. 1 or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (Standards). The requirements of the U.S. No. 1 Institutional grade are the same as those of the U.S. No. 1 grade, with two exceptions. The first relates to bunch size. Under the U.S. No. 1 grade, there is a minimum bunch size requirement of 4 ounces. Under the U.S. No. 1 Institutional grade, bunches must

weigh at least 2 ounces but not more than 5 ounces. The second difference is that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack," whereas no such marking requirement applies under the U.S. No. 1 grade. In order to allow for variations incident to proper grading and handling, both grades provide a tolerance of 8 percent for off-size bunches and for bunches and berries failing to meet other grade requirements.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on November 4, 1993, and unanimously recommended relaxing the quality requirements in the handling regulations to allow an additional bunch size tolerance for grapes which would otherwise grade U.S. No. 1 Institutional. This proposal would provide an additional tolerance of 25 percent, or a total of 33 percent, for bunches of grapes that would otherwise meet the U.S. No. 1 Institutional grade.

Prior to the 1992 season, the minimum grade requirement in effect under the order was U.S. No. 1 grade. The U.S. No. 1 Institutional grade was authorized as a means of allowing the industry to fulfill demands of the foodservice industry (e.g., restaurants and schools) for smaller sized bunches of grapes than are preferred in other markets. However, the domestic table grape industry has experienced difficulty in meeting the requirements of the U.S. No. 1 Institutional grade due to the 8 percent tolerance for off-sized bunches. The committee believes that establishing an additional tolerance for off-sized bunches in the handling regulation will promote sales of grapes packed for institutional use. Due to the requirements of the current handling regulation, California table grape handlers are unable to ship smaller grape bunches because of the 8 percent off-size bunch tolerance of the U.S. No. 1 Institutional grade. This has required handlers to repack grapes after they have been packed in the vineyards, resulting in packing costs that are prohibitively high for the modest prices paid by buyers of institutional grade grapes. Allowing an additional 25 percent bunch size tolerance is expected to allow the industry to more fully utilize its grapes in the marketplace. This proposal would allow handlers to mark containers of grapes meeting the modified requirements as proposed herein as "DGAC No. 1 Institutional."

In accordance with section 8e of the Act, table grapes imported into the United States are subject to the same

minimum grade requirements as those in effect for domestically grown grapes under the marketing order. Those requirements are found in Table Grape Import Regulation 4 [7 CFR part 944.503]. Because this proposed rule would provide an additional tolerance for off-size bunches of grapes under the domestic handling regulation, the same change is being proposed under the table grape import regulation.

Finally, this rule would also update references to government contacts and sources of regulatory information in both the domestic and import regulations.

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

Interested persons are invited to submit comments on this proposal. A 15-day comment period is considered appropriate because this action would relax requirements currently in effect, and to be of maximum benefit it should be in effect as soon as possible since the 1994 shipping season began on April 20.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR Parts 925 and 944 are proposed to be amended as follows:

1. The authority citation for both 7 CFR Parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Section 925.304 is amended by revising paragraph (a) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

(a) Grade, size, and maturity. Except as provided under paragraphs (a)(1) and (a)(2) of this section, such grapes shall meet the minimum grade and size requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera

Type, 7 CFR 51.880 through 51.913) (Standards), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 8 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked "DGAC No. 1 Institutional" but shall not be marked "Institutional Pack."

(1) Grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch;

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch; shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code [Title 3].

3. Section 925.304(f) is amended by removing the zip code "20250" and adding in its place "20090-6456" and by removing the phone number "(202) 447-5697" and adding in its place "(202) 720-2491".

PART 944—FRUITS, IMPORT REGULATIONS

4. Section 944.503 is amended by revising paragraph (a)(1) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 Table or in 7 CFR 51.885 for U.S. No. 1 Institutional grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.913), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 8 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked "Institutional Pack, but may be marked DGAC No.1 Institutional."

(1) Grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

* * * * *

5. Section 944.503(a)(2) is amended by removing the zip code "20250" and adding in its place "20090-6456" and by removing the phone number "(202) 447-5697" and adding in its place "(202) 720-2491."

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-17242 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 989

[Docket No. FV94-989-3PR]

Raisins Produced From Grapes Grown in California; Removal of an Exemption for Raisins Produced in Southern California and Exported to Mexico

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would revise the administrative rules and regulations established under the Federal marketing order for raisins produced from grapes grown in California. It would remove a provision that currently exempts raisins produced from grapes dried on the vine in southern California and exported to Mexico from all marketing order requirements. This rule is based on a unanimous recommendation of the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. Elimination of the exemption is intended to facilitate administration and improve enforcement efforts.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule.

Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX (202) 720-5698. Comments should reference this docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or FAX (209) 487-5906; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; Telephone: (202) 205-2830, or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 USC 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. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule would remove a provision that exempts raisins produced from grapes dried on the vine in southern California and exported to Mexico in natural condition from all marketing order requirements. It is based on a unanimous recommendation of the Committee and other available information.

Section 989.60 of the order provides that the Committee may establish, with the approval of the Secretary, rules and procedures to exempt from regulations raisins produced in southern California (i.e., the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego) and disposed of for distillation, livestock feed, or by export in natural condition to Mexico.

Paragraph (b) of section 989.160 of Subpart—Administrative Rules and Regulations (7 CFR 989.102-989.176) currently exempts raisins produced from grapes dried on the vine in those southern California counties, which are disposed of for use in distillation, livestock feed, or by export in natural condition to Mexico, from all marketing order requirements. This proposed rule would eliminate the exemption that applies to those raisins exported in natural condition to Mexico.

When that exemption provision was established in the early 1970's, the quantities of raisins exported to Mexico were relatively small and were of off grade quality. It was determined at that time that the export exemption would not interfere with order regulations or with accomplishing program objectives.

Diminished demand in recent years for off-grade raisins and raisin residual material for distillation in California has made export in natural condition to Mexico a relatively lucrative market. The Committee has confirmed reports that large volumes of poor quality raisins, including lots as large as forty to fifty thousand pounds, have been exported into Mexico from southern California and other areas of California. This is a significant departure from the situation which existed when the exemption was first implemented. Raisins from areas which are not exempt from the provisions of the order appear to be passing into Mexico in violation of the regulations.

The North American Free Trade Agreement (NAFTA) has effected the removal of import duties and license requirements, opening the Mexican market to raisins which meet the quality requirements of the order. Hence, there is now an opportunity to build an export market in Mexico for high quality raisins. The Committee believes that all raisins eligible for export to Mexico need to be subject to the quality requirements of the order. The Committee also believes that the regulation of such raisins is essential to meeting program objectives and improving compliance efforts.

On the basis of this information, the Committee, on April 16, 1994, unanimously recommended the removal of the exemption that applies to raisins produced from grapes dried on the vine in southern California and exported in natural condition to Mexico.

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

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the Committee would like to stop further abuse of the current provisions as soon as possible to accomplish marketing order objectives.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 989.160 is amended by revising paragraph (b) to read as follows:

§ 989.160 Exemptions.

(a) * * *

(b) *Disposition of raisins produced in Southern California.* Raisins produced from grapes dried on the vine in the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego, which are disposed of for use in distillation or livestock feed, shall be exempt from the provisions of this part.

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-17245 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1030

[DA-94-16]

Milk in the Chicago Regional Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This document invites written comments on a proposal to revise the supply plant shipping standards under the Chicago Regional order for the months of August and September, 1994. The proposal would reduce shipping percentages for individual supply plants and units of supply plants to zero for these two months. The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic and inefficient movements of milk to qualify plants for pooling.

DATES: Comments are due no later than July 22, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-2357.

SUPPLEMENTARY INFORMATION: 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1030.7(b)(5) of the order, the temporary revision of certain provisions of the order regulating the

handling of milk in the Chicago Regional marketing area is being considered for the months of August 1, 1994, through September 30, 1994.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August 1994 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of August and September, 1994. For an individual supply plant, the proposed action would reduce the shipping percentage by 3 percentage points (from 3 to zero percent of receipts) in August 1994 and by 5 percentage points (from 5 to zero percent of receipts) in September 1994. For a unit of supply plants, the proposed action would reduce the shipping percentage by 6 percentage points (from 6 to zero percent of receipts) in August 1994 and by 10 percentage points (from 10 to zero percent of receipts) in September 1994.

Currently, the order provides that from January through August, individual supply plants must ship at least 3 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 6 percent of total receipts for pooling purposes. From September through December, individual supply plants must ship at least 5 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes.

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can

be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represents a substantial number of the producers who supply the market. CMPC contends that the most recent supply and demand estimates, and their commitments to the market, substantiate that there will be more than sufficient fluid milk supplies from close-in sources available for the fluid market. Current projections indicate that supply will remain constant while demand will decrease. Based on these projections, CMPC asserts that it is impractical and unnecessary to require qualifying shipments from distant unit plants, while forcing the milk from nearby unit plants to be hauled to distant plants for manufacturing, merely for pooling purposes. CMPC states that this double hauling of milk will put a financial burden on handlers who operate pool units. Thus, CMPC contends that a reduction of shipping percentages is necessary to prevent uneconomic and inefficient shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and demand estimates, CMPC has requested that the market administrator reduce the shipping percentages by 2 percentage points for the months of August and September 1994. A reduction of the shipping percentages for these two months is being considered by the Market Administrator.

Based on the most recent supply and demand projections, CMPC contends a further reduction of shipping percentages, beyond the request to the Market Administrator, will be necessary.

CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the months of August and September, 1994, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to zero percent of receipts, respectively.

In view of the current supply and demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the months of August 1, 1994, through September 30, 1994.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR Part 1030 continues to read as follows:

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

Dated: July 11, 1994.

Silvio Capponi,

Acting Director, Dairy Division.

[FR Doc. 94-17243 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1106

[DA-94-17]

Milk in the Southwest Plains Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This document invites written comments on a proposal to reduce the shipping requirement for a cooperative association that operates a balancing plant under the Southwest Plains Federal milk order (Order 106) for a 12-month period, beginning October 1, 1994. The proposed action was requested by Associated Milk Producers, Inc. (AMPI), which contends the action is necessary to prevent the uneconomic and inefficient movement of producer milk regularly associated with the market.

DATES: Comments are due no later than August 15, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 690-1932.

SUPPLEMENTARY INFORMATION: 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order

and thereby receive the benefits that accrue from such pricing.

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

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1106.7 (c) and (d) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of October 1, 1994, through September 30, 1995.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed revision would reduce from 45 to 35 percent the shipping requirement for a cooperative association that operates a balancing

plant for the period of October 1994 through September 1995. In order for a cooperative association's plant that is located in the marketing area or in a county adjacent to the marketing area to be a pool plant, the Southwest Plains order requires that the cooperative deliver to pool distributing plants a minimum of 45 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month. The order also authorizes the Director of the Dairy Division to increase or decrease this requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or prevent uneconomic shipments of milk.

According to AMPI, Mid-America Dairymen (Mid-Am) and AMPI have formed an agency for the purpose of pooling member-producers' milk. These two cooperatives represented about 73 percent of the producers and 77 percent of the milk pooled on Order 106 in May 1994. AMPI states that the agency has shipped approximately 40 percent of its total receipts to pool distributing plants during the past 12 months and anticipates a similar demand for milk during the next 12 months. It concludes, therefore, that the 45 percent cooperative association shipping requirement, which was reduced to 35 percent for the period of October 1, 1992, through September 30, 1994, should remain at that level for the 12-month period commencing on October 1, 1994.

AMPI contends that, without the continuation of the reduced shipping requirements, milk normally pooled under the Southwest Plains order would become ineligible for pooling unless the cooperative made uneconomic, inefficient, and unnecessary shipments of milk of fluid handlers.

Accordingly, it may be necessary to reduce from 45 to 35 percent the delivery requirement as proposed to provide for the efficient and economic marketing of milk during the months of October 1, 1994, through September 30, 1995.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

Dated: July 11, 1994.

Silvio Capponi, Jr.,

Acting Director, Dairy Division

[FR Doc. 94-17244 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-66-AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require installation of additional venting between the flight deck and the passenger compartment. This proposal is prompted by results of an engineering analysis that revealed there was insufficient venting in the forward stowage and wardrobe assembly. The actions specified by the proposed AD are intended to prevent injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression.

DATES: Comments must be received by September 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-66-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P. O. Box 16029, Dulles International Airport, Washington, D.C. 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-66-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-66-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that results of an engineering analysis have revealed that there is insufficient venting in the left and right forward stowage and the right forward wardrobe assembly between the flight deck and the passenger compartment. This condition, if not corrected, could result in injury to the crew due to structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression. Although the forward flight attendant seat is attached to this bulkhead, integrity of the airplane hull is not a risk factor in this situation.

Jetstream Aircraft Limited has issued Service Bulletin J41-25-018, dated March 15, 1994, that describes procedures for installing additional

venting in the left and right forward stowage and the right forward wardrobe assembly. This additional venting would provide faster pressure equalization between the flight deck and the passenger compartment in the event of a sudden depressurization of the pilots' compartment. Faster pressure equalization will prevent structural failure of the bulkhead in the event of rapid depressurization. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of additional venting between the flight deck and the passenger compartment. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$22,000, or \$2,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein 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 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 94-NM-66-AD.

Applicability: Model 4101 airplanes; constructors numbers 41005 through 41015 inclusive, 41019 through 41024 inclusive, 41028, and 41029; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression, accomplish the following:

(a) Within 525 hours time-in-service after the effective date of this AD, install additional decompression vents in the left and right stowage and the right forward wardrobe assembly bulkhead between the flight deck and passenger compartment, in accordance with Jetstream Service Bulletin J41-25-018, dated March 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-17194 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-77-AD]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125-1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Raytheon Corporate Jets Model BAe 125-1000A and Hawker 1000 series airplanes. This proposal would require installation of additional vent areas in the central fuselage. This proposal is prompted by an analysis which indicated that an explosive decompression could not be vented adequately with the currently-installed floor venting system on these airplanes. The actions specified by the proposed AD are intended to prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage.

DATES: Comments must be received by September 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-77-AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055-4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-77-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-77-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model BAe 125-1000A and Hawker 1000 series airplanes. The CAA advises that an analysis was recently conducted which indicates that, due to the configuration of the floor venting system currently installed on these airplanes, an explosive decompression could not be adequately vented. This condition, if not corrected, could result in the collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage.

Hawker-Raytheon Corporate Jets has issued Service Bulletin SB.53-76-3627A, dated February 25, 1994, which describes procedures for installing Modification 253627A. This modification entails adding two holes to the underfloor diaphragm at Frame 10D. This will increase the vent areas by 4 sq. in.

Hawker-Raytheon Corporate Jets has also issued Service Bulletin SB.53-81-3661B, dated February 25, 1994, which describes procedures for installing Modification 253661B. This modification entails removing the fiberglass floor fill cover located outboard of the floor panels between Frames 8 and 10D, right-hand. It also entails enlarging the existing lightening holes in the right-hand seat rail web between Frames 10B and 10D, adding a third hole to increase the vent area, and installing a new reinforcing plate. The manufacturer recommends that this modification be installed concurrently with Modification 253627A.

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require installation of Modifications 253627A and 253661B. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$35,350, or \$1,870 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein 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 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Corporate Jets [formerly British Aerospace plc]: Docket 94-NM-77-AD.

Applicability: Model BAe 125-1000A and Hawker 1000 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage, accomplish the following:

(a) Within 12 months after the effective date of this AD, install Modification 253627A in accordance with Hawker-Raytheon Service Bulletin SB.53-76-3627A, dated February 25, 1994; and install Modification 253661B in accordance with Hawker-Raytheon Service Bulletin SB.53-81-3661B, dated February 25, 1994. These modifications shall be installed concurrently.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-17195 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 94-AWP-19]

Proposed Modification of Class E Airspace; Marysville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marysville, CA. This action would modify the Marysville, CA Class E airspace to accommodate an Instrument Landing System (ILS)/standard instrument approach procedure (SIAP) being developed for Lincoln Municipal Airport.

DATES: Comments must be received on or before September 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 94-AWP-19, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0697.

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-AWP-19." The postcard will be date/time stamped and returned to the

commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Marysville, CA Class E airspace to accommodate an area ILS/SIAP being developed for Lincoln Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

Marysville, Yuba County Airport, CA
(Lat. 39°05'53" N, long. 121°34'11" W)
Marysville Beale AFB, CA
(Lat. 39°08'10" N, long. 121°26'12" W)
Marysville Beale AFB TACAN
(Lat. 39°08'05" N, long. 121°26'26" W)
Marysville VOR/DME
(Lat. 39°05'55" N, long. 121°34'23" W)
Mustang VORTAC
(Lat. 39°31'53" N, long. 119°39'22" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Beale AFB and 2 miles each side of a 345° bearing from the Lincoln Municipal Airport and within a 7-mile radius of Yuba County Airport and within 7.8 miles west and 4.3 miles east of the Beale AFB TACAN 342° radial extending from the Beale AFB 8.7-mile radius to 25 miles northwest of the Beale AFB TACAN and within 7 miles west and 4.3 miles east of the Marysville VOR 343° radial, extending from the Yuba County 7-mile radius to 10.4 miles northwest of the Marysville VOR and within 7 miles southwest and 4.3 miles northeast of the Marysville VOR 153° radial extending from the Yuba County 7-mile radius to 10.4 miles southeast of the VOR. That airspace extending upward from 1,200 feet above the surface bounded on the east by a line extending from lat. 40°00'00" N, long. 120°30'04" W; to lat. 39°30'00" N, long.

120°30'04" W; to lat. 39°30'00" N, long. 120°19'04" W; to lat. 39°07'00" N, long. 120°19'04" W, then counterclockwise via the 39.1-mile radius of the Mustang VORTAC to lat. 39°00'00" N; thence via lat. 39°00'00" N, to the west boundary of V-23; on the west by the west boundary of V-23, on the northwest by the Red Bluff, CA, Class E airspace area, and on the north by lat. 40°00'00" N. That airspace extending upward from 8,500 feet MSL bounded on the south by lat. 40°00'00" N, on the west and northwest by the Red Bluff, CA, and Maxwell, CA, Class E airspace areas, on the north by lat. 40°45'00" N, and on the east by a line extending from lat. 40°45'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°25'04" W; to lat. 40°00'00" N, long. 121°25'04" W. That airspace extending upward from 10,500 feet MSL bounded on the east by long. 120°19'04" W; on the south by a line extending from lat. 39°30'00" N, long. 120°19'04" W; to lat. 39°30'00" N, long. 120°30'04" W; to lat. 40°00'00" N, long. 120°30'04" W; to lat. 40°00'00" N, long. 121°25'04" W; on the west by long. 121°25'04" W, and on the north by lat. 40°45'00" N. That airspace extending upward from 12,500 feet MSL bounded on the east by long. 121°25'04" W; on the south by lat. 40°23'00" N, on the west by long. 121°39'04" W; and on the north by lat. 40°45'00" N.

* * * * *

Issued in Los Angeles, California on June 29, 1994.

Richard R. Lien,

Manager, Air Traffic Division.

[FR Doc. 94-17213 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-AWP-18]

Proposed Establishment of Class D and Class E4 Airspace and Modification of Class E2 Airspace: Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace and modify Class E2 airspace at Elko Municipal Airport—J.C. Harris Field, Elko, Nevada. The Elko County Commission is establishing an Airport Traffic Control Tower at this airport. The intended effect of this proposal is to provide adequate airspace for Instrument Flight Rules (IFR) procedures at Elko Municipal Airport—J.C. Harris Field, and to require two-way radio communications at the airport.

DATES: Comments must be received on or before September 16, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal

Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 94-AWP-18, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-1640.

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-AWP-18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public

contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and E airspace at Elko Municipal Airport-J.C. Harris Field. An airport traffic control tower is being established at the airport. The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace is published in paragraphs 5000, 6002 and 6004 respectively, of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in the document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

AWP NV D Elko [New]

Elko Municipal Airport—J.C. Harris Field, Elko, NV

(Lat. 40°49'31" N, long. 115°47'28" W)

That airspace extending upward from the surface up to and including 7,700 feet MSL within a 4.3-mile radius of Elko Municipal Airport-J.C. Harris Field, and within 1.8 miles each side of the extended centerline of Runway 23 of the Elko Municipal Airport-J.C. Harris Field, extending from the 4.3 mile radius to 5 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

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AWP NV E2 Elko [Revised]

Elko Municipal Airport—J.C. Harris Field, Elko, NV

(Lat. 40°49'31" N, long. 115°47'28" W)

Within a 4.3 mile radius of the Elko Municipal Airport and within 1.8 miles each side of the 247° bearing from the Elko Municipal Airport-J.C. Harris Field, extending from the 4.3 mile radius to 5.2 miles southwest of the of the Elko Municipal Airport-J.C. Harris Field and within 1.8 miles each side of the 075° bearing from the Elko Municipal Airport-J.C. Harris Field extending from the 4.3 mile radius to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AWP NV E4 Elko [New]

Elko Municipal Airport—J.C. Harris Field,
Elko, NV
(Lat. 40°49'31" N, long. 115°47'28" W)

That airspace extending upward from the surface within 1.8 miles each side of the 075° bearing from the Elko Municipal Airport-J.C. Harris Field extending from 4.3 miles to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 30, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94-17214 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

RIN 1515-AB21

Withdrawal Of Proposed Customs Regulations Amendments Relating To Prefiling Of Entry Documentation

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

ACTION: Notice of withdrawal.

SUMMARY: This document withdraws proposed amendments to the Customs Regulations which would have limited the privilege of prefilling merchandise entry documentation to participants in the Automated Broker Interface and to other entry filers where the carrier participates in, or where transmission is otherwise through, the Automated Manifest System. Customs has determined that the proposals should be withdrawn based on concerns expressed by the trade community and because Customs is not presently in a position to make the programming changes that would be necessary to implement the proposals.

DATES: Withdrawal effective July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control (202-927-0167).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1991, Customs published in the **Federal Register** (56 FR 56608) an Advance Notice of Proposed Rulemaking stating that Customs was considering amending Parts 141 and 142 of the Customs Regulations (19 CFR Parts 141 and 142) to limit merchandise entry prefilling (that is, prior to arrival of the merchandise) privileges to: (1) entries filed by entry filers who are participants in the Automated Broker Interface (ABI); and (2) entries filed by non-ABI entry filers for merchandise that is transported on carriers that are participants in the Automated Manifest System (AMS). The document also gave advance notice that if this proposal is adopted, Customs would within six months of its adoption release selectivity results (that is, a determination whether a general or intensive examination of merchandise is necessary) prior to carriers' arrival only to entry filers whose merchandise is transported on carriers that are participants in AMS. Thus, in effect, while entry filers who are participants in ABI could continue to prefile, provisional releases would only be issued by Customs for merchandise transported on AMS carriers. The document invited the public to submit written comments to assist Customs in determining whether to proceed further with these proposals.

On December 13, 1993, Customs published in the **Federal Register** (58 FR 65135) a Notice of Proposed Rulemaking which, after discussing the public comments submitted in response to the Advance Notice of Proposed Rulemaking and noting that no regulatory change was necessary to implement the proposal to narrow the category of entry filers to whom selectivity results would be released prior to arrival, set forth specific proposals to amend §§ 141.68(a)(3) and 142.2(b)(1) of the Customs Regulations (19 CFR 141.68(a)(3) and 142.2(b)(1)). The proposed amendment to § 141.68(a)(3) consisted essentially of a cross-reference to § 142.2(b)(1), and the proposed amendment to § 142.2(b)(1) involved setting forth three circumstances in which entry documentation may be submitted before the merchandise arrives within the limits of the port where entry is to be made. The first two circumstances were essentially as outlined in the Advance Notice of Proposed Rulemaking. The third circumstance, added in response to a public comment, involved cases where, regardless of whether the carrier

transporting the merchandise for which the entry documentation is filed is an AMS participant, there is an AMS transmission through the Express Consignment Module of Air AMS regarding that carrier. The Notice of Proposed Rulemaking invited public comments on the proposals which would be considered before adoption of the proposals, and the public comment period closed on February 11, 1994.

Ten letters were received setting forth comments on the proposed regulatory amendments. Although the majority of these commenters supported, in principle, one of the underlying Customs goals of encouraging carriers to automate, a number of these commenters were of the view that practical considerations militated against implementation of the proposals under present circumstances. The cited circumstances included the need for modifications to Air and Sea AMS to deal with continuing operational problems, the need to provide access to AMS through ABI, and the need to address the lack of adequate participation in Air AMS on the part of freight forwarders and deconsolidators. Some commenters objected in principle to the approach of encouraging one group to do something by taking a benefit away from another group, and other commenters stated that the proposals would put small trucking operators and small customs brokers at a competitive disadvantage vis-a-vis larger entities that can more easily support the expense of becoming operational in AMS and ABI.

Customs believes that the comments submitted in response to the Notice of Proposed Rulemaking raise important issues that must be more fully addressed before the published proposals are adopted. Those comments, as well as further internal review of this matter by Customs, demonstrate that the proposed changes to the existing prefilling policy would require extensive programming changes in selectivity, AMS, the Automated Air Arrival/Departure Log, and the yet to be developed Automated Sea Arrival/Departure Log. Due to other programming priorities, including the need to address unresolved problems in Air AMS, and because of the unavailability of adequate personnel and budgetary resources to devote to the task, Customs is not at the present time in a position to pursue such large-scale programming changes. Accordingly, the proposals set forth in the document published in the **Federal Register** at 58

FR 65135 on December 13, 1993, are hereby withdrawn.

George J. Weise,
Commissioner of Customs.

Approved: June 24, 1994.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 94-17147 Filed 7-14-94; 8:45 am]
BILLING CODE 4820-92-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 92P-0476]

Crabmeat; Amendment of Common or Usual Name Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the common or usual name regulation for crabmeat by adding the species *Lithodes aequispina* to those listed in this regulation and by providing that the common or usual name of crabmeat derived from this species is "Brown King crabmeat." This proposal is in response to a citizen petition submitted by the Alaska Seafood Marketing Institute (ASMI).

DATES: Written comments by September 13, 1994. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the Federal Register.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-05), Food and Drug Administration, rm. 1-3, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS-16), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-3888.

SUPPLEMENTARY INFORMATION:

I. Background

A. Crabmeat Labeling

The Shellfish Promotion Committee of ASMI, 1011 Western Ave., suite 603, Seattle, WA 98104, filed a petition on December 17, 1992, to amend the common or usual name regulation for crabmeat (§ 102.50 (21 CFR 102.50)) to provide that the common or usual name of crabmeat derived from the species *L. aequispina* is "Brown King crabmeat."

Section 102.50 lists the following genera and species and the associated

common or usual name of their crabmeat: *Paralithodes camtschatica* and *P. platypus* as King crabmeat; *P. brevipes* as King crabmeat or Hanasaki crabmeat; *Erimacrus isenbeckii* as Korean variety crabmeat or Kegani crabmeat; and *Chionoecetes opilio*, *Chionoecetes tanneri*, *Chionoecetes bairdii*, and *Chionoecetes angulatus* as Snow crabmeat. Thus, § 102.50 provides that only the crabmeat from three species of the genus *Paralithodes* may be called "King crabmeat."

FDA has been dealing with common or usual name issues involving crabmeat since 1954. In the Federal Register of April 8, 1954 (19 FR 2013), FDA announced its policy for the appropriate labeling of imported canned crabmeat. FDA stated that the term "King crabmeat" is an acceptable common name for the product prepared from any one of the above three *Paralithodes* species, and that "Hanasaki crabmeat" was an acceptable alternative common name for a product prepared from *P. brevipes*. FDA later codified these and the other common or usual names for crabmeat in § 102.7 when it promulgated 21 CFR part 102 in 1973 (38 FR 6964 at 6966, March 14, 1973). (Section 102.7 was later redesignated as § 102.50 (42 FR 14322, March 15, 1977)).

FDA's policy on the labeling of the crabmeat of species not listed in § 102.50 is set forth in the agency's Compliance Policy Guide (CPG 7108.04). Under this policy, products derived from domestic sources that are labeled as "crabmeat," without qualification, are generally accepted to have been derived from *Callinectes sapidus* (blue crab). In other cases, the agency encourages the use of a prefix that identifies the country where the crab was caught (e.g., "Taiwan Crabmeat").

B. Common or Usual Name Provisions

The common or usual name of a food is the prevalent and meaningful name by which consumers ordinarily identify a specific food. This vernacular name may lack the specificity of the scientific or technical name of a food, but an appropriate common or usual name permits the public to unambiguously distinguish between similar foods that are available in the marketplace. The common or usual name of a food may be established by a history of common usage or by regulation. Section 102.5 requires that the common or usual name of a food accurately identify, in simple and direct terms, the basic nature of the food and its characterizing properties. The name must be uniform among all identical or similar products. In fact,

under § 101.3(b)(1), a food with a common or usual name that has been established by regulation is misbranded if it is not identified by that name.

Before establishing a common or usual name by regulation, FDA must conclude that the proposed name is not false or misleading within the meaning of section 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(a)) and that the name for the food conforms with the provisions of § 102.5. Moreover, to prevent confusion and deceptive economic practices, the agency must ensure that a proposed common or usual name is not inappropriately similar to one that has already been established by regulation. Therefore, suitable identifying terms in the proposed name are necessary to ensure that consumers can distinguish one product from another similar product (28 FR 10900, October 11, 1963).

In the case of crabmeat, the common or usual name "King crabmeat" identifies a food with the common characterizing properties that consumers in the United States associate with the meat of the large spider crabs found in the waters of the North Pacific. These King crabs, also known as "Alaskan King Crabs," are characterized by a spiny shell, six long spidery legs, a large and a small claw, and a typical weight of about 4½ Kilograms (kg) (10 pounds (lb)) (Refs. 1 and 2). Thus, the common name "King crabmeat" applies to the meat derived from any of three scientifically different crab species whose meats are sufficiently similar that consumers accept them as being interchangeable.

This proposal, if finalized, will establish a new common or usual name that is similar to "King crabmeat." FDA tentatively finds, however, that the similarity in names will not be deceptive because the ASMI petition includes data that show that the meat of *L. aequispina* and *P. camtschatica* (King crabmeat) are similar. Moreover, inclusion of the qualifying prefix "brown" in the proposed common or usual name for the meat of *L. aequispina* will help consumers to distinguish that crabmeat from that of the *Paralithodes* spp. Finally, data in the ASMI petition also show that "Brown King crabmeat" is the commonly accepted name for *L. aequispina*.

C. Previous King Crabmeat Petitions

FDA has previously denied petitions to amend § 102.50 to permit the use either of the term "King crabmeat" or a qualified version of that name as the common or usual name of crabmeat from either *L. aequispina* or *L.*

antarctica (Docket Nos. 76P-182, 81P 0327/CP, and 84P-046). In each instance, the agency concluded that the petitioner had not presented sufficient evidence of the comparability of the meats of the *Lithodes* spp. with the King crabmeat of the *Paralithodes* spp. to support the requested amendment (Refs. 3, 4, 5, and 6). In these denials the agency held that a petitioner must demonstrate that each of the significant characteristics of King crabmeat that are valued by consumers is present in the new species before the agency will permit meat from that species to be identified in § 102.50 as "King crabmeat."

The petition that FDA denied in 1978 (Docket No. 76P-182) requested that the common or usual name "King crabmeat" be established for *L. aequispina*. The agency denied the petition primarily because it found that, based on the limited numbers of *L. aequispina* marketed at that time, there was not a sufficient basis to find that there was a common or usual name for the species (Ref. 6). The available information on the name by which this species was commonly known within the industry showed that it was referred to by various names, including "brown crab" and "golden crab," as well as "King crab" and "golden King crab."

II. Grounds for the Petition

A. Introduction

The ASMI petition requests that FDA amend § 102.50 to include the species *L. aequispina* and provide for the use of "Brown King crabmeat" as the common or usual name of its crabmeat. In support of the amendment, the petition provides: (1) Data and results of tests that compare *L. aequispina* with *P. camtschatica*. The tests scored the preferences of a consumer panel for the taste, texture, appearance, and appropriateness of labeling each species as King crabmeat; (2) photographs that compare the size and color of the cooked legs and claws of these species; (3) literature bearing on crab fishery practices, marketing, and the nomenclature and comparative morphology of *L. aequispina* and other crab species, (4) a compilation of the average measurements of the shoulder, merus, carpus, and propodus for the crab legs used in the consumer panel visual display to determine preference for "King crab" labeling; and (5) ten letters from major processors of Alaska King crab and a letter from the National Fisheries Institute endorsing the petition and attesting that consumers and the industry accept *L. aequispina*

("Alaska golden or brown crab") as King crab.

B. Brown or Golden King Crab

1. Market Acceptance as King Crabmeat

The ASMI states that *L. aequispina* has been commonly identified, marketed, and accepted as "Gold," "Golden," or "Brown King crab" since the early 1980's, when its fishery began to develop. The ASMI also states that no resistance or confusion has arisen from the general buying public concerning the use of the term "King crab" to describe the product. The petitioner further states that increased demand and recent developments in deep water harvesting technology have resulted in a significant commercial fishery for *L. aequispina*, and that, over the last decade, as the availability of *P. camtschatica* and *P. platypus* has decreased, the demand for and supply of *L. aequispina* has grown. The petition states that as a result of these factors, *L. aequispina* has become a major source of King crabmeat in the United States, whereas the supply of crabmeat from *P. camtschatica* and *P. platypus* has been greatly reduced and is often limited to a few market areas.

As discussed above, FDA concluded in 1978 that the use of the term "golden" or "brown crab" for *L. aequispina* was not sufficiently common in U.S. markets to be established as the common or usual name for this food. However, the available evidence shows that, beginning in the 1980's, the size of the commercial catch of *L. aequispina* has increased to a large fraction of what the industry has called the "total King crab harvest." For example, from 1981 to 1982, *L. aequispina* represented 1.4 percent of the total Alaskan King crab catch (*Paralithodes* spp. plus *L. aequispina*) in the western region. From 1983 to 1984, it represented 21.7 percent of the total catch (see Docket No. 84P-0046).

In addition to the information in the petition, FDA has sought to corroborate the general acceptance of *L. aequispina* as a King crab, and that it is commonly known as "brown" King crab, by consulting authoritative references on nomenclature for aquatic species, as well as the scientific and trade literature. All of these sources commonly refer to *L. aequispina* as either "golden King crab" or "brown King crab" (Refs. 2 and 7 through 12).

FDA relied in part on publications of the American Fisheries Society ("List of Common and Scientific Names of Fishes from the United States and Canada") in preparing a guide to acceptable common and market names for the species of

food fish sold in U.S. interstate commerce that do not have common or usual names established by regulation (54 FR 12284, March 24, 1989). The American Fisheries Society Special Publication 17, "Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans," addresses adherence to uniform scientific and common nomenclature of aquatic invertebrates (Ref. 9). *L. aequispina* is among the species recognized in this compilation under the family heading "Lithodidae-stone and King crabs." This compilation also identifies this species with the common name "golden King crab."

Similarly, a compilation that focuses on the fishery region of interest, "Alaska's Saltwater Fishes and Other Sea Life, A Field Guide", prepared by the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, identifies *L. aequispina* as "Golden King Crab, Brown King Crab, or Deep Water Crab" (Ref. 7). This source also presents illustrations and the dimensions of the species listed.

A nomenclature reference with an international perspective, "Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs," lists *L. aequispina* as "golden King crab" (Ref. 10).

Literature unrelated to species identification or nomenclature also distinguishes *L. aequispina* as a King crab. For example, a treatise dealing with the diseases of aquatic species, "Principal Diseases of Marine Fish and Shellfish," refers to this species as "golden king crabs" (Ref. 11). Similarly, an article reporting a joint government/industry ocean survey to gather information on the size of *L. aequispina* at maturity is entitled "Brown King Crab" (Ref. 8), and regulations of the Alaska Board of Fisheries for Commercial Fishing in Alaska identify the species as "brown king crab" (Ref. 15).

Correspondingly, trade periodicals dealing with the market price and availability of King crab consistently classify or refer to *L. aequispina* as a King crab (prefaced by either "golden" or "brown") and commonly regard it as an Alaskan King crab (Refs. 2, 12, and 13). Thus, the agency tentatively finds that these names for *L. aequispina* have been commonly used in the United States for about a decade, and that this usage, in contrast with the situation in 1978, supports the requested amendment of § 102.50.

In addressing the similarities between *L. aequispina* and *P. camtschatica*, the petition does not address the value that

the marketplace ascribes to each species, as reflected by the market prices they command. Nor does the petition address whether establishing the proposed common or usual name for *L. aequispina* will affect the price of its meat. FDA believes that in the case of unprocessed raw products such as crabs, consumers and crabmeat processors will normally pay a comparable price for similar products that are equally desirable. For example, from January 1990 to January 1992, prices for "King" crab legs and claws (12/14 count) were reported to have varied from \$2.10 to \$3.85 more per pound than those of "Brown King" (21/24 count) (Ref. 12). In 1988, graded sections of *P. camtschatica* were \$1.75 to \$2.00 more per pound than those of Brown King crab (Ref. 13). Thus, although *L. aequispina* is classified and sold as a King crab, the substantial price difference between these species means that they are not typically regarded as interchangeable foods by the marketplace.

A certain amount of the price differential between these species may be attributable to the current scarcity of the *Paralithodes* spp. However, FDA believes that most of the difference in price is a result of the disparity in size. The agency recognizes that one of the primary distinguishing and valued features of *Paralithodes* spp. is their large size relative to other crabs. Therefore, fair dealing and the interest of the consumer require that, among other considerations, any crabmeat that is labeled either as "King crabmeat" or as a variety of King crabmeat (e.g., Brown King crabmeat) should be derived from a species of crab that has dimensions that are similar to those which consumers associate with King crab (*Paralithodes* spp.).

Literature in the petition (Ref. 7) shows that the length of *L. aequispina* (listed as "Golden King Crab," "Brown King Crab," or "Deep Water Crab"), measured across the body shell (carapace), is 23 centimeters (cm) (9 inches (in)), and that its width is up to 23 cm (9 in). The respective carapace dimensions for *P. camtschatica* and *P. platypus* are given as: 23 cm (9 in) and up to 28 cm (11 in) across the carapace; 20 cm (8 in) and up to 25 cm (10 in) in width.

These dimensions show that while *L. aequispina* is not as large as the two *Paralithodes* spp., selected examples of the three species can be comparable in overall body size. The actual sizes of the crabs generally available to the consumer or crabmeat processor, however, are governed by the size of the crabs customarily found in the

commercial catch. This size, in turn, may be determined more by the minimum harvestable size imposed for a specific harvesting area or fishery, than by the larger sizes that are known to exist but are not caught in significant numbers.

The larger sizes of *L. aequispina* apparently are not caught in significant numbers (Ref. 8). As a consequence, the minimum legal size limit for harvest in some fishery areas might be reduced to crabs as small as 13.75 cm (5½ in) in carapace width, to make the fishery commercially viable for *L. aequispina* (Ref. 8). The agency believes that these factors may result in crab parts and crabmeat chunks that typically are somewhat smaller than those of the *Paralithodes* spp.

The petition states that because each of the species is harvested from widespread areas in Alaskan waters, the size of the crabs has always varied. To compensate for this variation, the legs and claws are repacked to provide uniform counts per 4½-kg (10-lb) unit. Thus, the petitioner contends that the retailer and the consumer will get a uniform range of sizing regardless of which species of *Lithodes* or *Paralithodes* is purchased as "King crab." However, as described above, the generally lower market price of *L. aequispina* indicates that providing uniform counts per unit weight does not cause processors and consumers to accept its meat as interchangeable with that of the *Paralithodes* spp.

2. Comparative Sensory Testing

The petitioner states that in establishing an appropriate common or usual name, consumers must be protected from deceptive practices, but that the proposed name is justified because there are more similarities than differences between *L. aequispina* crabmeat and that of the three species of *Paralithodes* listed in § 102.50. The petition states that the crabmeat from all four species is nearly identical in flavor, texture, and color. The petition describes a slight variation in the reddish hue of the carotenoid layer surrounding the white meat of each leg segment of *L. aequispina* but states that there is a range of the reddish hue in the meat between samples of any one species. Photographs comparing the cooked legs and claws of *L. aequispina* and *P. camtschatica* demonstrate that these pieces share a similar color and morphology.

Consumer acceptance studies were conducted with a total of 158 individuals tested in three geographic areas (Chicago, Los Angeles, and New York City). The tests compared *L.*

aequispina with *P. camtschatica* by rating consumer preference, in terms of degree of "liking," based on the appearance of previously frozen crab legs and the taste and texture of their crabmeat, presented as precooked split merus (the section of the leg of a king crab which is closest to the shoulder (Ref. 16)) portions in the shell. The test panel also rated the appropriateness of labeling each species' crabmeat as "King crab," based on a display of cooked, whole crab legs. All products were from crab legs sized 16/20 pieces per 4½ kg (10 lb).

The sensory characteristics of the samples were evaluated on a hedonic scale, ranging from 9 for "like extremely" to 1 for "dislike extremely." The reported average scores in each of the four rated categories of "liking" (overall degree of liking, appearance, flavor, and texture) for each species were not statistically different at the 90 percent confidence level, and these average scores were approximately 7 on the hedonic scale (like moderately) for each category. The averaged results thus indicate that the panel members found no significant differences between the crabmeats of the two species. However, a slightly greater number of responses in the top degrees of liking (extremely and very much) indicated a consistent margin of preference for *P. camtschatica* across these four categories.

Analysis of the data by FDA confirmed the reported results but found that the results for all of the categories evaluated were dependent on the order in which the species were presented (Ref. 14). The ratings for "appearance" showed that the respondents that were given the *P. camtschatica* crabmeat first rated it significantly higher ($p < 0.01$) than they rated *L. aequispina*. When the species were presented to other respondents in the reverse order, *L. aequispina* was rated significantly higher ($p < 0.01$). Similarly, when rated for "flavor," *P. camtschatica* meat scored significantly higher ($p < 0.01$) if presented first, while the reverse order of presentation resulted in flavor ratings that were about the same on average ($p < 0.15$). In the case of the rating for "overall" acceptance, respondents that were given *P. camtschatica* crabmeat first rated it significantly higher ($p < 0.001$) than *L. aequispina*, while those presented with the products in the reverse order rated the two products about the same on average ($p < 0.15$). A similar pattern was found for the "texture" ratings.

The ratings for the appropriateness of labeling either crab as "King crab," based on the appearance of the whole crab legs, resulted in a statistically

significant higher mean score for *L. aequispina*. However, the petition does not state to what degree the display represented the most commonly available leg sizes of each species. Again, however, FDA analysis of the data indicated that the order of presentation appeared to affect the results. Respondents observing *P. camtschatica* legs first rated *L. aequispina* significantly higher ($p < 0.001$) than *P. camtschatica*. When given in the reverse order, the two products were rated about the same on average ($p > 0.25$).

The apparent dependence of the preferences expressed by the panel on the order of species presentation raises questions about the adequacy of the statistical design of the study. However, FDA does not believe that the effects observed from the order of species presentation are of a type or an extent that invalidates the overall test panel results, which show that the crabmeats are similar. For example, in four of the five categories evaluated, reversing the order in which the crabmeat was presented (e.g., *L. aequispina* before *P. camtschatica*) did not result in *L. aequispina* being favored over *P. camtschatica*, as might be expected if there was a meaningful correlation between preference and order of presentation. Instead, those served *L. aequispina* first rated the two crabmeats about the same on average, suggesting that any bias introduced by the order of crabmeat presentation was not a determining factor in the overall panel ratings. Therefore, FDA tentatively concludes that the approximately equivalent average scores for each species in each of the four sensory categories compared are valid findings, and that they are sufficient to demonstrate that the test panels found that the two crabmeats are similar foods when compared for flavor, texture, appearance, and overall degree of liking.

Thus, with respect to these sensory attributes, the results are consistent with the conclusion that the use of the terms "King crabmeat" in the common or usual name of *L. aequispina* is not misleading. Inasmuch as the proposed amendment will establish a common name for a similar but separate type of "King crabmeat," FDA tentatively finds that tests showing that consumers accept the meat of *L. aequispina* as identical to, or interchangeable with, that of the three *Paralithodes* species are not necessary.

III. The Proposed Regulation

While the petition seeks to demonstrate the similarity between the important characteristics of *L.*

aequispina meat and that of the largest of the *Paralithodes* crabs, the petitioner's proposed amendment requests the use of a common or usual name other than "King crabmeat."

FDA believes that the data and information submitted in the petition, as well as other information available to the agency, support a tentative conclusion that *L. aequispina* is now widely accepted in the United States as a bonafide King crab. This tentative conclusion is based primarily on the use of the term "King crab" in the names commonly used to identify it in the scientific and trade literature (i.e., golden, gold, brown, and deep water King crab), as well as its relative size and a decade of substantial sales and acceptance in the United States as a type of King crab.

However, the agency also recognizes that *L. aequispina* is a different genus than the species commonly known as "King crab" in the United States, and that its somewhat smaller size and lower market value clearly differentiate it from traditional King crab of the genus *Paralithodes*. Consequently, FDA agrees with the petitioner, and one of the processors that endorsed the petition by letter, that the crabmeat of *L. aequispina* should be identified by a qualifying prefix that will make consumers aware that it is not identical to the King crabmeat of the three *Paralithodes* species listed in § 102.50. Therefore, because the requested name is a modified form of an established common name for a similar food, FDA tentatively concludes that the proposed name will not confuse or mislead consumers. FDA has tentatively concluded the modified name "Brown King crabmeat" appropriately sets this product apart from "King crabmeat," and that "Brown" suitably serves to identify and distinguish this similar but specific type of crabmeat. Moreover, the name "Brown King crabmeat" has the benefit of a history of common use that should augment the recognition among consumers of the differences between these two foods.

The agency is aware that *L. aequispina* also has been commonly referred to as "Golden King crab." Nonetheless, FDA discourages the use of the name "Golden King crabmeat," because its use as a statement of identity on food labels could mislead consumers. FDA believes that the use of the prefix "golden" connotes a superior quality or premium grade of crabmeat and thereby could unfairly affect the price that consumers are willing to pay for the product. Conversely, the agency tentatively concludes that the common or usual name "Brown King crabmeat"

does not convey similar ambiguous implications about the nature or value of the crabmeat. FDA tentatively finds that this name is consistent with fair dealing and the interest of the consumer and should not unfairly affect the price of *L. aequispina* crabmeat.

As provided by § 101.3(b)(1), adoption by FDA of the proposed amendment will require that the meat of *L. aequispina* be labeled as "Brown King crabmeat." The agency tentatively finds that the consistent use of this term will benefit consumers by providing a consistent statement of identity, thereby precluding the use of various potentially misleading names in or on labels and labeling pertaining to this food.

The common or usual name "Brown King crabmeat" will provide consumers with a common or usual name for *L. aequispina* crabmeat that not only accurately identifies the basic nature of the food in simple and direct terms as a meat derived from a King crab, but also provides consumers with added characterizing information that will enable them to distinguish it from traditional "King crabmeat."

Therefore, after a careful review of the petition and consideration of all of the available information, FDA is proposing to amend § 102.50, by adding the crabmeat of the species *L. aequispina*, identified by the common or usual name "Brown King crabmeat." This proposal is based in part on the acceptance of *L. aequispina* as a "Brown King crab" by the fishery industry and in the marketplace and in part on the similarity of its meat in taste, texture, and appearance with King crabmeat, as demonstrated by consumer acceptance studies.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Because *L. aequispina* has been marketed for 10 years as golden or brown King crab, FDA estimates that there are no costs of the proposed rule from labeling changes or for any other reason, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "The Seafood Handbook, Seafood Standards, Establishing Guidelines for Quality," published by Seafood Business Magazine, Rockland, ME, Journal Publications, 1991.
2. Miller, R.J., "North American Crab Fisheries: Regulations and Their Rationales," *Fisheries Bulletin*, 74 (3):623, 1976.
3. Letter to Arne L. Abrams, Wendt International, Inc., from Joseph P. Hile, FDA, April 12, 1982.
4. Letter to Patrick J. Ricci, Seven Seas, Inc., from Joseph P. Hile, FDA, April 30, 1984.
5. Letter to Raquel B. Flisfisch, Embassy of Chile, ProChile Chilean Government Trade Bureau, from Joseph P. Hile, FDA, September 28, 1984.
6. Letter to Charles O. Perkins, Technical Services, New England Fish Company, from Joseph P. Hile, FDA, September 11, 1978.
7. Kessler, Doyné W., "Alaska's Saltwater Fishes and Other Sea Life. A Field Guide," The National Marine Fisheries Service, Alaska Northwest Publishing Co., Anchorage, AK, p. 27, 1985.
8. Benveniste, K., "Brown King Crab," *Pacific Fishing*, p. 44, October 1983.
9. Williams, Austin B., Lawrence G. Abele, et al., "Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans," American Fisheries Society Special Publication 17, p. 33, 1989.
10. Krane, W., "Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs," Van Nostrand Reinhold, p. 96, 1986.
11. Sindermann, C. J., "Principal Diseases of Marine Fish and Shellfish," vol. 2, 2d ed., Academic Press, Inc., San Diego, CA, p. 193, 1990.

12. "North Pacific Crab," *Seafood Leader*, 12(2):213, 1992.

13. "Buyer's Guide," *Seafood Leader*, 8:275, 1988.

14. Memorandum from Foster D. McClure, Statistical Analysis Branch, Center for Food Safety and Applied Nutrition, FDA, to Spring C. Randolph, Office of Seafood, FDA, November 1, 1993.

15. Alaska Department of Fish and Game, Regulations of the Alaska Board of Fisheries and Commercial Fishing in Alaska, p. 128, 1990.

16. Dore, Ian, "Fresh Seafood," *The Commercial Buyers Guide*, Van Nostrand Reinhold, p. 210, 1984.

VII. Comments

Interested persons may, on or before September 13, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 102 be amended as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

2. Section 102.50 is amended by revising the table to read as follows:

§ 102.50 Crabmeat.

| Scientific name of crab | Common or usual name of crabmeat |
|---|---|
| <i>Chionoecetes opilio</i> , <i>Chionoecetes tanneri</i> , <i>Chionoecetes bairdii</i> , and <i>Chionoecetes angulatus</i> . | Snow crabmeat. |
| <i>Erimacrus isenbeckii</i> . | Korean variety crabmeat or Kegani crabmeat. |

| Scientific name of crab | Common or usual name of crabmeat |
|--|-------------------------------------|
| <i>Lithodes aequispina</i> .. | Brown King crabmeat. |
| <i>Paralithodes brevipes</i> | King crabmeat or Hanasaki crabmeat. |
| <i>Paralithodes camtschatica</i> and <i>Paralithodes platypus</i> . | King crabmeat. |

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-17289 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-P

21 CFR Parts 203 and 205

[Docket No. 92N-0297]

RIN 0905-AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to August 15, 1994 the comment period for the proposed rule to establish agency policies and requirements, and to provide administrative procedures, information, and guidance for sections of the Prescription Drug Marketing Act of 1987 (PDMA) and the Prescription Drug Amendments of 1992 (PDA), which was published in the Federal Register of Monday, March 14, 1994. This action is in response to requests for an extension of the comment period.

DATES: Written comments by August 15, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: May-Lis A. Manley, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 14, 1994 (59 FR 11842), FDA issued a proposed rule to implement sections of PDMA and PDA. The proposed rule focuses primarily on reimportation, sales restrictions, and drug samples. These

provisions are intended to benefit consumers by providing safeguards to ensure that prescription drug products are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are being sold to consumers. The proposal gave interested persons an opportunity to submit written comments by May 30, 1994.

In response to the proposal, Alza Corp. requested a 1-month extension of the comment period; Piper & Marbury requested a 90- to 120-day extension; and Wolf, Block, Schorr and Solis-Cohen on behalf of Diagnostek, Inc., requested a 10-day extension. These organizations requested additional time to respond to the proposal because of its length and because of complex issues and questions that need careful analysis and evaluation.

FDA has carefully considered these requests and has determined that reopening the comment period to August 15, 1994 for the preparation and submission of meaningful comments on this proposed rule, is in the public interest. A longer comment period is not warranted because the proposal provided an extended comment period and because FDA previously made available many of the procedures contained in the proposal in a series of letters containing interim guidance. Accordingly, the comment period for submissions by any interested person is reopened to August 15, 1994.

Interested persons may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-17288 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. I

Minerals Management Service

30 CFR Ch. II

Geological Survey

30 CFR Ch. IV

Bureau of Mines

30 CFR Ch. VI

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

National Park Service

36 CFR Ch. I

Office of the Secretary

43 CFR Subtitle A

48 CFR Ch. XIV

Bureau of Reclamation

43 CFR Ch. I

Bureau of Land Management

43 CFR Ch. II

Fish and Wildlife Service

50 CFR Chs. I and IV

Review of Existing Significant Regulations

AGENCY: Office of the Secretary, Interior.
ACTION: Notice with request for comment.

SUMMARY: Pursuant to Executive Order 12866 (the "Order"), the Department of the Interior ("DOI") announced its intent on March 1, 1994, to establish periodic reviews of all "significant" regulations published by the Department (59 FR 9718). The purpose of these reviews is to ensure that all significant DOI regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the objectives of the program being implemented.

The Department has determined to review a number of its regulations. Some are being reviewed based upon the Department's examination of its regulatory program. Others are being reviewed in response to the comments received on the March 1 notice (the

"Notice"), or will be reviewed in the course of upcoming rulemakings or other proceedings. The purpose of this notice is to inform the public of which regulations are being reviewed at this time, to briefly discuss the comments received pursuant to the March 1 Notice, and to invite specific, detailed comments on how the regulations under review may be revised.

This notice discusses regulations issued by the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, the Minerals Management Service, the Bureau of Indian Affairs, and the Bureau of Reclamation. Other bureaus and offices are not discussed because no comments were received regarding their regulations, and it was determined that either they have no significant regulation or review is not appropriate at this time. If you disagree and feel that these bureaus and offices have regulations that should be reviewed at this time, please contact the Office of Regulatory Affairs at the address below. Similarly, if there are any concerns regarding the plans or analyses set forth below by the various Departmental bureaus and offices, please also contact the Office of Regulatory Affairs.

DATES: Written comments must be received by October 13, 1994.

ADDRESSES: Please send written comments to Bill Vincent, Deputy Director, Office of Regulatory Affairs, Department of the Interior, Mail Stop 6214 MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill Vincent, Deputy Director, Office of Regulatory Affairs, phone (202) 208-5271.

SUPPLEMENTARY INFORMATION: The following is a discussion of the regulations that currently are scheduled for review as well as the comments received in response to the March 1 notice.

Bureau of Land Management ("BLM")

After assessing its regulatory program and reviewing the comments received in response to the Notice, BLM plans to review the following regulations contained in 43 CFR: Part 1600 (Planning, Programming, Budgeting); Group 3200 (Geothermal Resources Leasing); Group 3400 (Coal Management); Group 3600 (Mineral Materials Disposal); and Group 8300 (Recreation Management). Specific comments are requested on these provisions. The following is a discussion of comments received in response to the Notice.

Comments From the Geothermal Energy Industry

Five comments came from companies producing or seeking to produce geothermal energy. The thrust of all of the comments was that the BLM should expedite publication of geothermal resources leasing and operations regulations that have been in development for several years. These regulations were removed from the Semiannual Agenda of Federal Regulations (the "Agenda") last winter because we were unable to forecast with precision when work on the rule would be completed. This rule will be restored to the Agenda this summer, and internal review of the rule should begin in October 1994.

Two of these comments suggested that a series of industry-government forums should take place on these regulations, and an industry-government task force should be formed to monitor them and prepare the rule. We will consider the use of such forums during the public comment period on the proposed rule, but any group formed to reach consensus on a proposed rule must be in compliance with the Federal Advisory Committee Act.

One of the geothermal comments also mentioned other regulations as possible candidates for review: 43 CFR Part 1600—Planning, Programming and Budgeting, and 43 CFR Part 2800—Rights-of-way. As mentioned above, BLM plans to review the planning regulations, and draft revised regulations are in preparation. They will be restored to the Agenda when it is updated this summer.

There are no current plans to review or amend the general right-of-way regulations implementing Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) or Section 28 of the Mineral Leasing Act. Two current rules on rights-of-way are in review: regulations on rights-of-way under R.S. 2477, a major DOI priority, and fee schedule regulations for nonlinear communication site rights-of-way, which are of interest in the Congress. Reviews will not begin until those two rules are finalized.

Comments From the Oil and Gas Industry

Two commenters suggested review of regulations on archaeological and cultural resource clearances for mineral leasing activities on BLM and split-estate lands. The regulations referred to in this comment are issued by the Advisory Committee on Historic Preservation and implemented by BLM in cooperation with State Historic

Preservation Officers. They are not subject to review or amendment by BLM, and comments will be forwarded to the Committee.

The commenters also suggested that lease terms and rental payments be suspended pending environmental reviews, and that BLM should not consider exploration and production wastes as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or the Resource Conservation and Recovery Act of 1976. They urged completion of rules reviewing Onshore Oil and Gas Order No. 1—Approval of Operations, Order No. 8—Well Workovers, Completions, Abandonments, and a rule relating to BLM responsibilities as to oil and gas operations on Forest Service lands.

These suggestions are not related to the review of existing significant regulations and therefore fall outside of the scope of the Order. Nevertheless, the following is a brief statement regarding current efforts for some of the suggestions. The rule regarding Order No. 1 will be restored to the Agenda when the program office has finished its review of the draft prepared by BLM's standing field committee on operations. The rule regarding Order No. 8 is undergoing review within BLM. The rule relating to Forest Service lands is undergoing review within the Department's Solicitor's Office.

One commenter suggested that oil and gas lease terms and rental payments be automatically suspended pending environmental reviews affecting a particular lease or unit. The current regulations at 43 CFR 3103.4-2 allow such suspensions, at the discretion of the authorized officer, for the purpose of conserving natural resources. Although this suggestion might be considered in a future review, making such a suspension automatic would make the process susceptible to abuse. It might allow extensions of leases that are not being actively developed without proof that the environmental review prevents ongoing or imminent development or somehow threatens natural resources. Without further persuasion from the public, this suggestion likely will not be adopted.

The comment regarding whether oil and gas wastes are hazardous has long been a matter of controversy. The matter has not yet been resolved conclusively in the courts, and may not be until the laws involved are reauthorized in the Congress. We are continuing to work with industry to resolve this issue.

One commenter requested to be involved in the preparation and distribution of BLM's Instruction

Memoranda. This is a matter for review in the process of reducing our internal directives pursuant to Executive Order 12861, and will be considered then. Specific suggestions for revising BLM instruction manuals may be sent to the Office of Regulatory Affairs at the address set forth in the beginning of this notice.

One commenter urged that environmental impact statements ("EIS's") on rights-of-way on public lands for projects that are otherwise wholly on private lands be limited strictly to a consideration of their environmental impacts on the public lands crossed by the rights-of-way. This would be counter to our interpretation of the National Environmental Policy Act of 1969 ("NEPA"), which requires that all effects of a project be considered in reviewing the Federal aspects of the project.

The commenter also urged that categorical exclusions from environmental review be applied more liberally to activities such as geophysical exploration and drilling permit applications, which it characterizes as having minimal impact. At 43 CFR 3162.5-1, BLM's regulations require an environmental record of review or an environmental assessment to determine whether an EIS is required and what terms and conditions need to be included in approved plans. Again, NEPA requires that all effects of a project be considered in reviewing the Federal aspects of the project. Further, the Department's Solicitor has advised BLM to limit its use of categorical exclusions. Nevertheless, categorical exclusions are listed in the appendix to the Departmental Manual, and may be subject to our review of internal directives under E.O. 12861.

The commenter also suggested that BLM apply Administrative Procedure Act procedures (*i.e.*, public notice and comment) to BLM State and District Office issuance of Notices to Lessees, and that oil and gas lease parcel stipulations identify, by specific legal description, the lands covered. The latter is a matter that can be covered in the review of internal directives. The former have not been routinely published in the *Federal Register* for public comment because of their geographically limited effect. In any event, these are not topics for periodic review of significant regulations.

Finally, a review of 43 CFR Group 3100 was requested. These rules, however, currently are being reviewed through the National Performance Review. The National Performance Review has identified broad aspects of the onshore oil and gas program as

candidates for process re-engineering. Implementation teams have been established to evaluate comments received from outside groups and Federal employees on ways to streamline procedures and make them more effective. It is likely that these teams will recommend changes to one or more sections of the onshore oil and gas regulations as a result of their evaluations. Consequently, no further review is necessary at this time.

Comments From the Coal Industry

A coal industry commenter made two specific recommendations regarding BLM's coal management regulations: (1) that BLM reinstitute a rulemaking that was withdrawn from review in 1993 that would have rendered all coal lease decisions and approvals in full force and effect pending appeal; and (2) that BLM discontinue its current rulemaking that would amend coal logical mining unit ("LMU") procedures. Neither recommendation relates to periodic review of existing regulations. Further, following the recommendations would reverse two policy decisions of the administration. Nevertheless, the program office is reviewing the entire group of coal management regulations at this time. A proposed rule that will include the LMU proposal and other coal management provisions will be scheduled in the upcoming Agenda, revising the current entry for the LMU rule.

Miscellaneous

One commenter provided a list of regulations that, in the commenter's view, adversely affect "in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health safety (sic), or State, local, or tribal governments, or communities." Each of the following paragraphs is devoted to the successive parts of Title 43 suggested by this commenter for review.

1700—Program Management. This Group is divided into two parts, 1720—Programs and Objectives, and 1780—Cooperative Relations. The former part was removed from the Code of Federal Regulations in a final rule published on June 6, 1994 (59 FR 29205). The latter, which contains the regulations on advisory committees, was proposed to be substantially revised as part of the proposed rule on rangeland reform, published on March 25, 1994 (59 FR 14314). No further review of these regulations is necessary.

2400—Land Classification. Proposed legislation that would make these regulations unnecessary is being drafted in BLM. Further, a proposed rule

amending this part currently is being reviewed by the Department's Solicitor's Office. It was removed from the most recent edition of the Agenda because of uncertainty regarding when review would be complete.

3000—3800. This grouping includes all of the mineral development regulations of BLM. Of these, Group 3400—Coal Management is now being reviewed, as stated above, and review should be completed and lead to new regulations before 1996. Group 3200—Geothermal Resources Leasing, as stated above, is being reviewed, and a proposed rule will be scheduled in the upcoming Agenda.

In addition, all of the minerals regulations except for those governing mining under the mining law are being reviewed for purposes of revising or adding provisions for recovery of administrative costs. A proposed rule was drafted in 1993, but was withdrawn because of questions regarding supporting data that arose during internal review. New rules amending some of the cost recovery provisions relating to oil and gas exploration (part of Group 3100) and non-energy leasable minerals (Group 3500) may be added to the upcoming Agenda, depending on policy decisions to be made at the DOI level and involving the Office of the Inspector General.

Several rulemaking efforts amending portions of Groups 3700 and 3800, relating to the mining law, have been suspended pending the development of mining law reform legislation in the Congress. Moreover, the regulations in Group 3600—Mineral Materials Disposal, were the subject of a final rule prepared in 1992. This rule was suspended upon the change of Administrations in 1993, and the regulations in this group are now being reviewed, partly in response to audits by the Office of the Inspector General, and for purposes of updating the regulations and improving efficiency. This review should be concluded by 1996.

4100—Grazing Administration. These regulations have been subject to internal and DOI review, and intense public scrutiny, during the last 12 months. A rule amending them is now among the highest priorities of the Secretary of the Interior, and a proposed rule was published on March 25, 1994 (59 FR 14314). There is no need for further review of these regulations under Section 5 of the Executive Order.

5000—5510. This grouping comprises the entire Forestry Program regulations of BLM, including those on free use of vegetative resources. The regulations governing these programs have been

undergoing continual informal review over the past decade and close public scrutiny and intense interest during the past 18 months surrounding the formulation of the Secretary's Forest Plan. As problems are disclosed, either through informal public input or internal review, and as legislation is enacted, rules have been proposed and promulgated dealing with them. There currently are two rules undergoing review, one proposing regulations on export and substitution of timber, and the other promulgating regulations on trespass. We would be happy to consider specific public comments on needed changes in the forestry regulations, but there are no plans for systematic review of these regulations in the next 2 years, especially in light of possible funding and personnel cuts in this program.

6220—Wildlife Management. There are no regulations in this part except for a single paragraph stating a purpose for regulations on primitive areas, scenic corridors and buffer zones, and wild and scenic rivers. It is not clear why the commenter listed this provision as significant, but it is certainly a good candidate for removal as serving no purpose.

8300—Recreation Management. The portions of the recreation management regulations on prohibited acts are currently undergoing review as part of the projected overhaul of the law enforcement regulations in part 9260. In addition, the entire recreation management part will be reviewed for purposes of efficiency and streamlining in the next 2 years. Comments from the public regarding this review are welcome.

8400—Visual Resource Management [Reserved] and 8600—Environmental Education and Protection [Reserved]. There are no regulations at all in these groups, and it is not clear why the commenter listed these parts. The headings and part numbers are merely reserved for possible future use.

8500—Wilderness Management. The wilderness management regulations were thoroughly reviewed by BLM in 1992-93, and a proposed rule updating certain provisions is awaiting review in the Office of the Solicitor. Publication of the proposed rule will afford the public an opportunity to make further suggestions.

9210—Fire Management. There are no current plans to review the fire management regulations. The program office currently is reviewing its internal Manual and other guidance. Moreover, most fire management initiatives arise from State and local governments, and are carried out through cooperative

agreements and memoranda of understanding. We do not view these regulations as significant under the terms of the Executive Order, but would be happy to accept specific comments from the public as to how they may be improved. We do not anticipate a formal review, however, unless comments arrive informing us of problems with the current regulations.

The commenter also suggested a procedure for conducting periodic review of existing regulations. He suggested that "DOI held numerous public hearings in each of the States which are affected by these regulations" and that "DOI meet separately with each individual county together with the businesses and industries within that county which are affected by these regulations." In the BLM we meet constantly with the public, formally and informally, at all levels of the organization. To institutionalize such meetings in every county for this periodic review, however, would be enormously expensive and time consuming. BLM therefore is strongly opposed to such a procedure.

Summary

The following BLM regulations in Title 43 of the Code of Federal Regulations are scheduled for review and specific, detailed recommendations on how these regulations should be amended are invited.

Part 1600—Planning, Programming, Budgeting

- Group 3200—Geothermal Resources Leasing
- Group 3400—Coal Management
- Group 3600—Mineral Materials Disposal
- Group 8300—Recreation Management

The following regulations will not be reviewed in the immediate future because reviews have been completed, proposed rules amending them either have been published or are expected to be published, or because legislation is pending.

- Group 1700—Program Management
- Group 2400—Classification
- Group 3700—Multiple Use; Mining
- Group 3800—Mining Claims under the General Mining Law
- Group 4100—Grazing Administration
- Group 8500—Wilderness Management

The following regulations are not scheduled for review, although comments addressing them are welcome:

Part 9210—Fire Management

The following regulations are not scheduled for review and comments are not being solicited through this notice

because rules or reviews currently are underway in those areas:

- Group 2800—Use; Rights-of-Way
- Group 3100—Oil and Gas Leasing
- Group 3500—Management of Solid Minerals Other Than Coal
- Group 5400—Sales of Forest Products
- Group 5500—Nonsale Disposals

Bureau of Reclamation

The Bureau of Reclamation (Reclamation) received no comments in response to the Department's March 1 Notice. Nevertheless, it has identified six significant regulations that meet the Order's criteria for a significant regulation, and each of these regulations will be reviewed. These regulations are:

- (1) 43 CFR part 413 (assessment by irrigation districts of lands owned by the United States, Columbia Basin Project, Washington);
- (2) 43 CFR part 417 (procedural methods for implementing Colorado River water conservation measures with lower basin contractors and others);
- (3) 43 CFR part 418 (Newlands Reclamation Project, Nevada; Truckee River Storage Project, Nevada; and Washoe Reclamation Project, Nevada-California (Truckee and Carson River Basins, California-Nevada); Pyramid Lake Indian Reservation, Nevada; Stillwater Area, Nevada);
- (4) 43 CFR part 424 (regulations pertaining to standards for the prevention, control, and abatement of environmental pollution of Conconully Lake and Conconully Reservoir, Okanogan County, Washington);
- (5) 43 CFR part 426 (rules and regulations for projects governed by Federal Reclamation Law, which currently are being reviewed and revised; and
- (6) 43 CFR part 431 (general regulations for power generation, operation, maintenance, and replacement at the Boulder Canyon Project, Arizona/Nevada).

Reclamation will conduct a review of each of these regulations. Any revisions will be published in the Federal Register with a 60-day period for public comment.

Regulation 43 CFR 426 is in the process of being rewritten. The proposed rule is scheduled for completion in December 1994, and the final rule is scheduled for completion in August 1995. The remaining rules will be reviewed as expeditiously as possible, and completion of the review and any appropriate revisions will be no later than June 30, 1996.

Office of Surface Mining Reclamation and Enforcement ("OSM")

OSM received several comments in response to the Notice. Based upon

these comments and an independent assessment of its regulatory program, OSM is conducting, or will conduct, reviews of several existing significant regulations. The following is a brief discussion of the comments received and the reviews that will be conducted.

Definition of Valid Existing Rights

OSM received a number of comments regarding the definition of valid existing rights. A rulemaking currently is being conducted regarding this definition, and no further review is necessary at this time. A notice of intent to prepare an environmental impact statement was published in the Federal Register on April 28, 1994, and the comment period on this notice expired on June 30. OSM is examining the comments and is proceeding with preparation of the statement and the rule.

Federal Oversight/Enforcement of Approved State Programs (Sections 842, 843)

One commenter recommends that OSM repeal 30 CFR 843.12(a)(2) to eliminate Federal NOV authority in primacy States. These regulations, however, currently are being litigated. OSM does not intend to take any further action until a court decision is issued.

The commenter also recommends that OSM require citizens to exhaust the State program citizen complaint process before any Federal involvement or use of ten-day notices. The commenter further recommends that OSM limit citizen review of State permitting decisions to those procedures established under State programs for that purpose, and eliminate use of ten-day notices to address State permitting issues.

OSM has established two task forces which currently are studying the entire citizen complaint and ten-day notice processes. This study includes a review of the specific concerns raised by the commenter. The efforts of these task forces may culminate in recommended changes, and OSM does not intend to undertake any further action until the studies are completed.

Revegetation Success Standards (Sections 816.116/817.116)

A commenter identified three areas of the revegetation success standards for change: 1) The requirement to obtain approval from other agencies for planting and stocking plans; 2) the requirement that husbandry or conservation practices be approved through the State program amendments process; and 3) the requirement that OSM-approved statistically valid

measurement techniques be used in evaluating revegetation success.

OSM will review the regulations to determine the need to propose rulemaking. Public comments are requested regarding modification to the Revegetation Success Standards for sections 816.116 and 817.116. Review of the regulations will commence by October 1, 1994.

Hydrology: Water Quality (Sections 816.42/817.42, 782.21(j)/784.14(i))

A commenter asked OSM to delete cross references to 816.42 (which cites effluent guidelines at 40 CFR part 434) in favor of the statement " * * * capable of meeting EPA's effluent guidelines." Any rule change, however, requires the concurrence of the Environmental Protection Agency (EPA). OSM therefore intends to enter into discussions with EPA and review the current Hydrologic standards at sections 816.42, 816.43/817.42, 817.46. Public comments are requested regarding these hydrologic standards. Review of the regulations will commence by October 1, 1994.

Air Monitoring Program (Sections 780.15/784.26)

A commenter noted that fugitive and other emissions at mines fall within EPA's authority under the Clean Air Act and should not be regulated by OSM. The commenter also noted that SMCRA only provides authority to deal with erosional aspects of air pollution.

The existing OSM permitting requirements were promulgated in 1979. Subsequently, the corresponding performance standards governing air quality were revised. OSM considers it appropriate, therefore, to review these permitting regulations. Public comments are requested regarding these requirements at sections 780.15 and 784.26. Review of the regulations will commence by October 1, 1994.

Roads (Sections 816.150, 816.151, 817.150, 817.151)

One commenter suggested that existing road design standards need to be deleted because the primary road category is so broadly defined that it subjects temporary roads and insignificant travel routes to expensive highway design standards. The commenter further suggested that the foundation and embankment testing requirements and drainage design requirements are costly and unnecessary, and that they should be replaced with general criteria for roads based upon prudent engineering practices and best management practices. The commenter also noted

that OSM should refrain from exerting jurisdiction over public roads.

OSM does not believe there is sufficient justification to review the existing regulations regarding road design standards. OSM believes its existing standards, which are implemented through a two-tiered classification system, adequately address the commenters concerns. OSM plans, however, to undertake rulemaking to address the jurisdictional question.

Regulations Concerning Ownership and Control, Permit Information, and Permit Rescission

Commenters suggested that OSM review regulations concerning ownership and control, permit information, and permit rescission. These regulations currently are being litigated and/or are in the process of being revised. OSM does not intend to take any further action until pending issues are decided.

Water Impoundments/Sedimentation Ponds (Sections 816.49/817.49, 780.25/846.16)

A rulemaking currently is being undertaken and no further review is expected at this time. A final rule entered internal review within OSM on February 7, 1994.

Backfilling and Grading—Nationwide Time and Distance Standards

A commenter raises the same issues on the relevance of a time standard and the practicality of establishing national standards for area and contour mining due to the variability in geology, equipment, mining methods, and market conditions as it previously did in its May 25, 1993, report. OSM already has commenced a rulemaking in this area and no further review is required.

Backfilling and Grading—Underground Mines (Sections 817.102/106)

A commenter recommends revising existing regulations requiring the elimination of the "highwall" at underground mine openings. The commenter notes that OSM's rules on highwall elimination and approximate original contour restoration should reflect the statutory and operational differences between surface and underground mining. The commenter recommends that OSM revise the regulations to clarify that the underground performance standards in section 516(b)(2) are the relevant standards governing the reclamation of mine openings and avoid the wholesale incorporation of surface mining requirements.

OSM is currently reviewing its Backfilling and Grading rule and will shortly implement an outreach plan to discuss certain topics. Public comment regarding OSM rules for backfilling and grading highwalls for underground mines will be welcome at that time.

Historic Properties (Sections 779.12(b)/7832.12(b))

A commenter recommends that the rules should provide, with greater clarity and certainty, a threshold of information necessary before the State Historic Preservation Officer ("SHPO") and regulatory authority can order field investigations and surveys to identify the possible existence of important cultural and historic resources. The SHPO should be subject to a higher burden for its recommendations so that available information discloses a substantial likelihood that cultural and historic resources eligible for listing in the National Register are present on the mine site.

OSM currently is pursuing a programmatic agreement with the Advisory Council on Historic Preservation that will address the issues raised by the commenter. A notice announcing the availability of the programmatic agreement and requesting comments was published in the Federal Register on June 16, 1994.

Transfer, Assignment, and Sale of Permits (Section 774)

Comments suggested that rules relating to the transfer, assignment, and sale of permits be reviewed. A rulemaking currently is being undertaken and no further review is necessary.

Abandoned Mined Land Fee Reauthorization Implementation

A commenter recommends not finalizing that aspect of the proposed rule on the new reporting requirements until it has conducted a burden analysis and discussed with the coal industry a more realistic and less costly approach for gathering information. For example, OSM should clarify that the lessees of the coal are the owners for purposes of identifying the owners of the coal on the AML form.

A final rule was published in the Federal Register on May 31, 1994. Extensive outreach efforts were conducted with States and Tribes and constituent groups prior to the drafting of the proposed rule. Further, the proposed rule was subject to an extended public comment period via the Federal Register process. All comments received were evaluated carefully and responded to as appropriate in the final

rule, including responding to a lengthy comment that included references to the reporting burdens of industry as related to threshold reporting requirements. Specifically, the final rule at 30 CFR 870.5 addressed the coal ownership concern by specifying that, "(i) if there are several persons who have successfully transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e., the person or persons who have granted the permittee the right to extract the coal."

Minerals Management Service

The Minerals Management Service ("MMS") received approximately 40 public comments on the Notice. The commenters cited specific sections of the regulations and stated what was, in their opinion, wrong with the regulation and recommended how to fix it. Since the comments were very specific they will be very useful to MMS. The comments were also very constructive and we encourage the continued use of this open dialogue.

The comments were almost equally divided between MMS' Offshore Minerals Management operation and its Royalty Management Program. Discussed below are those comments that MMS either already has started some action, or intends to initiate some type of action in the near future. In keeping with the need to avoid paperwork and regulations, MMS will seek non-regulatory solutions wherever possible.

If issues raised by commenters are not covered by one of the listed areas, MMS will conduct a separate review and obtain input from other offices in headquarters and the Regions. For example, MMS will address concerns expressed in a letter from the Wilderness Society about the public input process.

Offshore Minerals Management ("OMM") Program

In response to the public comments received on the Notice, the OMM Program plans to review the following four sections of OMM regulations. The first three areas involve ongoing reviews that will be expanded to cover additional provisions as a result of the comments received in response to the Notice.

1. Regulations applicable to production in deep water. (30 CFR Part 250, Subpart H, Production)

Comments Received—(a) "Revise current regulations to provide for approval of extended flaring periods under certain situations (e.g., deepwater prospects, well tests, etc.) and clarify

criteria for flaring or venting small amounts of gas."

(b) "Revise requirements associated with subsea installations such as valve arrangement and closure time requirements for USV's and associated SCSSV's."

Action Planned—Formation of a Task Force to evaluate deepwater issues.

Timetable—Task Force expected to complete a draft report in July or August 1994.

2. Regulations applicable to blowout preventer ("BOP") test procedures and frequency. (30 CFR 250.56 and 57)

Comments Received—"Revise BOP testing regulations to allow for less frequent and shorter tests. Allow 14 day BOP test interval vs. current 7 day * * *"

Action Planned—The MMS has established a workgroup to study BOP system maintenance and reliability. The workgroup is also looking at testing times.

Timetable—The workgroup expects to complete data analysis by November 1994.

3. Regulations governing safety and pollution prevention equipment. (30 CFR 250.126)

Comments Received—"Reduce associated administrative burden on lessees and operators by eliminating unnecessary record keeping requirements (i.e., inventory lists, paperwork notifications, etc.)."

Action Planned—MMS intends to use a negotiated rulemaking as part of this review.

Timetable—A "Convener" has been appointed and has initiated discussions with interested parties. The first meeting of the participants is planned for September 1994.

4. Regulations governing conservation of resources and diligence. (30 CFR Part 250, Subpart K, Oil and Gas Production Rates and Subpart M, Unitization).

Comments Received—(a) "Revise Suspension of Production approval/lease holding criteria * * *", (b) "Relax restrictions on commingling reservoirs in a common wellbore * * *", (c) "revise current regulations to provide for approval of extended flaring periods * * *", etc.

Action Planned—Initiate a review of the issues raised. Review may consist of forming a workgroup.

Timetable—Begin review in Fall of 1994.

Royalty Management Program ("RMP")

The RMP plans to review the following regulations:

1. Regulations applicable to valuation of oil and gas produced from unitized/communitized properties (Take vs

Entitlements). Also, regulations applicable to non-arm's length sales. (30 CFR 202)

Comments Received—"Regulations concerning Takes vs. Entitlements are confusing and make compliance difficult * * * valuing gas under a non-arm's length transaction is burdensome * * *"

Action Planned—Form a workgroup with representation from various sources to arrive at a consensus and develop a Negotiated Regulation.

Timetable—First meeting of participants in the negotiated rulemaking process was held in Denver, Co. on June 15, 1994.

2. Regulations clarifying the responsibilities of payors and lessees. (30 CFR 218 and 211)

Comments Received—"Existing regulations are unclear as to the obligations and liabilities of payors and lessees."

Action Planned—A workgroup has been assembled to review the options associated with this issue.

Timetable—A Proposed Rule on Payor Responsibilities is being drafted. Projected publishing date is late 1994.

3. Regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the OCS Lands Act. (30 CFR 230)

Comments Received—"Industry has difficulty complying with 2 year limitation on refunds * * *"

Action Planned—Regulations have been drafted to address certain aspects of section 10 refunds.

Timetable—A Final Rule on Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts under Federal offshore Mineral Leases. Projected publishing date is Fall 1994.

4. Streamlining the MMS Administrative Appeals process. (30 CFR 290)

Comments Received—The process has been criticized for taking too long.

Action Planned—A couple of studies have been performed to review the different core processes in the Appeal function. Some streamlining revisions have been implemented and further studies are continuing.

Timetable—Review and streamlining of appeals process is ongoing. Meetings are being held and internal processes being reviewed. Most recent effort is determining whether Alternative Dispute Resolution could be an effective tool in the Appeal process.

Bureau of Indian Affairs ("BIA")

BIA received no comments in response to the Notice. Nevertheless,

BIA will review the following regulations: 25 CFR Part 169 (rights-of-way over Indian lands); 25 CFR Part 152 (issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands); 25 CFR Part 168 (grazing regulations for the Hopi Partitioned Lands area); and 25 CFR Part 83 (procedures for establishing that an American Indian group exists as an Indian tribe).

Each regulation will be reviewed before December 31, 1994 to determine whether it should be revised. The reviews will be held during a joint meeting between the Division of Management Support, the Solicitor's Office and the related program office. Results of the reviews shall be submitted in writing from the Division of Management Support to the Department's Office of Regulatory Affairs as soon as possible after the conclusion of the last review meeting.

Dated: July 1, 1994.

Bill Vincent,

Deputy Director, Office of Regulatory Affairs.
[FR Doc. 94-17228 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-10-94]

RIN 1545-AS54

Real Estate Mortgage Investment Conduits; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to real estate mortgage investment conduits.

DATES: The public hearing originally scheduled for Friday, July 22, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 860G of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the *Federal Register* for Wednesday, April 20, 1994,

(59 FR 18772), announced that the public hearing on the proposed regulations would be held on Friday, July 22, 1994, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Friday, July 22, 1994, is cancelled.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer,
Assistant Chief Counsel (Corporate).

[FR Doc. 94-17148 Filed 7-14-94; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Reclamation Act of 1977 (SMCRA). The proposed amendment (#93-2 Continuation) consists of revisions to the Indiana rules concerning show cause orders and adjudicative proceedings for the suspension and revocation of permits. The amendment is intended to revise the Indiana program to be consistent with SMCRA and the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T. August 15, 1994. If requested, a public hearing on the proposed amendment will be held on August 9, 1994. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on August 1, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, 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 contracting OSM's Indianapolis Field Office. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Roger W. Calhoun, Director,
Indianapolis Field Office, Office of
Surface Mining Reclamation and
Enforcement, Minton-Capehart
Federal Building, Room 301,
Indianapolis, Indiana 46204,
Telephone: (317) 226-6166;
Indiana Department of Natural
Resources, 402 West Washington
Street, Room C256, Indianapolis,
Indiana 46204, Telephone: (317) 232-
1547.

FOR FURTHER INFORMATION CONTACT:
Roger W. Calhoun, Director,
Indianapolis Field Office, Telephone:
(317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, *Federal Register* (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated June 15, 1994 (Administrative Record No. IND-1374), Indiana submitted the final-adopted language of program amendment #93-2 concerning show cause orders and adjudicative proceedings for the suspension or revocation of permits. OSM published a final rule notice approving, with an exception, Indiana's program amendment #93-2 on November 18, 1993 (58 FR 60783). In that notice, OSM required, at 30 CFR 914.16(d), an amendment to the Indiana program. Indiana's submittal of the final-adopted language of amendment #93-2 contains Indiana's response to the required program amendment at 30 CFR 914.16(d) and other changes made by Indiana. Since Indiana's final adoption of amendment #93-2 occurred after OSM published its approval of #93-2, any changes Indiana made to the language approved by OSM on November 18, 1993, must be considered by OSM to be the subject of a new

proposed amendment. In addition to nonsignificant wording and paragraph notation changes, the proposed amendments are summarized as follows.

1. 310 IAC 0.6-1-5 Petition for Review; Response

Indiana is making numerous changes to this section. Subsection 5(c) is reworded to provide that when the director of the Indiana Department of Natural Resources (IDNR) determines that a permit issued pursuant to IC 13-4.1 and 310 IAC 12 should be suspended or revoked, the director of the IDNR (or a delegate of the director) shall issue to the permittee an order to show cause why the permit should not be revoked or suspended. Deleted from this paragraph is reference to IC 4-21.5-3-8.

In subsection 5(c)(2), the words "alleged in the order to show cause" are added after the word "violations."

In subsection 5(c)(2)(B) a reference to 310 IAC 12 is added at the end of the sentence.

In subsection 5(e), the first sentence is reworded by referring to "an order to show cause." The word "service" is deleted and replaced by "permittee's receipt of the order to show cause."

Subsection 5(e)(1) is amended by deleting the words "as described in" following the word "violations." Reference to 310 IAC 12 is added following the second reference to IC 13-4.1.

The language in 5(e)(1)(A) is amended to provide "that the facts alleged in the order to show cause constitute a pattern of violations."

In subsection 5(e)(1)(C), the words "to comply with IC 13-4.1, 310 IAC 12, or any permit condition required by IC 13-4.1 or 310 IAC 12" are added at the end of the clause.

Subsection 5(f) is amended by replacing the word "response" with "an answer." The word "permittee's" is added before the word "receipt." "Show cause order" has been amended to read "order to show cause."

In subsection 5(g)(1), "a response" is replaced by "an answer." A new second sentence is added to read "[t]he proceeding is commenced when the permittee files an answer under subsection (e)." In the third sentence the phrase "complaint and proposed order" is changed to "order to show cause."

Subsection 5(g)(2) is amended to provide that the administrative law judge (ALJ) shall "issue findings and a written recommendation to the commission that the permit either" be suspended or revoked. Prior to this change, the language provided that the ALJ shall "order the permit either

suspended or revoked." The second sentence is amended to provide "[i]n issuing findings and a written recommendation to the commission" the listed standards shall apply.

Subsection 5(g)(2)(C) provides that the ALJ shall comply with the requirements of IC 4-21.5-3-27(a) through IC 4-21.5-3-27(d) and IC 4-21.5-3-27(g). The provisions of IC 4-21.5-3-27(e) and IC 4-21.5-3-27(f) shall not apply to show cause proceedings.

New subsection 5(g)(2)(D) provides that any time prior to the conclusion of the hearing of record, the ALJ may allow the parties to submit briefs and proposed findings.

New subsection 5(g)(3) sets ten-day standards for the written recommendations of the ALJ following a hearing or following the permittee's answer if no hearing is requested.

New subsection 5(g)(4) limits the filing of objections to a director's recommendation under 310 IAC 0.6-1-5(f) if a person did not comply with 310 IAC 0.6-1-5(e) concerning contesting an order to show cause. In addition, this provision provides "[u]nder IC 13-4.1-11-6(c), the administrative law judge shall issue the findings and a non-final order within 60 days after conclusion of the hearing."

Subsection 5(h) is amended to set a 50-day standard for the final order of the commission following the issuance of the director's recommended order to the ALJ findings and written recommendations. Amendments also set a 90-day standard for the commission's final order following receipt of the order to show cause by the permittee where the permittee does not comply with the requirements of 310 IAC 0.6-1-5(e). A 60-day standard is set for the commission's final order following the hearing or the ALJ's receipt of the permittee's answer filed under 310 IAC 0.6-1-5(e) if no hearing was requested or necessary.

Subsection 5(i) is amended by replacing "administrative law judge" with "commission" and adding a reference to 310 IAC 12 at the end of the first sentence.

Old subsection 5(j), which limited the number of hearings available to one before the director and one before the commission, is deleted.

2. 310 IAC 0.6-1-13 Awards of Litigation Expenses

Subsection 13(c) is amended by changing "IC 13-8-5-7" to read "IC 13-8-15-7."

3. 310 IAC 0.7-3-5 Delegations

Subsection 5(c) is deleted. This provision would grant the deputy

director of the IDNR authority to take action to forfeit a bond.

III. Public Comment Procedures

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 Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues 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 Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on August 1, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

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).

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, to the extent allowed by law, 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 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory program 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.

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)).

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.*).

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 which is the subject of this rule is based upon corresponding 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 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 corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 11, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94-17284 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ16-1-5820; FRL-4884-5]

Clean Air Act Limited Approval/Disapproval and Promulgation of PM₁₀ Implementation Plan for Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes limited approval/disapproval of the State implementation plan (SIP) submitted by the State of Arizona for the purpose of bringing about the attainment of the National ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM₁₀ SIP for the Hayden/Miami area in Arizona.

DATES: Comments on this proposed action must be received in writing by August 15, 1994.

ADDRESSES: Comments should be addressed to Robert Pallerino, Plans Development Section (A-2-2), EPA, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Pallerino, Plans Development Section (A-2-2), U.S. Environmental

Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 744-1212.

SUPPLEMENTARY INFORMATION:

1. Background

The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in subparts 1 and 4 of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM₁₀ nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this action on the Arizona moderate PM₁₀ SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM₁₀ nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

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

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

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

4. Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM₁₀ nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM₁₀ by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM₁₀ NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543-13544.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, EPA is proposing to grant a limited approval/disapproval of the plan revision for Hayden/Miami because it contains some portions which strengthen the existing SIP but the revision does not wholly meet the applicable requirements of the Act. The most serious deficiency of the SIP revision is that it only addresses the Hayden portion of the nonattainment area. The Hayden/Miami nonattainment area consists of two distinct air basins which are separated by the Pinal and Mescal Mountain ranges. These two air basins are affected by different sources of PM₁₀ and a separate control strategy is required for each basin. Therefore, while the submittal does not fully meet the specific provisions of part D, for example, a complete emission inventory that addresses the entire nonattainment area, a description of the monitoring network for the entire nonattainment area, and a demonstration of attainment that includes the Miami portion of the nonattainment area, it does contain some provisions which adequately address PM₁₀ air quality in the Hayden portion of the nonattainment area. The operating permit issued to ASARCO, Inc., which is the primary vehicle for implementing the control strategy developed for the Hayden area, is an effective control of the largest sources of PM₁₀ emissions in the Hayden area and advances the NAAQS-related air quality protection goals of the Act. Therefore, EPA proposes to grant a limited approval for the SIP revision because of its overall strengthening effect on Arizona's SIP, but is also proposing to disapprove the SIP revision because it does not address the Miami portion of the nonattainment area and because the SIP revision did not address the general requirements pertaining to establishing provisions for an air quality surveillance system.

A. Analysis of State Submission

The EPA is proposing to grant a limited disapproval for the SIP submittal for not meeting the specific requirements of sections 110(a)(2)(B), 172(c)(1), and 172(c)(3) of the Act. These deficiencies result from the SIP's failure to address the Miami portion of the nonattainment area and also the general monitoring requirements for the entire nonattainment area. Further discussion on these deficiencies is provided in the Technical Support Document contained in the docket.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of Arizona held a public hearing on August 21, 1989 to entertain public comment on the implementation plan for Hayden, Arizona. Following the public hearing the plan was adopted by the State and signed by the Governor's designee on October 16, 1989, and submitted to EPA on October 16, 1989 as a proposed revision to the SIP. On February 3, 1992, Arizona submitted a new transmittal letter to EPA asking that EPA consider the October 16, 1989 submittal as meeting the November 15, 1991 PM₁₀ SIP submittal due date. This transmittal letter included an attached justification for not implementing additional RACM in the Hayden SIP.

The SIP revision was reviewed by EPA to determine completeness shortly

after November 15, 1991, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA determined that the submittal was complete, but did not make a formal finding of completeness. By operation of law the submittal was deemed complete as of May 15, 1992. As noted, in this action EPA proposes to partially approve Arizona's PM₁₀ SIP submittal for Hayden/Miami and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

Arizona submitted an emissions inventory for base year 1986. The base year inventory only identified sources in Hayden (the ASARCO smelter stack, copper ore tailings, ore crushing, the ASARCO slag dump, road dust, ASARCO smelter building fugitives, and copper ore). These are the primary sources of PM₁₀ in the Hayden portion of the nonattainment area, contributing over 90 percent of the total emissions in Hayden during the time that the violations were recorded. Additional contributing sources included lime handling, gypsum handling, locomotive exhaust, automobile exhaust, and woodburning stoves.

The EPA is proposing to approve the emissions inventory. While the emission inventory contains some inaccuracies with respect to certain point, area, and mobile source emissions, EPA feels that the inventory is accurate enough for determining the primary sources of PM₁₀ in the Hayden area and the control strategy's effect on PM₁₀ emissions in the nonattainment area. Furthermore, EPA feels the inventory provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act (ACT).² For further details

¹ Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

² The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air

see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561).

It should be noted that the SIP revision for the Hayden area was developed prior to the passage of the Clean Air Act Amendments of 1990. Implementation of RACM was not a

required portion of the SIP at that time. Arizona subsequently submitted an addendum to the SIP revision on February 3, 1992 which presented the justification for not implementing all of the RACM measures identified in Appendices C1, C2, and C3 of the General Preamble. The basic argument against implementation of further RACM was that the SIP demonstrated attainment of the PM_{10} NAAQS in 1990, four years sooner than required by the Act, and that additional RACM would not cause the area to reach attainment any sooner. This is a valid argument in favor of not adopting further RACM. The control measures that are being implemented in the Hayden area are consistent with the guidance issued by

EPA regarding fugitive dust in its General Preamble. Furthermore, the Hayden area has not experienced any violations of the PM_{10} NAAQS since 1990. The SIP submitted by Arizona for the Hayden nonattainment area used Chemical Mass Balance receptor modeling and dispersion modeling and then reconciled the results according to guidance provided by EPA in the document *Protocol For Reconciling Differences Among Receptor And Dispersion Models*, EPA, March 1987. As a result, five sources were identified as contributing to the PM_{10} nonattainment problem in Hayden and will be controlled with a variety of measures. Table 1 lists these measures and the associated emission reductions.

TABLE 1

| Source/source category | Control measure | Emissions w/o controls (contribution to 24 hr ambient levels in $\mu\text{g}/\text{m}^3$) | Emissions after controls (contribution to 24 hr ambient levels in $\mu\text{g}/\text{m}^3$) |
|--|--|--|--|
| Ore Unloading, Crushing, and Conveying | Increased use of spray bars, hooding, enclosures, newer and more efficient rotoclones, better house-keeping. | 410.8 | 39.6 |
| Unpaved Roads | Capping, watering, use of dust suppressants | 86.5 | 8.7 |
| Locomotives | Implementation of 40% opacity limit | 58.8 | 23.5 |
| Paved Roads | No controls to be implemented | 29.9 | 29.9 |
| Gypsum Handling | Source permanently shut down | 10.2 | 0.0 |

The control measures in Table 1 have been implemented and therefore meet the requirement of implementing RACM by December 10, 1993. According to the SIP, control of these sources will result in an estimated emission reduction of 292 tons per year of PM_{10} . A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation as to why certain available control measures were not implemented, can be found in the Technical Support Document (TSD).

The EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. There are a limited and obvious number of PM_{10} sources in the Hayden area and the State addresses each of them in the SIP revision. The implementation of Arizona's part D particulate matter nonattainment plan control strategy will result in the attainment of the PM_{10} NAAQS by December 31, 1994. By this document EPA is proposing to approve

the RACM, including RACT, developed by Arizona for the Hayden area's control strategy. EPA is proposing to approve the operating permit issued to ASARCO, Inc., the measure restricting off road vehicle use, the measure for locomotive emissions and the measure for gypsum handling.

4. Demonstration

As noted, the CAA requires that initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. The SIP submitted by Arizona for Hayden contains an attainment demonstration using Chemical Mass Balance (CMB) Receptor Modeling reconciled with the Industrial Source Complex Short Term (ISCST) Dispersion Model. This demonstration indicates that the NAAQS for PM_{10} will be attained by 1990 in Hayden and

maintained in future years. The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is $50 \mu\text{g}/\text{m}^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to $50 \mu\text{g}/\text{m}^3$. The demonstration predicted that the 24-hour design concentration in the attainment year of 1990 will be $129 \mu\text{g}/\text{m}^3$, thus demonstrating attainment of the 24-hour PM_{10} NAAQS. The annual design concentration of $31.6 \mu\text{g}/\text{m}^3$ predicted for the same year demonstrates attainment of the annual PM_{10} NAAQS. The demonstration also showed that the PM_{10} NAAQS will be maintained in future years by predicting a 24-hour design concentration of $147.1 \mu\text{g}/\text{m}^3$, and an annual design concentration of $34.2 \mu\text{g}/\text{m}^3$ for the year 1997. The control strategy used to achieve these design concentrations is summarized in

the section titled "RACM (including RACT)".

The State's demonstration of attainment of the 24 hour NAAQS in the Hayden area is approved as is the SIP's demonstration of attainment of the annual PM₁₀ NAAQS in the Hayden area. For a more detailed description of the attainment demonstration and the control strategy used, see the Technical Support Document.

5. PM₁₀ Precursors

The control requirements which are applicable to major stationary sources of PM₁₀, also apply to major stationary sources of PM₁₀ precursors unless EPA determines such sources do not contribute significantly to PM₁₀ levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Hayden portion of the nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate matter emissions from copper ore unloading, crushing and conveying activities, unpaved roads, locomotives, and gypsum handling. Sources of particulate matter precursor emissions of SO₂ contribute anywhere from 3 µg/m³ to 5 µg/m³ to the 24 hr design concentration. Consequently, EPA is proposing to find that major sources of precursors of PM₁₀ do not contribute significantly to PM₁₀ levels in excess of the NAAQS. The consequences of this finding are that the PM₁₀ nonattainment area control requirements will not apply to the sources of PM₁₀ precursors. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the Technical Support Document. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM₁₀ nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual

incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In determining RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area and assessed whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM₁₀ NAAQS by December 31, 1994 (see section 171(1)). Since Arizona has not recorded a violation of the PM₁₀ NAAQS in the Hayden since 1990, EPA feels that the State of Arizona has satisfied the RFP requirement for the Hayden portion of the nonattainment area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion, including, for example, copper ore unloading, crushing and conveying, dust from unpaved roads, locomotive exhaust, gypsum handling, and off-road vehicle use. The SIP provides that the affected activities are subject to the applicable control measures.

Consistent with the attainment demonstration described above, the SIP requires that all affected activities must be in full compliance with the applicable SIP provisions by December 31, 1991. In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information. In addition, the SIP sets out a compliance schedule for the ASARCO smelting facility that includes enforceable deadlines by which the source must implement the appropriate control measures. The compliance schedule is described in more detail in the supporting technical information. Compliance for certain

measures, such as the limitation of process emissions from the crushing facility and the control of emissions from unpaved roads must be determined in accordance with appropriate test methods. The SIP provides that compliance with the operating permit process emission conditions applicable to the ASARCO facility will be determined in accordance with EPA approved test methods as contained in the Arizona Testing Manual. For the control of unpaved road emissions compliance will be determined based on test methods contained in the EPA document *Control of Open Fugitive Dust Sources* (EPA-450/3-88-008). The EPA believes these test methods are appropriate for determining compliance.

The attached Technical Support Document (TSD) contains further information on enforceability requirements including: enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; and reporting and recordkeeping requirements.

The State of Arizona has given the State Department of Environmental Quality the necessary legal authority to ensure that the measures contained in the SIP are adequately enforced.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13543-13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM₁₀ NAAQS by the applicable statutory deadline.

However, as noted the States are not required to submit the contingency plan in section 172(c)(9), until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). Consequently, Arizona will have until November 15, 1993 to submit a contingency plan.

III. Implications of This Action

The EPA is proposing to grant a limited approval/disapproval for the SIP revision submitted by the State of Arizona on October 16, 1989 for the Hayden/Miami moderate PM₁₀ nonattainment area. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of

the Act (see generally 57 FR 13566-13567). As provided under section 179(a) of the Act, the State of Arizona would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has come into compliance. If EPA ultimately disapproves all or part of the SIP submittal for the Hayden/Miami nonattainment area and the State of Arizona fails to correct the deficiency within 18 months of such disapprovals, EPA anticipates that the first sanction it would impose would be the two to one offset requirement. Note also that any final disapproval would trigger the requirement for EPA to impose a Federal implementation plan as provided under section 110(c)(1) of the Act.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal including EPA's proposed decision to impose the two to one new source review offset requirement as the first sanction should EPA ultimately disapprove this submittal in whole or in part and the State fail to timely remedy the deficiency. EPA is particularly interested in comments addressing the adequacy of the State's modeling and the accuracy of the State's emissions inventory. As indicated at the outset of this document, EPA will consider any comments received by August 15, 1994.

V. Executive Order (EO) 12866

Under Executive Order 12866, this action is not "significant". It has not been submitted to OMB for review in accordance with section 6 of E.O. 12866.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA

do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

The disapproval action taken against Arizona's SIP submittal for not addressing the Miami portion of the nonattainment area affects only one source, Cyprus Miami Mining Corp. Cyprus Miami Mining Corp. is not a small entity. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 15, 1994.

Felicia Marcus,
Regional Administrator.

[FR Doc. 94-17300 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CT15-1-6080; A-1-FRL-5013-5]

Approval and Promulgation of Air Quality Implementation Plans; Approval of the Employee Commute Options Program Submitted by the State of Connecticut Pursuant to Title I, Section 182(d)(1)(B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Connecticut for the purpose of establishing an Employee Commute Options Program (Program). Connecticut submitted this SIP revision to satisfy the requirement in Section 182(d)(1)(B) of

the Clean Air Act (CAA) that, for severe ozone nonattainment areas, states establish programs under which employers with 100 or more employees must develop compliance plans which convincingly demonstrate an increase in the average passenger occupancy (APO) of commute trips by their employees by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. This action is being taken under Section 110 of the Clean Air Act. The rationale for the approval is included in this notice; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by August 15, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the state's submittal and EPA's technical support document are available for inspection during normal business hours, by appointment at the U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR-443, 401 M Street, SW, Washington, D.C. 20460; the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; and the Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Daniel J. Brown, (617) 565-9048, of the U.S. Environmental Protection Agency in Boston, MA.

SUPPLEMENTARY INFORMATION: On January 12, February 1, and July 27, 1993, the Connecticut Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for air quality. The revision is designed to satisfy the requirements of Section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (CAA).

I. Background

Section 182(d)(1)(B) of the CAA requires that states, in which all or part of a severe ozone nonattainment area is located, must submit a SIP revision requiring employers in such areas to reduce work related trips and miles travelled by employees. Such employee commute option (ECO) programs are required to minimize the use of single occupant vehicles for work-related trips,

thereby achieving emission reductions beyond what can be obtained through stricter tailpipe and fuel standards. Because parts of Connecticut's Fairfield and Litchfield Counties are in the New York-New Jersey-Connecticut severe nonattainment area, Connecticut was required to submit an ECO program covering those parts of the two counties.

Under Section 182(d)(1)(B), Connecticut was required to submit its ECO SIP revision by November 15, 1992. Connecticut submitted its ECO SIP on January 12, 1993, and supplemented the program with submittals on February 1 and July 27, 1993. ECO SIP revisions must, at a minimum, require that each employer of 100 or more employees increase average passenger occupancy (APO) per vehicle in commuting trips during peak travel periods by not less than 25% above the AVO for all such trips in the area at the time the revision is submitted. To achieve this goal, the revision must require subject employers to submit compliance plans to the state two years after the SIP revision is submitted to EPA. These compliance plans, developed by each subject employer, shall convincingly demonstrate an increase in the APO of their employees who commute to work during the morning peak travel period by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must "convincingly demonstrate" that the employers will meet the target APO (at least 25% above the AVO) not later than four years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

EPA is also requesting comments on Connecticut's plan to modify its SIP submission by revising the definition of "average vehicle occupancy" to replace the requirement that it be calculated on or before November 15, 1992 with the requirement that it be calculated using a method acceptable to EPA; revising the definition of "employer" to include the State of Connecticut and any political subdivision of the State rather than a government department; and revising the dates by which employers of two hundred or more are required to submit compliance plans. Employers of two hundred or more will have additional time to submit compliance plans while still being required to submit plans no later than two years from the date of the SIP revision. Proposed amendments to the ECO legislation reflecting these changes are currently before the Connecticut

legislature. EPA agrees with Connecticut that these are minor "technical" changes to the legislation that will not affect the approvability of the ECO SIP. Therefore, upon Connecticut's submission of a revised ECO SIP containing these revisions, EPA proposes to approve these revisions to the SIP in the final rulemaking on this proposal.

Section 110(k) of the CAA contains provisions governing EPA's review of SIP submittals. Section 110(k) specifies that if the submittal satisfactorily addresses all of the required Program elements, EPA shall grant full approval.

II. Analysis

The State of Connecticut has submitted a SIP revision to EPA in order to satisfy the requirements of Section 182(d)(1)(B). EPA issued the Employee Commute Options Guidance on December 17, 1992 interpreting various aspects of the statutory requirements. Under this guidance, to gain approval, the State submittal must contain each of the following program elements: (1) the AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25% above the AVO(s); (3) an ECO program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers.

Connecticut has met the requirements of Section 182(d)(1)(B) by submitting a SIP revision that implements all required program elements.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. Connecticut has met this requirement by establishing an AVO for the entire Connecticut portion of the severe nonattainment area. The AVO was calculated to be 1.19 based on the most recent census data and was included as part of the Connecticut SIP submittal on January 12, 1993. Connecticut has affirmed that this AVO is representative of the AVO at the time of submittal as required by Section 182(d)(1)(B).

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25% above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. Connecticut has met this requirement in the SIP submittal on January 12, 1993, by including a target APO which is no less than 25% above the AVO.

Connecticut provided EPA with the state regulation describing the methodology required to be followed by an employer when calculating the APO for the worksite. This method is consistent with EPA guidance and is binding on employers. Connecticut specifically requested that the calculation methodology not be included in the SIP revision since it is subject to change pending EPA guidance on allowable credit for alternatively fueled vehicles. EPA has agreed to withhold the APO calculation from the SIP revision and will audit any revisions to current methodology for consistency with EPA guidance. In the event that EPA finds revisions to the APO calculation methodology that are inconsistent with EPA guidance, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring the appropriate APO calculation methodology to be incorporated into an ECO SIP revision.

3. ECO Program

State or local law must establish ECO requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Guidance issued December 1992, EPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO requirements.

State and/or local law must require that initial compliance plans "convincingly demonstrate" prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the CAA requirement that initial compliance plans "convincingly demonstrate" compliance will be met.

Connecticut has met these requirements, in the February 1, and July 27, 1993 SIP revisions, by including enacted legislation revising the General Statutes of Connecticut to provide for automatic coverage of employers of 100 or more located in the portion of Connecticut's Fairfield and Litchfield Counties which are in the New York-New Jersey-Connecticut severe nonattainment area. The SIP revision sets forth time schedules for notifying affected employers and requiring the submittal and implementation of compliance plans which convincingly demonstrate an increase in the APO of not less than 25%. The schedule for submission varies by employer size, but in any event all subject employers are required to submit a compliance plan,

within two years from the date of the SIP revision, increasing the APO by 25% within four years from the date of the SIP revision, as required by the CAA. To ensure that compliance plans "convincingly demonstrate" compliance, the Connecticut Department of Transportation, or designated regional planning agency, shall within 120 days of a plan submittal evaluate the plan for its ability to convincingly demonstrate compliance. Employers whose compliance plan does not convincingly demonstrate compliance will be required to submit, within 60 days of notification, a revised compliance plan which convincingly demonstrates compliance. Connecticut will impose financial penalties for employers who do not submit a compliance plan, or a revised compliance plan, which convincingly demonstrates compliance. The penalties should be large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan.

The Connecticut ECO legislation includes a provision allowing an employer's compliance plan to be deemed approved in the absence of a response following the 120 day evaluation period. EPA believes that this provision is intended to expedite the approval process for only those plans which convincingly demonstrate compliance, thereby promoting early implementation of such plans. EPA is concerned that such a provision could result in a compliance plan which does not convincingly demonstrate compliance, being deemed approved in the event that a notice of inadequacy on such a plan is not provided within the 120 day evaluation period. It is therefore important that the state, or designated regional planning agency, review and take action promptly on submitted employer compliance plans. EPA intends to audit Connecticut's ECO program to assure that compliance plans are being evaluated as required, and notice is provided to employers whose compliance plans do not convincingly demonstrate compliance. If EPA finds that such requirements are not being complied with, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring Connecticut to submit a revision to the ECO SIP eliminating the provision for approval of compliance plans based on a 120 day time lapse.

EPA has similar concerns regarding the definition of employee as described in the ECO legislation. The definition includes a provision which would exempt a person whose mode of transportation for performing such

person's responsibilities is the same vehicle in which such person commuted to the employer's work location. EPA believes that this provision is intended for a limited classification of employees who require the use of a vehicle for such responsibilities as sale of products and also require the employee to commute to a worksite to obtain such products or samples thereof, eliminating the possibility for such an employee to not use their vehicle for commuting to the worksite. EPA will audit the Connecticut ECO program and in the event that EPA finds this provision to exclude employees which otherwise could commute to the worksite by a means which would assist the worksite to achieve the target APO, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring Connecticut to submit a revision to the ECO SIP eliminating this provision from the definition of employee.

4. Enforcement Procedures

States and local jurisdictions need to include penalties and/or compliance incentives in their ECO regulations for an employer who fails to submit a compliance plan, or an employer who fails to implement an approved compliance plan, according to the compliance plan's implementation schedule. Penalties should be severe enough to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. Connecticut has met this requirement, in the February 1, and July 27, 1993 SIP revisions, by including enacted legislation revising the General Statutes of Connecticut to provide penalties for an employer who fails to submit compliance plans, revised compliance plans, compliance reports, maintenance plans, and/or fails to implement such compliance and maintenance plans.

Proposed Action

EPA is proposing to approve the SIP revision submitted by the State of Connecticut. The State of Connecticut submitted a SIP revision implementing each of the program elements required by Section 182(d)(1)(B) of the CAA.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of

Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 27, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94-17302 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[M129-01-6416; FRL-5013-3]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, the EPA is proposing to approve portions and to conditionally approve other portions of a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993, Michigan submitted a SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended in 1990 (CAA or Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an I/M program in the Grand Rapids and Muskegon ozone nonattainment areas. The EPA's final action to approve or conditionally approve portions of the State's SIP revision is dependent upon the materials submitted to EPA 2 weeks prior to the close of the public comment period. Alternatively, should the State fail to timely submit the items described below, EPA is proposing to disapprove the SIP submission.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments may be mailed to: Carlton Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, (312) 353-4779.

SUPPLEMENTARY INFORMATION:**1. Introduction**

The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was

part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a "basic" or an "enhanced" I/M program depending upon its classification, regardless of previous requirements.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program.

II. Background

The State of Michigan currently contains 3 ozone nonattainment areas which are required to implement I/M programs in accordance with the Act. The Detroit-Ann Arbor ozone nonattainment area is classified as moderate and contains the following 7 counties: Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe. The Grand Rapids ozone nonattainment area is classified as moderate and contains 2 counties: Kent and Ottawa. The Muskegon ozone nonattainment area is classified as moderate and is comprised of Muskegon county. These designations for ozone were published in the *Federal Register* (FR) on November 6, 1991 and November 30, 1992 and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300-81.437.

III. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the CAA. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51 by November 15, 1993.

Pursuant to these requirements, the State of Michigan was required to

submit a SIP revision that requires the establishment and implementation of a "basic" I/M program in the Detroit-Ann Arbor, Grand Rapids, and Muskegon nonattainment areas by November 15, 1993.¹

IV. State Submittal

On November 12, 1993, the Michigan Department of Natural Resources (MDNR) submitted to the EPA a revision that provided for an I/M program in Western Michigan (i.e., the Grand Rapids and Muskegon nonattainment areas). Under the requirements of the EPA completeness review procedures (40 CFR 51 Appendix V) and the requirements of section 110(k) of the CAA, the submittal was deemed complete by EPA on April 18, 1994.

In Western Michigan, the State will be implementing a biennial, "test-only" I/M program which meets the requirements of the EPA's "enhanced" performance standard and other requirements contained in the Federal I/M rule in the applicable nonattainment counties. The Michigan Department of Transportation (MDOT) has sole responsibility for implementing the program, while the MDNR is responsible for enforcement of the program. In addition, the State will enter into a contractual agreement with a centralized contractor to provide the network of services required to operate a program. Other aspects of the Western Michigan I/M program include: testing of 1975 and later light duty vehicles and trucks and heavy duty trucks, evaporative emission testing for 1975 and later model year vehicles, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration denial, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, minimum expenditure waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, and inspector training and certification, and contractual requirements for a Total Quality Management Plan between the State and the centralized contractor.

V. The EPA's Analysis of the Western Michigan I/M Program

The EPA has reviewed the State's submittal for consistency with the statutory requirements of EPA regulations. A summary of the EPA's analysis is provided below. More detailed support for approval of the

¹ This rulemaking is limited to the Grand Rapids and Muskegon nonattainment areas. The I/M program in the Detroit-Ann Arbor nonattainment will be addressed in a separate rulemaking.

State's submittal is contained in a Technical Support Document (TSD), dated May 31, 1994, which is available from the Region 5 Office, listed above.

A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 57 FR 51.350, needs to include the legal authority or rules necessary to establish program boundaries.

The Western Michigan I/M legislation specifies that an I/M program be implemented in Kent, Ottawa, and Muskegon counties, as required.

B. I/M Performance Standard

The SIP revision provides for an I/M program in Western Michigan that meets the "enhanced" I/M performance standard. The State elected to design a program meeting the "enhanced" performance standard as a means of meeting other requirements associated with the CAA (e.g., section 182(b)(1), Reasonable Further Progress). The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the "enhanced" performance standard is met.

C. Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, the required legal authority, and in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for areas implementing "enhanced" I/M programs, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State has chosen to implement a "centralized" I/M network program design which will utilize a centralized contractor to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design.

The MDNR describes and commits, in its SIP narrative, to institute a continuous ongoing evaluation program consistent with the Federal I/M rule. The results of the evaluation program will be reported to the EPA on a biennial basis. Legal authority, which is contained in the H.B. 4165, authorizes the MDNR to implement this contractor operated centralized program and conduct the program evaluation.

D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, and discuss how the performance standard will be met, which includes: (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The adopted legislation for the Western Michigan program, H.B. 4165, provides for a \$24 per vehicle inspection fee which is adjusted annually for inflation. Of this \$24 fee, no less than \$3 will be devoted to oversight and management of the program. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State expects to dedicate a staffing level of 12 full-time equivalent employees to support the program.

E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, for "enhanced" I/M programs, the SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The SIP revision for Western Michigan requires biennial inspections for all subject motor vehicles. For new vehicles, the first test is required for re-registration, 2 years after initial titling.

For vehicles already titled at the time of program start-up, inspections are required within 30 days prior to the anniversary of initial titling. Newly registered used vehicles are required to be inspected within thirty days of being registered initially in the State. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process which is explained in the SIP submittal. The authority for the enforcement of the testing frequency is contained in the Western Michigan I/M legislation.

Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its managing contractor. The State is contractually requiring that the monthly average waiting time shall not exceed 15 minutes more than 4 times in a month. In addition, the location of stations shall be such that 70 percent of the vehicle population must be within 5 miles of an inspection station, and that 90 percent of the vehicle population must be within 12 miles of an inspection station.

F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The Western Michigan program includes coverage of all 1975 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered or required to be registered within the nonattainment areas and fleets primarily operated within an I/M program area. Vehicles will be identified through the MDOT vehicle registration database. Only the following vehicles are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

The legal authority for the vehicle coverage is contained in the H.B. 4165.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

The Western Michigan I/M SIP obligates the State to do IM240 testing in accordance with the EPA's guidance document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1981 and later model year vehicles. This model year coverage complies with the EPA's I/M regulation. All 1975 and later model year vehicles not receiving an IM240 test will receive a loaded 2 speed test in accordance with the EPA's test procedures contained in the appendices of the Federal I/M rule. The test procedures are specifically and legally established in the Request For Proposal (RFP), which the Western Michigan I/M contractor is required to abide by.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 57 FR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Western Michigan I/M SIP revision obligates the State to use the written equipment specifications contained in the EPA's IM240 Technical Guidance and appendices of the Federal I/M rule. Michigan's RFP sufficiently addresses the requirements in 40 FR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are also mandated in the RFP.

I. Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Western Michigan SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with

the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded as well as maintaining compliance document security. The quality control procedures manual is contained in the RFP. The Western Michigan SIP revision obligates the State to comply with all specifications for all quality control in accordance with the Federal I/M rule.

J. Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The Western Michigan I/M program includes a waiver rate as a percentage of initially failed vehicles of 6 percent. This waiver rate is used in the modeling demonstration. In the SIP narrative, the State of Michigan commits to take corrective action if the actual waiver rate rises above 6 percent. The SIP provides for only 1 type of waiver, that being based on a minimum repair expenditure. This waiver is consistent with the Federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers will be ensured by MDOT and the managing contractor and are contained in the SIP narrative and RFP. The waiver criteria are contained in both the State's legislation and the RFP. The State has established a minimum \$300 expenditure for the issuance of a waiver. This minimum limit is in accordance with the CAA and Federal I/M rule.

K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process including: (1) a description of the existing compliance mechanism, if it is to be used in the future, and the demonstration that it is as effective or more effective than registration-denial

enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g., those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level, at a minimum, in practice.

The State has chosen to use registration-denial as its primary enforcement mechanism. Motorists will be denied vehicle registration unless the vehicle has complied with the I/M program requirements. The motorist compliance enforcement program will be implemented in part, by the MDOT in conjunction with the Michigan Department of State. The Michigan State Police and local police departments will take the lead in citing motorists who fail to comply with the registration requirement. In addition, parking meter attendants also have the authority to ticket parked vehicles with expired or otherwise invalid license plates.

Only the following vehicles types are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

Fleet vehicles, rental car fleets, and leased vehicles that do not receive an annual registration will be required to meet the same program requirements as all other vehicles that receive annual registration. The project compliance rate is estimated to be 97 percent. The State commits to revise the I/M SIP if the State fails to meet the 97 percent compliance rate.

The legal authority to implement and enforce the program is included in H.B. 4165.

L. Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Western Michigan SIP revision provides for regular auditing of its enforcement program and the following of effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the SIP narrative and RFP which include: the establishment of written procedures for personnel engaged in I/M document handling and processing and the use of a bar-coded data entry system for tracking program documents.

However, the submittal does not include, for example, the procedures through which the activities of enforcement personnel are quality-controlled, as described in 40 CFR part 51.362. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.362 to EPA prior to final rulemaking.

M. Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits.

The Western Michigan I/M SIP revision includes a description of its quality assurance program. The program includes operation and progress reports and overt and covert audits of all emission inspectors and emission inspection and referee facilities. The program will be conducted by a contractor with oversight provisions reserved to the State. Procedures and techniques for overt and covert performance, record, and equipment

audits will be given to auditors and updated as needed. In addition, all program auditors will themselves be audited at least once per year.

N. Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of State constitutional impediments to immediate suspension authority, the State Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the 3 day case management requirement for violations that directly affect emission reductions.

The Western Michigan SIP revision incorporates an innovative method for ensuring that the I/M program will be run effectively. The State will require the contractor to become part of the MDOT's Total Quality Management (TQM) program.

However, while the State's submittal includes the legislative authority for enforcement against contractors, the submittal does not include, for example, a penalty schedule for those persons found in violation of the rules of the I/M program, as described in 40 CFR part 51.364. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR

part 51.364 to EPA prior to final rulemaking.

O. Data Collection

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359. The SIP needs to describe the types of data to be collected.

The Western Michigan I/M SIP revision provides for the collecting and storage of test data consistent with the Federal I/M rule. The information contained within each test report is such that it will be possible to unambiguously tie specific test results to a specific vehicle, test site, and inspector. The State also commits to gather, summarize, and report the results of quality control checks performed on testing equipment, sorted according to station number, system number, date, the concentration values of the calibration gases used and the start time of the quality control check.

P. Data Analysis and Reporting

Data analysis and reporting are required to allow for monitoring an evaluation of the program by the State and the EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control, and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to the EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the previous 2 year period and how these problems will be or were corrected.

Under the Western Michigan SIP revision, the State will address all the data elements and reporting requirements listed in 57 FR 51.366.

Q. Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and "hands-on" tests, and the licensing or certification process.

The Western Michigan I/M SIP revision provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes

the program and curriculum which include written and "hands-on" testing at least every 2 years. All inspectors will be required to be certified to inspect vehicles in the Western Michigan I/M program.

R. Public Information and Consumer Protection

The SIP must include public information and consumer protection programs.

The Western Michigan SIP revision includes a provision in the RFP for the contractor to develop a public information program which educates the public on I/M, State and Federal regulations, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the Federal rule. The consumer protection program includes a number of provisions for a challenge mechanism, protection of whistle blowers, and assistance to motorists in obtaining warranty covered repairs will also be further developed in the final contract.

However, the State's submittal does not include a provision to provide motorists that fail the emissions test to automatically receive test repair facility performance data and diagnostic information, as described in 40 CFR part 51.368. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.368 to EPA prior to final rulemaking.

S. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for "enhanced" I/M programs, and a description of the repair technician training resources available in the community.

The Western Michigan I/M SIP revision includes a description of the technical assistance and repair technician training programs to be implemented. The State has committed to meeting the applicable technical assistance requirements of 40 CFR part 51.369, and to that end require the contract to be entered into will sufficiently address the Federal I/M rule requirements. The MDOT will also ensure that a repair technician hotline will be available for repair technicians. The State will also ensure that adequate repair technician training exists prior to the beginning of testing in January 1995.

However the submittal does not provide for a system of repair facility performance monitoring, as described in 40 CFR part 51.369. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.369 to EPA prior to final rulemaking.

T. Compliance with Recall Notices

For areas implementing "enhanced" I/M programs, the SIP needs to describe the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The State's submittal does not sufficiently address all the aspects of this requirement as described in 40 CFR part 51.370. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to

conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.370 to EPA prior to final rulemaking.

U. On-road Testing

For areas that are classified as serious or above for ozone nonattainment, the SIP needs to include a detailed description of the on-road testing program.

Because the nonattainment areas in Western Michigan are classified as moderate, this particular I/M requirement is not applicable to the Western Michigan I/M program. However, the State does have the authority to implement on-road testing on a discretionary basis.

V. State Implementation Plan Submissions/Implementation Deadlines

The Federal I/M rule requires areas starting new test-only programs to be fully implemented by January 1, 1995.

The Western Michigan I/M SIP revision provides that the program will begin operation by January 1, 1995.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the Federal requirements is contained in the EPA's TSD dated May 31, 1994, which is available from the Region 5 office listed above. The criteria used to review the submitted SIP revision are based on the requirements stated in section 182 of the CAA and the Federal I/M regulations. Based on these requirements, the EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the Federal I/M rule. This checklist, based on the CAA and Federal I/M regulations, formed the primary basis for the EPA's technical review.

The EPA has reviewed the Western Michigan I/M SIP revision submitted to the EPA, using the criteria stated above. The H.B. 4165, RFP, and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements and meet all the criteria required for approvability with the exceptions noted above.

Proposed Action

The EPA is proposing to approve portions the Western Michigan I/M SIP

revision as meeting the requirements of the CAA and the Federal I/M rule and for the deficient portions of the State's submittal noted above, approve those portions which the State submits 2 weeks before the close of the official comment period and conditionally approve those portions which the State submits a commitment to complete within 1 year of EPA's final rulemaking, or alternatively if the State takes neither of the above actions to remedy the submittal's deficiencies, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. The EPA requests comments on this proposal including the EPA's proposal to approve the I/M SIP for Western Michigan as meeting the requirements of the CAA and Federal I/M rule. As indicated at the outset of this action, the EPA will consider any comments received by [insert date 30 days from date of publication] and make the TSD available upon request.

I. Basis for Conditional Approval

The EPA believes conditional approval is appropriate in this case because the State has developed final, fully adopted legislative authority for the "enhanced" I/M program and needs only to supplement its submittal to address a number of the I/M program requirements. As a condition of EPA's proposed conditional approval, the State must submit a final, fully adopted contract or rules to EPA no later than 1 year after EPA's final conditional approval.

II. Statement of Approvability

Under the authority of the Governor, the MDNR submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on November 15, 1993. The Agency has reviewed this submittal and is proposing to approve portions and proposing to conditionally approve other portions of it pursuant to Sections 110(k) of the Act, on the condition that the portions of the I/M program noted above are adopted and/or submitted on the schedules noted in this proposed rulemaking.

If the State fails to timely submit the required regulations and other material or commit to do so within 1 year of EPA's final conditional approval, EPA proposes in the alternative to disapprove the SIP as failing to comply with section 110 and Part D.

If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit the final rule or contract amendments within 1 year of the conditional approval. Once the EPA has conditionally approved this committal,

if the State fails to adopt or submit the required rules or contract to EPA, final approval will become a disapproval. EPA will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved nonattainment area SIPs. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If the State adopts and submits the final rule or contract amendments to the EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules or contract will become a part of the SIP.

If after considering comments on the proposal, the EPA issues a final disapproval or if the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose 1 of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

The OMB has exempted this rule from the requirements of section 6 of Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct., 1976); 42 U.S.C. § 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 6, 1994.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 94-17299 Filed 7-14-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[PA25-1-5994; FRL-5013-6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania—Emission Statement Program

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

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of implementing an emission statement program for stationary sources applicable in the entire Commonwealth of Pennsylvania. The SIP revision was submitted by the Commonwealth to satisfy the federal requirements for an emission statement program as part of the SIP for the Commonwealth of Pennsylvania.

DATES: Comments on this proposed action must be received in writing by August 15, 1994.

ADDRESSES: Comments must be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the Commonwealth's submittal and other information are available for public inspection during

normal business hours at the following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Market Street Office Bldg., Harrisburg, PA 17105-8468.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, (3AT14), U.S. Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-8239.

SUPPLEMENTARY INFORMATION: On November 12, 1992, the Pennsylvania Department of Environmental Resources (PADER) submitted a revision to the Pennsylvania's SIP which establishes emissions statement requirements for sources of nitrogen oxides (NO_x) and volatile organic compounds (VOCs).

The revision consists of amendments to Title 25 Pa. Code Chapter 135. Section 135.21 provides the actual requirements for the submittal of emission statements by owners or operators of stationary sources emitting NO_x and/or VOCs located in ozone nonattainment areas designated by the Clean Air Act (CAA) as marginal, moderate, serious, severe or extreme. Under 25 Pa. Code section 135.21, emission statement requirements would also apply to stationary sources of NO_x and/or VOCs in areas included in the Northeast Ozone Transport Region which emit or have the potential to emit 100 tons per year of NO_x or 50 tons per year of VOC. Each facility will provide the Commonwealth with a certified statement reporting emissions in accordance with EPA guidance requirements. The Commonwealth's annual emission statements are due by March 1 for the preceding calendar year beginning with March 1, 1993 for calendar year 1992.

Section 135.5 identifies records that facilities are required to maintain and report to PADER to support emission inventory and emission statement data reports.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the CAA. EPA has published a "General Preamble" describing EPA's preliminary views on how the Agency intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for

ozone transport areas within the States {see 57 FR 13498 (April 16, 1992) ["SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"], 57 FR 18070 (April 28, 1992) ["Appendices to the General Preamble"], and 57 FR 55620 (November 25, 1992) ["SIP: NO_x Supplement to the General Preamble"]}.

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify Title 40, Part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in Marginal nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOC and NO_x. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program. Based upon the provisions of sections 182(f), 184(b)(2) and 302(j), emission statements are also required from sources in attainment areas within ozone transport regions which emit, or have the potential to emit, 50 tons per year (tpy) or more of VOC, or 100 tpy or more of NO_x.

If a stationary source emits either VOC or NO_x at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tpy of actual plant-wide NO_x and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP-42) or other methods acceptable to EPA.

The CAA requires facilities to submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter.

At minimum, the emission statement data should include:

- certification of data accuracy;
- source identification information;
- operating schedule;
- emissions information (to include annual and typical ozone season day emissions);
- control equipment information; and
- process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of the Commonwealth's Submittal

A. Procedural Background

The Commonwealth of Pennsylvania held public hearings on January 6, 7, 8, 1992 in King of Prussia, Harrisburg, and Monroeville respectively, for the purpose of soliciting public comment on the proposed regulatory revisions to require emission statements for stationary sources. Following the public hearings, the regulatory revisions were adopted by the State, on July 21, 1992, became effective in the Commonwealth on October 10, 1992, and were submitted to EPA on November 12, 1992 as a revision to the SIP.

B. Components of the Commonwealth's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State. In general, the emission statement program must include, at a minimum, definitions and provisions for applicability, compliance, specific source reporting, and reporting forms. EPA has determined that the Commonwealth of Pennsylvania has developed their Emission Statement Program in accordance with the EPA guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992) and satisfies the above mentioned minimum requirements. EPA's detailed review of Pennsylvania's Emission Statement Program is contained in the technical support document (TSD) which is available, upon request, from the EPA Region III Office listed in the ADDRESSES section of this notice.

C. Enforceability

The Commonwealth of Pennsylvania SIP (Pa Stat. Ann tit. 35, section 4009 and section 4009.1) provides for adequate enforcement of the emission statement requirements of Section 182(a)(3)(B) and Sections 184(b)(2) and 182(f). Once EPA completes the rulemaking process approving the Commonwealth's Emission Statement program as part of the SIP, it will be federally enforceable.

III. Proposed Action

EPA is proposing to approve revisions to the Pennsylvania SIP to include the regulation at Title 25 Pa. Code chapter 135, section 135.5, Recordkeeping, and section 135.21, Emission Statements. This revision was submitted to EPA by the Commonwealth of Pennsylvania on November 12, 1992. This state submittal establishes emission statement requirements for sources of NOx and VOCs within the entire Commonwealth of Pennsylvania.

The EPA is requesting public comments on all aspects of the issues discussed in this notice. As indicated at the outset of this notice, EPA will consider any comments received by (30 days from date of publication). Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional Office in accordance with the instructions in the ADDRESSES section of this notice.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator

certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove the Pennsylvania's SIP Emission Statement revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 52.

List of Subjects in 40 CFR Part 52

Environmental protection, Air Pollution Control, hydrocarbons, volatile organic compounds, oxides of nitrogen, nitrogen dioxide, Ozone reporting and recordkeeping requirements, SIP requirements, and intergovernmental relations.

Authority: 42 U.S.C. section 7401-7671q.

Dated: April 23, 1994.

Peter H. Kostmayer,

Regional Administrator, Region III.

[FR Doc. 94-17298 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 60 and 63

[AD-FRL-5012-3]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing to regulate the emissions of certain hazardous air pollutants from petroleum refineries that are major sources under section 112 of the Clean Air Act as amended in 1990. The proposed rule, the national emission standards for hazardous air pollutants for petroleum refineries, would require sources to achieve emission limits reflecting the application of the maximum achievable control technology, consistent with sections 112(d) and 112(h) of the Clean Air Act as amended in 1990. The proposed rule would regulate the emissions of the organic hazardous air pollutants identified on the list of 189 hazardous air pollutants in the Clean Air Act at both new and existing petroleum refinery sources.

The EPA is also proposing to amend two standards of performance for new stationary sources: standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry; and standards of performance for volatile organic compounds emissions from petroleum refinery wastewater systems. These standards were previously promulgated under section 111 of the Clean Air Act.

DATES: *Comments.* Comments must be received on or before September 13, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 5, 1994, a public hearing will be held on August 15, 1994, beginning at 9 a.m. Persons wishing to present oral testimony must contact Ms. Lina Hanzely of the EPA at (919) 541-5673 by August 5, 1994. Persons interested in attending the hearing should call Ms. Hanzely at (919) 541-5673 to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible), to: The Air and Radiation Docket and Information Center (LE-131), ATTN: Docket No. A-93-48, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will

be held at the EPA's Office of Administration auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Hanzely, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5673.

Docket. The docket listed above under ADDRESSES contains supporting information used in developing the proposed rule. The docket includes several memoranda documenting the estimation of impacts of the regulatory alternatives and the technical basis of the proposed standards. Dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. James F. Durham, at (919) 541-5672, Chemicals and Petroleum Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed regulation.

- I. Acronyms, Abbreviations and Measurement Units
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- II. Background
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- VII. Amendments to Previous Regulations
 - A. Amendment to 40 CFR Part 60 Subpart QQQ
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- VIII. Administrative Requirements
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 - B. Paperwork Reduction Act
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 - D. Review

The proposed regulatory text is not included in this Federal Register notice, but is available in Docket No. A-93-48, or by written or telephone request from the Air and Radiation Docket Information Center (see ADDRESSES). The proposed regulatory language is also available on the Technology Transfer Network (TTN), on the EPA's electronic bulletin boards. This bulletin board provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541-5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541-5384.

I. Acronyms, Abbreviations and Measurement Units

The following acronyms, abbreviations and measurement units are provided to clarify the preamble to the proposed rule.

A. Acronyms

- Act—Clean Air Act
 BWON—Benzene Waste Operations NESHAP
 CEMS—continuous emission monitoring system
 CFR—Code of Federal Regulations
 CTG—control techniques guideline
 E.O.—Executive Order
 EFR—External Floating Roof
 EPA—U.S. Environmental Protection Agency
 FCCU—fluidized catalytic cracking unit
 FR—Federal Register
 HAP—hazardous air pollutant
 HON—hazardous organic national emission standards for hazardous air pollutants for the SOCM I source category
 ICR—information collection request
 IFR—internal floating roof
 LDAR—leak detection and repair
 MACT—maximum achievable control technology
 NESHAP—national emission standards for hazardous air pollutants
 NSPS—new source performance standards
 OMB—Office of Management and Budget
 QIP—quality improvement program
 RCT—reference control technology
 RIA—Regulatory Impact Analysis
 SOCM I—synthetic organic chemical manufacturing industry

- TAB—total annual benzene
 TOC—total organic compounds
 VOC—volatile organic compounds

B. Abbreviations and Measurement Units

- Btu—British thermal unit
 CO—carbon monoxide
 hr—hour
 kPa—kilopascals
 Kw-hr/yr—kilowatt-hour per year
 lb—pound
 l/min—liters per minute
 m³—cubic meters
 Mg—megagrams
 MEK—methyl ethyl ketone
 MTBE—methyl tertiary butyl ether
 NO_x—nitrogen oxides
 PM—particulate matter
 ppm—parts per million
 ppmv—parts per million by volume
 ppmw—parts per million by weight
 psia—pounds per square inch absolute
 SO₂—sulfur dioxide
 yr—year

II. Background

This section provides background about the legal and policy criteria that the Administrator took into consideration in selecting the provisions of this proposed rule. It is included to give the reader a sense of the rule as a whole. To that end, this section includes background about the rule, the statutory authority of the rule, including some statutory history, a summary of the current statutory requirements for standards developed under section 112 of the Act, and a summary of previous regulations.

The regulation being proposed today, under section 112 of the Act, is the petroleum refineries NESHAP, which would set MACT for petroleum refineries. The petroleum refineries industry group includes any facility engaged in producing gasoline, naphthas, kerosene, jet fuels, distillate fuel oils, residual fuel oils, lubricants, or other products made from crude oil or unfinished petroleum derivatives.

Some components of the petroleum refining industry have already been subject to various Federal, State, and local air pollution control rules. Although these existing rules will remain in effect, the petroleum refinery NESHAP will provide comprehensive coverage of the petroleum refinery sources not covered by the existing rules. The petroleum refinery NESHAP, as proposed today, regulates emissions of all the organic HAP's emitted from emission points at both new and existing petroleum refinery sources. The proposed NESHAP reflects the EPA's regulatory experience from previous NESHAP and NSPS rulemakings involving similar kinds of sources and emission points. Information on control

technology applicability, performance, and cost was developed to support these NESHAP and NSPS. This information was carefully reconsidered in light of the Act and used in the selection of MACT and the other provisions of the proposed rule, such as monitoring, recordkeeping, and reporting requirements.

A. Statutory Authority

This section provides a brief history of section 112 of the Act and background regarding the definition of source categories and source for section 112 standards. This information is included to give the reader a sense of the statutory, judicial, and Congressional guidance that the Administrator took into consideration in developing the source category and source definitions for the petroleum refinery NESHAP.

Section 112 of the Act provides a list of 189 HAP's and directs the EPA to develop rules to control HAP emissions. The Act requires that the rules be established for categories of sources of the emissions, rather than being set by pollutant. In addition, the Act sets out specific criteria for establishing a minimum level of control and criteria to be considered in evaluating control options more stringent than the minimum control level. Assessment and control of any remaining unacceptable health or environmental risk is to occur 8 years after the rules are promulgated.

Specifically, section 112(c), as amended, directs the Administrator to develop a list of all categories or subcategories of major sources and such categories or subcategories of area sources that meet the requirements of section 112(c)(3) and emit the HAP's listed pursuant to section 112(b). Section 112(d) directs the Administrator to promulgate emission standards for each listed category or subcategory of HAP sources. Such standards will be applicable to both new and existing sources and shall require:

the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory to which such emission standard applies. . . .

42 U.S.C. 7412(d)(2).

The Act further provides that "the maximum degree of reduction in emissions that is deemed achievable" shall be subject to a "floor," which is

determined differently for new and existing sources. For new sources, the standards set shall not be any less stringent than "the emission control that is achieved in practice by the best controlled similar source." For existing sources, the standards may not be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in each category or subcategory of 30 or more sources. (For smaller categories or subcategories, the standards may not be less stringent than the average emission limitation achieved by the best performing five sources in the category or subcategory.)

In determining whether the standard should be more stringent than the floor and by how much, the Administrator is to consider, among other things, the cost of achieving such additional reductions. The statutory provisions do not limit how the standard is to be set beyond requiring that it be applicable to all sources in a category and be at least as stringent as the floor.

B. Previous Regulations and Guidance

The regulations affecting the petroleum refining industry that have already been promulgated include a number of NSPS in 40 CFR part 60: subpart J—Standards of Performance for Petroleum Refineries; subparts K, Ka, and Kb—various standards of performance for storage vessels for petroleum liquids; subpart GGG—Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries; and subpart QQQ—Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems.

The regulations that have already been promulgated also include a number of NESHAP in 40 CFR part 61: subpart J—NESHAP for Equipment Leaks (Fugitive Emission Sources) of Benzene; subpart Y—NESHAP for Benzene Emissions from Benzene Storage Vessels; and subpart FF—NESHAP for Benzene Waste Operations.

The EPA has also issued guidance on controlling equipment leaks at refineries in the refinery CTG. Guideline Series: Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. EPA-450/2-78-036. June 1978.

III. Summary of Proposed Rule

This section of this preamble summarizes the proposed rule (40 CFR part 63, subpart CC). The rule is made up of seven different subjects: applicability, definitions, and general

standards; miscellaneous process vent provisions; storage vessel provisions; wastewater provisions; equipment leak provisions; recordkeeping and reporting provisions; and emissions averaging. This summary is divided into seven subsections corresponding to these parts of the regulation.

The discussion in this section briefly summarizes the requirements of the rule, without accounting for how the provisions were selected or how applicability criteria were determined. Specific discussion of the rationale upon which the provisions of the rule are based can be found in section VI of this preamble.

It should be noted that State rules for VOC (and/or HAP's) may be more stringent than the rules being proposed today for refineries. Organic HAP's are only a subset of the VOC emitted from refineries. This means that the magnitude of VOC emissions from a refinery can be substantially greater than the HAP emissions, and the cost per unit of emission reduction of any particular control strategy would be less.

A. Applicability and General Standards

The rule applies to petroleum refining process units that are part of a plant site that is a major source as defined in section 112 of the Act. The determination of potential to emit, and therefore major source status, is based on the total of all HAP emissions from all activities at the plant site. For example, at some integrated facilities there may be operations from multiple source categories (e.g., petroleum refining, SOCOMI production, pesticide production). The potential to emit for such a plant site would include HAP emissions from all source categories. If that plant-site total potential to emit exceeds 10 tons per year of a single HAP or 25 tons per year of a combination of HAP's, the petroleum refinery process units would be subject to the proposed Petroleum Refinery NESHAP, even if the emissions from the petroleum refinery process units were below the 10/25 threshold.

The applicability section of the regulation specifies what is included in the petroleum refining source category and the source within the source category.

Petroleum refineries are facilities engaged in producing gasoline, naphthas, kerosene, jet fuels, distillate fuel oils, residual fuel oils, or other transportation fuels, heating fuels, or lubricants from crude oil or unfinished petroleum derivatives.

The source comprises the miscellaneous process vents, storage

vessels, wastewater streams, and equipment leaks associated with petroleum refining process units within a refinery. The rationale for selecting this source definition is discussed in section VI.A of this preamble.

The general standards section of the regulation establishes the compliance dates for new and existing sources and requires that sources be properly operated and maintained at all times. The general standards clarify the applicability of the NESHAP General Provisions (40 CFR part 63 subpart A) to sources subject to subpart CC.

B. Miscellaneous Process Vent Provisions

Miscellaneous process vents are defined to include streams containing greater than 20 ppmv organic HAP that are continuously or periodically discharged from petroleum refining process units. Miscellaneous process vents exclude vents that are routed to the refinery fuel gas system and vents from fluidized catalytic cracking unit catalyst regeneration, catalytic reformer catalyst regeneration, and sulfur plants. The vents included in miscellaneous process vents are defined specifically in the definitions section (§ 63.641) of the proposed rule.

The miscellaneous process vent provisions require the owner or operator of a miscellaneous process vent to reduce emissions of organic HAP by 98 percent or to 20 ppmv, or to reduce emissions using a flare meeting the requirements of § 63.11(b) of the NESHAP General Provisions (40 CFR part 63 subpart A). The process vent provisions allow for pollution prevention in that pollution prevention could be used to reduce organic HAP concentrations to less than 20 ppmv, and the stream would not be subject to control requirements.

C. Storage Vessel Provisions

A storage vessel means a tank or other vessel storing feed or product for a petroleum refining process unit that contains organic HAP's. The storage vessel provisions do not apply to the following: (1) vessels permanently attached to mobile vehicles, (2) pressure vessels designed to operate in excess of 204.9 kPa (29.7 psia), (3) vessels with capacities smaller than 40 m³ (10,500 gal), and (4) wastewater tanks.

The storage provisions define two groups of vessels: Group 1 vessels are vessels with a design storage capacity and a maximum true vapor pressure above the values specified in the proposed regulation and in section VI.C. of this notice; Group 2 vessels are all storage vessels that are not Group 1

vessels. The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) an IFR with proper seals; (2) an EFR with proper seals; (3) an EFR converted to an IFR with proper seals; or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals required. The EPA is proposing an option that would also require controlled fittings on existing floating roof tanks. Vessels at new sources that are equipped with floating roofs are required to meet specifications for seals and fittings. Monitoring and compliance provisions for Group 1 vessels include periodic visual inspections of vessels and roof seals, as well as internal inspections. If a closed vent system and control device is used for venting emissions from Group 1 storage vessels, the owner or operator must establish appropriate monitoring procedures. No controls or inspections are required for Group 2 storage vessels. The storage vessel provisions are based on and encourage pollution prevention. The pollution prevention options specifically listed by the standard are: IFR, EFR, and a closed vent system routed to a recovery device.

D. Wastewater Provisions

The wastewater provisions of this rule are based on the BWON, using benzene as a surrogate for all organic HAP's from wastewater in petroleum refineries. As explained in section VI.D of this preamble, benzene is a good indicator of the presence of other HAP's in wastewater. The wastewater streams subject to this rule include water, raw material, intermediate, product, by-product, co-product, or waste material that contains organic HAP's and is discharged into an individual drain system. The wastewater provisions define two groups of wastewater streams. Group 1 streams are those that contain a concentration of at least 10 ppmw benzene, have a flow rate of at least 0.02 l/min, are located at a refinery with a total annual benzene loading of at least 10 megagrams per year and are not exempt from control requirements under 40 CFR part 61 subpart FF (the BWON). Group 2 streams are wastewater streams that are not Group 1.

The wastewater provisions of the rule refer to the BWON, which requires owners or operators of a Group 1 wastewater stream to reduce benzene mass by 99 percent using suppression followed by steam stripping, biotreatment, or other treatment processes. Vents from steam strippers and other waste management or

treatment units are required to be controlled by a control device achieving 95 percent emissions reduction or 20 ppmv at the outlet of the control device. The performance tests required for wastewater streams and treatment operations to verify that the control devices achieve the desired performance are included in the BWON, as are the monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance. No controls or monitoring are required for Group 2 wastewater streams. The wastewater provisions promote pollution prevention in that pollution prevention measures could be used to reduce the benzene concentration to below the criteria for Group 1 wastewater streams. Once the stream is a Group 2 wastewater stream, control is not required. Pollution prevention measures may also be taken to reduce the refinery-wide TAB quantity in waste to below 10 Mg/yr or to reduce the refinery-wide TAB quantity in wastewater to below 1 Mg/yr, beyond which no further control would be required. Furthermore, the emissions suppression requirements of the provisions are pollution prevention measures.

E. Equipment Leak Provisions

The equipment leak standards for the petroleum refinery NESHAP refer to the negotiated equipment leak regulation included in the HON (40 CFR part 63 subpart H). These standards are summarized in the preamble to the promulgated HON (59 FR 19402, April 22, 1994). The standards for the petroleum refinery NESHAP differ from the HON in the following ways: only one leak definition for pumps in phase III; leak definition for pumps is equal to or greater than 2,000 ppmv; leak definitions for valves in phases II and III; monitoring frequencies for valves; connectors are not required to be monitored, but sources may choose to monitor valves less frequently in exchange for monitoring of connectors. More details and a discussion of the rationale for these differences are contained in section VI.E. The equipment leak standards further the goals of pollution prevention, because many of the requirements, such as leak detection and repair, are pollution prevention measures.

F. Recordkeeping and Reporting Provisions

The rule requires petroleum refineries complying with subpart CC to keep records of information necessary to document compliance for 5 years and to submit the following four types of reports to the Administrator: (1) An

Initial Notification, (2) a Notification of Compliance Status, (3) Periodic Reports, and (4) other reports. There are no requirements for reporting compliance with the wastewater provisions other than the reports already required by the BWON.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing petroleum refinery sources. For new sources that have an initial start-up more than 90 days after promulgation, the application for approval of construction or reconstruction required under the General Provisions (40 CFR part 63 subpart A) must be submitted in lieu of the Initial Notification. This application is due as soon as practicable before construction or reconstruction is planned to commence but it need not be sooner than 90 days after promulgation of subpart CC. For new sources that have an initial start-up less than 90 days after promulgation, no application for approval of construction is required, and the Initial Notification is due within 90 days after promulgation.

The Initial Notification must list the petroleum refining process units that are subject to the rule. The Initial Notification is not required if a Title V operating permit application has been submitted that provides the required information.

2. Notification of Compliance Status

The Notification of Compliance Status must be submitted 150 days after the sources' compliance date. It contains the information necessary to demonstrate that compliance has been achieved, such as: the results of any performance tests for miscellaneous process vents; design analyses for control devices applied to storage vessels; a description of equipment subject to the equipment leaks provisions and the number of pieces of equipment in each equipment type; and the method of compliance with the equipment leak standard. For emission points subject to continuous monitoring requirements, the notification must contain site-specific ranges for each monitored parameter and the rationale for selection of the ranges. If the information required in the Notification of Compliance Status has already been submitted to the operating permit authority, it does not need to be resubmitted.

3. Periodic Reports

Periodic Reports must be submitted semiannually, except that the

implementing agency can request quarterly submittal for emission points where monitored parameter values are outside their permitted ranges more than 1 percent or monitors are out of service more than 5 percent of the total operating time in a semiannual reporting period.

All Periodic Reports must include information required to be reported under the recordkeeping and reporting provisions for each emission point. For continuously monitored parameters, the data on those periods when the parameters are outside their established ranges are included in the reports. Periodic Reports must also include results of any performance tests conducted during the reporting period and reports of equipment failures, leaks, or improper work practices that are discovered during required inspections.

4. Other Reports

A very limited number of other reports must be submitted as required by the provisions for each kind of emission point. Other reports include notifications of storage vessel internal inspections, and reports of start-up, shut-down, and malfunction required by the General Provisions (40 CFR part 63 subpart A).

G. Emissions Averaging

The EPA is proposing that emissions averaging be allowed among existing miscellaneous process vents, storage vessels, and wastewater streams within a refinery. New sources would not be allowed to use emissions averaging. Under emissions averaging, a system of emission "credits" and "debits" would be used to determine whether the source is achieving the required emission reductions. An owner or operator who generates an emission debit must control other emission points to a level more stringent than is required by the regulation to generate an emission credit. Annual emission credits must exceed emission debits for a source to be in compliance. The proposed rule contains specific equations and procedures for calculating credits and debits. Monitoring of control device operation would be required and Periodic Reports would be submitted quarterly instead of semiannually for emission points in emissions averages.

IV. Summary of Impacts of Proposed Rule

This section presents the environmental, energy, cost, and economic impacts resulting from the control of HAP emissions under the

proposed rule. It is estimated that approximately 190 petroleum refineries would be required to apply controls by the proposed standards.

Impacts are presented relative to a baseline, the level of control in the absence of the proposed rule. The estimates include the impacts of applying control to: (1) existing process units and (2) additional process units that are expected to begin operation over a 5-year period. Thus, the estimates represent annual impacts occurring in the fifth year. Based on a review of annual construction projects over the years 1988 to 1992 listed in the *Oil and Gas Journal*, it was assumed that 34 new process units would be constructed each year over a 5-year period.

For regulatory purposes, some of the process units constructed in the first 5 years of the rule may be considered new sources, while others may be considered part of an existing source. However, for the purpose of presenting total impacts, this distinction has not been made.

A. Environmental Impact

The environmental impact of the rule includes the reduction of HAP and VOC emissions, increases in other air pollutants, and decreases in water pollution and solid waste resulting from the proposed rule.

Under the proposed rule, it is estimated that the emissions of HAP from refineries would be reduced by 54,000 Mg/yr, and the emissions of VOC would be reduced by 350,000 Mg/yr (see table 1). Estimates of baseline HAP and VOC emissions are presented in conjunction with emissions reductions estimates to illustrate the level of control being achieved by the rule. Baseline HAP and VOC emissions take into account the current estimated level of emissions control, based on previous regulations and questionnaire responses submitted by refineries. As a result, baseline HAP and VOC emissions reflect the level of control that would be achieved in the absence of the proposed rule. The proposed rule would achieve a 68 percent reduction in HAP emissions and a 72 percent reduction in VOC emissions relative to the baseline. Table 1 presents the baseline emissions and emission reduction for each of the four kinds of emission points controlled by this proposed rule.

TABLE 1.—NATIONAL PRIMARY AIR POLLUTION IMPACT IN THE FIFTH YEAR

| Source | Baseline emissions (Mg/yr) | | Emission reductions | | | |
|---|----------------------------|---------|---------------------|------------------|------------------|------------------|
| | HAP | VOC | (Mg/yr) | | (Percent) | |
| | | | HAP | VOC | HAP | VOC |
| Miscellaneous process vents | 9,800 | 190,000 | 8,400 | 180,000 | 86 | 95 |
| Equipment leaks | 52,000 | 190,000 | 45,000 | 160,000 | 87 | 85 |
| Storage vessels | 9,300 | 111,000 | 1,300 | 21,000 | 14 | 19 |
| Wastewater collection and treatment | 10,000 | 10,000 | (^a) | (^a) | (^a) | (^a) |
| Total | 81,000 | 500,000 | 55,000 | 360,000 | 68 | 72 |

^a The MACT level of control is no additional control.

Emission levels of other air pollutants (CO, NO_x, SO₂) were not quantified. However, slight increases above existing emission levels would result from the combustion of fossil fuel as part of control device operations. Additional emissions of CO, NO_x, and SO₂ would result from fuel burned to generate energy for operation of compressors for ducting miscellaneous process vent streams to control devices.

Impacts for water pollution and solid waste were judged to be negligible and were not quantified as part of the impact analysis.

B. Energy Impact

Increases in energy use were estimated for operating control equipment that would be required by the proposed standards (i.e.,

compressors for ducting miscellaneous process vent streams to control devices). The estimated energy use increase in the fifth year would be 13 million kw-hr/yr of electricity or 21,000 barrels of oil equivalent.

C. Cost Impact

The cost impact of the rule includes the capital cost of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, and operation and maintenance cost. Generally, the cost impact also includes any cost savings generated by reducing the loss of valuable product in the form of emissions. The average cost effectiveness of the regulation (\$/Mg of pollutant removed) is also presented as

part of the cost impact. The average cost effectiveness is determined by dividing the annual cost by the annual emission reduction.

Under the proposed rule, it is estimated that total capital costs would be \$207 million (first quarter 1992 dollars) and total annual costs would be \$84 million (first quarter 1992 dollars) per year. Table 2 presents the capital and annual cost impact of the proposed regulation for each of the four kinds of emission points as well as the national totals. In addition to the cost impact shown in Table 2, it is estimated that monitoring, recordkeeping, and reporting activities would cost about \$26 million/yr, bringing the total national annual costs to about \$110 million.

TABLE 2.—NATIONAL CONTROL COST IMPACTS IN THE FIFTH YEAR

| Source | Total capital costs ^a (10 ⁶ \$) | Total annual costs (10 ⁶ \$/yr) | Average HAP cost effectiveness (\$/Mg HAP) | Average VOC cost effectiveness (\$/Mg VOC) |
|---|---|--|--|--|
| Miscellaneous process vents | 31 | 12 | 1,400 | 66 |
| Equipment leaks | 130 | 66 | 1,500 | 410 |
| Storage vessels | 46 | 6 | 4,600 | 340 |
| Wastewater collection and treatment | (^b) | (^b) | (^b) | (^b) |
| Total | 207 | 84 | | |

^a Total capital costs incurred in the 5-year period.

^b The MACT level of control is no additional control.

D. Economic Impacts

The preliminary economic impact analysis for the selected regulatory alternatives shows that the estimated price increases for affected products range from 0.18 percent for residual fuel oil to 0.51 percent for jet fuel. Estimated decreases in product output range from 0.12 percent for jet fuel to 0.37 percent for residual fuel oil. Total net exports (exports minus imports) for all petroleum liquids are predicted to decrease by 1.8 million barrels annually, approximately 1 percent, as a result of the standard.

Industry has expressed concern that the proposed rule could cause some small refineries to shut down. Using conservative (i.e., worst case) assumptions, the economic analysis indicates that from none to seven small refineries are at risk of closure under the proposed rule. The majority of the closures would occur in refineries that process less than 10,000 to 20,000 barrels of crude oil per day. Also, the regulatory flexibility analysis showed that compliance costs as a percentage of sales are more than twice as high for small refineries compared to other

refiners. For more information, consult "Economic Impacts Analysis of the Petroleum Refinery NESHAP" in the docket.

E. Benefits Analysis

The RIA presents the results of an examination of the potential health and welfare benefits associated with air emission reductions projected as a result of implementation of the petroleum refinery NESHAP. The proposed regulation regulates HAP emissions from storage tanks, process vents, equipment leaks, and wastewater

emission points at refining sites. Of the HAP's emitted by petroleum refineries, some are classified as VOC, which are ozone precursors. Hazardous air pollutant benefits are presented separately from the benefits associated specifically with VOC emission reductions.

The predicted emissions of a few HAP's associated with this regulation have been classified as probable or known human carcinogens. As a result, one of the benefits of the proposed regulation is a reduction in the risk of cancer mortality. Other benefit categories include reduced exposure to noncarcinogenic HAP's, and reduced exposure to VOC.

Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with NO_x, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a series of respiratory related adverse impacts.

Based on existing data, the benefits associated with reduced HAP and VOC emissions were quantified. The quantification of dollar benefits for all benefit categories is not possible at this time because of limitations in both data and available methodologies. Although an estimate of the total reduction in HAP emissions for various control options has been developed for the RIA, it has not been possible to identify the speciation of the HAP emission reductions for each type of emission point. However, an estimate of HAP speciation for equipment leaks has been made. Using emissions data for equipment leaks and the Human Exposure Model, the annual cancer risk caused by HAP emissions from petroleum refineries was estimated. Generally, this benefit category is calculated as the difference in estimated annual cancer incidence before and after implementation of each regulatory alternative. Since the annual cancer incidence associated with baseline conditions was less than one life per year, the benefits associated with the petroleum refinery NESHAP were determined to be small. Therefore, these benefits are not incorporated into this benefit analysis.

The benefits of reduced emissions of VOC from a MACT regulation of petroleum refineries were quantified using the technique of "benefits transfer." Because analysis by the Office of Technology Assessment from which benefits transfer values were obtained only estimated health benefits in nonattainment areas, the transfer values can be applied to VOC reductions occurring only in nonattainment areas.

(Nonattainment areas are geographical locations in which the National Ambient Air Quality Standard for ozone has been violated.) The benefit transfer ratio range for acute health impacts used in this analysis is from \$25 to \$1,574 per megagram of VOC with an average of \$800 per megagram of VOC. In order to quantify VOC emission reductions, these ratios were multiplied by VOC emission reductions from petroleum refineries located in ozone nonattainment areas. Estimated benefits for VOC reductions are \$148.3 million for the proposed regulation and \$153.9 million for a more stringent alternative.

The quantified benefits exceed costs by \$15.9 million 1992 dollars per year for the proposed alternative. The quantified benefits exceed costs by \$5.5 million 1992 dollars per year for the more stringent alternative. Thus, a comparison of the incremental difference in the two alternatives indicates that the incremental net benefits are negative for the more stringent alternative.

V. Emission and Impact Estimation Methods

Emissions from petroleum refineries and the impact of controlling emissions were estimated using information published in the *Oil and Gas Journal* and provided by petroleum refineries in response to information collection requests and questionnaires sent out under section 114 of the Act. For a general discussion of the estimation methods for existing and new petroleum refinery sources and references for memoranda on the specific methods used for each kind of emission point, refer to the memorandum, Emission and Impact Estimation Methods, available in the Docket. It is noted that API provided the EPA with emissions data that it has collected relatively recently on leaking equipment. The EPA is evaluating this data. Once this review is complete, the EPA intends to incorporate it into documents which are used for estimating emissions, particularly on an individual plant basis. It could also affect the emission reduction estimates provided for the promulgated standard.

VI. Rationale for Proposed Standard

A. Selection of Source Category, Sources, and Pollutants

This section of the preamble describes the rationale for the selection and definition of the petroleum refinery source category and for the factors that the Administrator took into consideration in defining the sources within the petroleum refinery source category.

1. Selection of Source Category

The definition of the source category is important in setting standards because it sets the boundary for what emission points will be regulated under this standard. A large plant site such as a refinery could comprise multiple source categories. For example, a refinery is likely to contain equipment that would be regulated under the industrial cooling tower source category, the process heater source category, the industrial boiler source category, or the SO₂ source category. The petroleum refinery source category regulated under this NESHAP is defined to include equipment specifically used to produce fuels, heating oils, or lubricants by separating petroleum or separating, cracking, or reforming unfinished petroleum derivatives.

The EPA's source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies categories of sources for which NESHAP are to be established. This list includes all categories of major sources of HAP's known to the EPA at this time, and all area source categories for which findings of adverse effects warranting regulation have been made. Two categories of sources are listed for petroleum refineries: (1) catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units, scheduled for promulgation in 1997, and (2) other sources not distinctly listed, scheduled for promulgation in 1995 (58 FR 63952, December 3, 1993).

Based on review of information on petroleum refineries during development of the proposed standards, it was determined that some of the emissions points from the two listed categories of sources have similar characteristics and can be controlled by the same control techniques. In particular, miscellaneous process vents emitting organic HAP's, storage vessels, wastewater streams, and leaks from equipment in organic HAP service within catalytic cracking units, catalytic reforming units, and sulfur plant units are similar to emission points from the other process units at petroleum refineries (i.e., units in the category of "other sources not distinctly listed"). Because it is most effective to regulate these emission points in a single regulation, the EPA intends to amend the source category list when the standards proposed today are promulgated. Upon revision, all emission points from petroleum refining units included in today's proposed standards will be in a single source category.

The petroleum refinery source category selected for regulation by subpart CC includes process units for catalytic cracking (fluid and other), catalytic reforming, sulfur plants, and other petroleum refinery units not distinctly listed. The other units not distinctly listed include, but are not limited to, process units for thermal cracking, vacuum distillation, crude distillation, hydrotreating/hydrorefining, alkylation, isomerization, polymerization, lube oil processing, and hydrogen production. Units for processing natural gas liquids, refining units for recycling discarded oil, and shale oil extraction units are not covered by this rule. Ethylene processes are not covered by this rule because they are included in a separate source category.

Miscellaneous process vents, as defined in § 63.641 of the proposed rule, from the process units subject to this rule are part of the petroleum refinery source category. Three kinds of vents at petroleum refineries would not be included in the source category for today's proposed rule. These vents—the catalytic cracking catalyst regeneration vent, the catalytic reformer catalyst regeneration vent, and the sulfur plant vents—will be included in a separate category subject to a 1997 deadline. These vents have significantly different HAP emission characteristics and would be controlled with different controls than the rest of the refinery emission points. The standard proposed today addresses emissions of organic HAP's. The FCCU catalyst regeneration vent emits primarily metal HAP's, which would be controlled using particulate controls. Catalytic reformer catalyst regeneration vents emit hydrogen chloride, and sulfur plant vents emit carbonyl sulfide and carbon disulfide. Because of their unique characteristics, the EPA concluded that these emission points warranted separate consideration. Because limited data are currently available, these emission points will be included in a separate source category under a separate schedule. (However, the EPA would like to clarify that miscellaneous process vents (as defined in § 63.641 of the proposed rule) from catalytic cracking, catalytic reforming, and sulfur plant units that emit organic HAP's would be subject to subpart CC.)

a. *Distinction between petroleum refinery and SOCOMI source categories.* This petroleum refineries NESHAP generally covers refinery processes that produce petroleum liquids (such as gasoline, naphthas, and kerosene) for use as fuels. Often, products of refinery processes are used to make synthetic

organic chemicals other than fuels. The petroleum refineries NESHAP will not cover chemical manufacturing process units that are covered under the SOCOMI source category, even if these units are located at a refinery site. A SOCOMI chemical manufacturing process unit that is located at a refinery and produces one or more of the chemicals listed in the HON (40 CFR part 63 subpart F, table 1) as a single chemical product or as a mixed chemical used to produce other chemicals would be considered a SOCOMI process and would be subject to the HON rather than to the petroleum refineries NESHAP.

For example, MTBE, an additive used for octane enhancement in gasoline, is a SOCOMI chemical that can be produced at some petroleum refineries and is made from a petroleum refinery product. The feedstock for MTBE is a mixed C₄, C₅ hydrocarbon stream produced in an FCCU; the FCCU is subject to the petroleum refineries NESHAP. However, MTBE is on the list of SOCOMI chemicals in the HON (40 CFR part 63 subpart F), so the process unit used to produce MTBE from the C₄, C₅ hydrocarbon feedstock is regulated under the HON, not under the petroleum refineries NESHAP.

b. *Exclusion of area sources.* A petroleum refining process would be subject to the proposed standard only if it is part of a major source. A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, more than 10 tons per year of any HAP or more than 25 tons per year of total HAP. An area source is any stationary source or group of stationary sources that are not major sources. The General Provisions for the NESHAP (40 CFR part 63 subpart A), provide a definition of potential to emit. The General Provisions apply to the petroleum refinery source category.

Based on the information available on petroleum refineries and emission estimates developed for this standard, the EPA has no information that can be used to determine whether area sources in the petroleum refinery source category would present a threat of adverse effects to human health or to the environment. It is believed that most refineries are major sources, and that there are few, if any, area sources. The EPA requests comments containing information on whether there are area sources within the petroleum refining source category and on the emissions from such sources. Commenters should provide the basis for any emission estimates.

c. *Exclusion of research and development facilities.* The proposed standard would not apply to research and development facilities, such as laboratories and pilot plants, regardless of whether the facilities are located on the same site as a commercial petroleum refinery. Research and development facilities connected with petroleum refineries are believed to be small, and the EPA has limited information about their operations or about the appropriate controls for these facilities. The EPA concluded, therefore, that it would not be appropriate to include research and development facilities in this regulation. In accordance with section 112(c)(7) of the Act, a separate source category for research and development facilities may be established at a later date if more comprehensive information becomes available. Standards for such facilities may be developed at a later date, if the EPA determines that such action is warranted.

d. *Exclusion of transfer operations.* Transfer operations at petroleum refineries, that is, loading products into tank trucks, railcars, or marine vessels, is not included in the source category regulated by this rule. Loading of marine vessels will be regulated under the Federal Standards for marine tank vessel for loading and unloading operations and NESHAP for marine tank vessel for loading and unloading operations. Emissions from loading tank trucks and railcars will be regulated under the NESHAP for the gasoline distribution and organic liquids distribution (nongasoline) source categories in the liquids distribution industry group. The NESHAP for the gasoline distribution source category was proposed in February 1994; the NESHAP for the organic liquids distribution source category is scheduled to be promulgated by 2000.

e. *Small refineries.* The standard proposed today would apply to all refineries that are major sources including small refineries. Small refineries maintain that they will be more severely affected by the proposed rule than large refineries and therefore should be given separate regulatory consideration. Small refiners point out that they are predominately located in rural areas that are in compliance with the Federal ambient air quality standard for ozone. Therefore, many of them have not implemented LDAR programs and other control procedures that have been started by large refiners to control VOC in ozone nonattainment areas. As a result they will be confronted with relatively high costs for starting LDAR programs and retrofitting storage tanks. Moreover, small refiners point out that

LDAR costs are related more to refinery complexity than size. Therefore, refineries that differ in size but have similar processing configurations will incur similar costs. However, the costs on a per-barrel basis will be higher for the small refineries.

The proposed rule does not treat small refineries as a separate subcategory because the EPA could not identify fundamental technical differences between small and large refineries. In addition, even if small refineries were in a separate source category it appears that the minimum control levels (floors) would not be much different from those for the larger refineries. Comments are requested on whether a basis exists for subcategorizing small refineries, and if so, at what size, along with supporting data and rationale.

2. Selection of Source

The definition of source is an important element of this NESHAP because it describes the specific grouping of emission points within the source category to which each standard applies.

The EPA has broad discretion in defining "sources." Section 112(d) directs the Administrator to set standards for all "major sources" within every listed category. Area sources meeting the requirements of sections 112(c)(3) or 112(k) must also be regulated. Major sources are "stationary sources," or groups of stationary sources, of a given size, as defined in section 112(a)(1). The definition of "stationary source" included in section 112 is identical to the definition used in section 111(a), which is "any building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. 7411(a). However, section 112, as amended, does not require that the standards set under section 112(d) be set for the same components of the categories as was done under section 111. Thus, there is no requirement that the section 112(d) NESHAP for stationary sources be set for precisely the same portions of the industry as the section 111 NSPS.

As the Supreme Court has recognized in *Chevron, USA, Inc., versus Natural Resources Defense Council*, 467 U.S. 837 (1984) (hereafter referred to as *Chevron*), EPA has broad discretion to define "source." The Court recognized in *Chevron* that if any Congressional intent can be discerned from the statutory language of section 111(a)(3) (the definition of source that is used in section 112), "the listing of overlapping, illustrative terms was intended to enlarge, rather than confine, the scope

of the EPA's power to regulate particular sources in order to best effectuate the policies of the Act." *Chevron*. Thus, the court found that a "source" can encompass "any discrete, but integrated operation, which pollutes." *Chevron*. As such, the EPA has flexibility, within the broad definition of "stationary source," to define the source for each section 112(d) standard as broadly or narrowly as is appropriate for the particular industry being regulated. Previous regulations have, in light of this flexibility, defined source in a variety of ways, ranging from narrow to broad definitions. For example, for BWON, the source was defined as the plant site, for the petroleum refinery equipment leaks NSPS (40 CFR part 60, subpart GGG) the source was the process unit, and for the petroleum refinery wastewater NSPS (40 CFR part 60 subpart QQQ) the source was more narrowly defined. There is no presumptive definition.

The proposed standard defines source as the collection of emission points in HAP-emitting petroleum refining processes within the source category that are part of a major source. The source comprises all miscellaneous process vents, storage vessels, wastewater streams, and equipment leaks associated with petroleum refining process units that are located at a single plant site covering a contiguous area under common control.

The way the source is defined has implications for setting MACT and for compliance with the proposed rule. Emission standards for new and for existing sources promulgated under section 112(d) of the Act must represent the maximum degree of emission reduction achievable; this is typically referred to as MACT. The EPA considered two possible definitions of source for the petroleum refinery NESHAP. The source could be defined narrowly as each individual process vent, storage vessel, or wastewater stream or piece of equipment; or the source could be defined broadly, as the collection of all such emission points at the refinery.

The narrow definition of the petroleum refinery source, defining the source as each individual emission point, was rejected because a narrow definition is more appropriate when all emission points have consistent characteristics and because it would not allow compliance flexibility. For example, if each storage vessel were comparable to each other storage vessel, so that the same performance level could apply to them all, a narrow definition might be appropriate. In fact, storage vessels can vary widely in size and material stored, and the emission

performance level appropriate for one may be inappropriate for another. In addition, the control strategy for a refinery is decided at a refinery level. Often, individual emission points within a refinery are controlled together (e.g., multiple miscellaneous process vents can be routed to one control system). Thus, it is reasonable to look at the overall level of control a refinery is achieving because the size, level of emissions, and significance of emissions can vary from point to point.

A broad definition of source allows consideration of site-specific differences and compliance flexibility, including emissions averaging. With a broad definition, a source may exercise some choice in the level of control of each individual emission point as long as the sourcewide MACT level of emission reduction is met. This flexibility results in benefits of achieving maximum emission reductions in a more efficient and cost-effective manner.

Another reason for selection of the broad definition of source is compatibility with the BWON source definition. This compatibility allows the standards to be consistent and eliminates the burden of overlapping standards and implementation problems that would arise if the source for today's proposed rule was defined much more narrowly than the BWON source.

The definition of source also affects refineries making changes to existing facilities. Under the Act, sources that are constructed or reconstructed after proposal of a standard are considered to be new sources. Reconstructions are defined in § 63.2 of the NESHAP General Provisions (59 FR 12408, March 16, 1994) as the replacement of components of an affected source to such an extent that the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source. Upon reconstruction, an affected source is subject to standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

With a narrower source definition, enforcement of the standard would be difficult because any change to any emission point could trigger regulatory provisions governing reconstruction. Reconstructed sources are treated as new sources, so many small "new" sources could be scattered throughout an existing refinery. Determining requirements for different emission points would be complex, and the new or reconstructed sources (which are treated as new sources) may require control systems separate from the

control systems for existing sources. This could increase the cost and economic impact of the regulation.

With a broad source definition, the replacement or addition of new equipment would be unlikely to exceed 50 percent of the fixed capital cost of the source.

3. Determining New Source Status

The proposed rule clarifies the process for determining if new or existing source requirements would apply to a particular petroleum refining process unit or emission point. The requirements and definitions used by the proposed petroleum refineries rule to distinguish new and existing sources are consistent with section 112(a) and the related components of the subpart A General Provisions. The following would be subject to the subpart CC requirements for new sources: (1) Petroleum refining process units constructed after the date of proposal of subpart CC and having the potential to emit major quantities (10 tons per year of any HAP or 25 tons per year of any combination of HAP's); (2) existing sources reconstructed after that date; and (3) "greenfield" petroleum refining process units that constitute all or part of a major source constructed after that date. (New source requirements would not be triggered by the addition of an individual emission point, such as a storage vessel.) Thus, any change or addition to an existing petroleum refinery plant site must meet the same three criteria as a "greenfield" plant to be considered a new source. The EPA proposes this approach for determining what is subject to new source requirements to avoid providing an incentive for petroleum refinery owners and operators to construct processes as area sources. Also, EPA wanted to ensure that new sources built at existing plant sites are subject to the same requirements as new sources that are "greenfield" sites. Additions to an existing plant that do not meet the requirements of being a petroleum refining process unit and do not have the potential to emit major amounts, would be subject to existing source requirements.

4. Selection of Pollutants

The HAP's that are emitted from the emission points that make up the source in this source category are all organic HAP's; the predominant HAP's are benzene, toluene, xylene, ethylbenzene, and hexane. Therefore, the provisions of this NESHAP apply to the organic HAP's listed in section 112(b) of the Act.

B. Selection of Miscellaneous Process Vent Provisions

The definition in § 63.641 of the proposed rule describes the vents that are considered to be "miscellaneous process vents." The available data indicated that these vents have similar emission characteristics and can be controlled by the same type of control technologies.

1. Selection of Emission Control Requirements

The Act specifies that the EPA, in determining the MACT level of control for sources regulated under section 112, must select emission control requirements that are at least as stringent as, or more stringent than, the emission control level identified as the floor. As a result, the EPA began the process of selecting control requirements for miscellaneous process vents by determining MACT floors for existing and new sources. The MACT floor determinations are fully described in a memorandum "Determination of the Petroleum Refinery MACT Floors for Existing and New Sources," available in the docket. This section summarizes the MACT floors as they relate to miscellaneous process vents, and the selection of the proposed process vent provisions.

The Act requires that the EPA determine MACT based on consideration of cost, energy requirements and nonair quality health and environmental impacts. The EPA maintains that the requirements of this proposed rule were determined based on these statutorily-specified criteria. The EPA requests comment on the appropriateness of considering additional criteria such as pollution prevention, environmental equity,

affordability, and technology innovation.

a. *Existing sources.* Based on information contained in industry responses to the EPA's ICR and section 114 questionnaires, it was determined that the average emission limitation achieved by the best performing 12 percent of sources is combustion control of all miscellaneous process vents. Data analyses conducted in developing previous NSPS and the HON determined that combustion controls can achieve 98 percent organic HAP reduction or an outlet organic HAP concentration of 20 ppmv for all vent streams. The selection of these numerical levels is described in the preamble for the proposed reactor processes NSPS (55 FR 26953, June 29, 1990).

The MACT floor level of control for existing sources, therefore, includes reduction of organic HAP emissions from miscellaneous process vents by 98 percent or to a level of 20 ppmv for miscellaneous process vents with concentrations that exceed *de minimis* levels. A *de minimis* level of 20 ppmv was selected. Process vents with organic HAP emission levels below this concentration would not be subject to the proposed rule because the available technologies may not be able to reduce organic emissions below this level. Regulatory options more stringent than the floor were not investigated for miscellaneous process vents because no available technology that is generally applicable can achieve a more stringent level of control than the MACT floor. Therefore, the standard being proposed for miscellaneous process vents at existing sources is the MACT floor.

The estimated emission reductions and cost impacts for the proposed standards for all emission points are shown in table 3. The miscellaneous process vent costs are based on routing the vents to the refinery fuel gas or flare systems. Some industry representatives have expressed concerns that the costs may be underestimated. The EPA requests specific cost data and information on how miscellaneous process vents at existing sources would be controlled and what the cost would be.

TABLE 3.—CONTROL OPTIONS AND IMPACTS

| Source | Baseline emissions (Mg/yr) | Control option ^a | HAP | | Annual cost (\$1,000/yr) | Cost effectiveness (\$/Mg HAP) | |
|-------------------------------|----------------------------|-----------------------------|----------------------------|----------------------------|--------------------------|--------------------------------|-------------|
| | | | Emission reduction (Mg/yr) | Percent emission reduction | | Average | Incremental |
| Miscellaneous Process Vents: | | | | | | | |
| Existing sources | 8,900 | Floor* | 7,600 | 85 | 13,000 | 1,700 | N/A |
| New sources ^b | 900 | Floor* | 770 | 85 | 370 | 480 | N/A |
| Storage Vessels: | | | | | | | |
| Existing sources ^c | 9,000 | Floor* | 1,300 | 14 | 11,400 | 8,500 | N/A |
| | | Option 1* .. | 1,800 | 20 | 13,600 | 7,800 | 4,400 |
| | | Option 2 .. | 2,600 | 29 | 37,000 | 14,000 | 30,000 |
| New sources ^b | 290 | Floor* | 4 | 1.4 | 98 | 24,000 | N/A |
| | | Option 1 .. | 14 | 4.8 | 550 | 39,000 | 45,000 |
| Wastewater: | | | | | | | |
| Existing sources | 9,200 | Floor* | | N/A | | N/A | N/A |
| | | Option 1 .. | 7,700 | 93 | 120,000 | 15,000 | 15,000 |
| New sources ^b | 960 | Floor* | | N/A | | N/A | N/A |
| | | Option 1 .. | 930 | 97 | 18,000 | 20,000 | 20,000 |
| Equipment Leaks: | | | | | | | |
| Existing sources | 50,000 | Floor ^d | 35,000 | 69 | 69,000 | 2,000 | N/A |
| | | Option 1* .. | 44,000 | 87 | 66,000 | 1,500 | -330 |
| | | Option 2 .. | 46,000 | 91 | 78,000 | 1,700 | 6,000 |
| New sources | 1,300 | Floor ^d | 640 | 49 | -210 | -330 | -330 |
| | | Option 1 .. | 760 | 59 | 840 | 1,100 | 8,300 |

^a Explanation of control options:

Storage Vessels

Existing Sources

Floor=Subpart Kb floating roof with specified seals or closed vent systems and control devices for vessels ≥ 177 m³ storing liquid with the vapor pressures ≥ 8.3 kPa.

Option 1=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressure ≥ 5.2 kPa.

Option 2=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressure ≥ 0.014 kPa.

New Sources

Floor=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquid with the vapor pressures ≥ 3.4 kPa, and vessels ≥ 76 m³ storing liquids with vapor pressures equal to or greater than 77 kPa.

Option 1=Floating roof with specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressures ≥ 0.014 kPa, and vessels ≥ 76 m³ storing liquids with vapor pressures equal to or greater than 77 kPa.

Equipment Leaks

Existing Sources

Floor=Compliance with the petroleum refinery NSPS.

Option 1=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63, without connectors.

Option 2=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63.

New Sources

Floor=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63, without connectors.

Option 1=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63.

Wastewater

Existing and New Sources

Floor=Compliance with the BWN for any refinery with > 10 Mg/yr of benzene loading in waste. Controlling waste streams > 10 ppm benzene by weight with flow rates > 0.02 l/min.

Option 1=Compliance with the BWN for all refinery wastewater streams.

Miscellaneous Process Vents Existing and New Sources

Floor=Control to 20 ppm HAP or 98 percent reduction of HAP by combustion.

^b Impacts were estimated for new process units constructed in the 5 years after promulgation. For regulatory purposes, some of these units may be considered new sources while others may be considered part of an existing source.

^c The floor and option 1 are being co-proposed for storage vessels at existing sources and the EPA is requesting comment on which should be selected.

^d For equipment leaks at both new and existing sources the option identified as the "floor" is slightly more stringent than the actual floor. For ease of costing, these options were chosen to represent the floor. See footnote "a" for an explanation of the control options.

*=Control option chosen.

N/A=Not applicable.

Industry has commented that the control requirements for the process vents should be based on a cost-effectiveness method similar to the TRE approach used in the HON rule. Industry recommendations are based on limited information which indicates that the control cost per ton of HAP reduction can differ by several hundred percent. As in the HON, the differences are apparently due to wide variations in

the control costs and the HAP content of the process vents.

The EPA requests comment on whether or not the control requirements for the miscellaneous process vents should be based on a cost-effectiveness approach similar to the TRE method used in the HON. The EPA does not have the information to determine if a cost-effectiveness approach is needed or to develop one and to relate it to the floor. The required information includes

descriptions of the sources of emissions and the emission controls. The vent stream characteristics such as flow rate, heating value, VOC, and HAP contents are also required. Information provided by industry in response to two formal EPA questionnaires contained little information with respect to the vent stream characteristics. It is not possible to develop TRE equations that are specific to petroleum refineries without this information. In the event that the

EPA develops a TRE, the Agency requests the information that is needed to develop cost-effectiveness equations for the refining industry similar to those in the HON. The information is requested for a representative segment of the refining industry. If this information is received, the EPA will analyze it before promulgation of this rule and will utilize a TRE approach if such an approach appears appropriate.

Industry has commented that the cost equations for the TRE requirements in the HON rule may be applicable to the refining industry. The EPA solicits comment with supporting information on the applicability of the HON cost equations to the refining industry such as information on the similarity or differences between the refining industry and the SOCOMI in terms of vent stream characteristics (flow, concentration, heating value) and for combustion control device designs in use.

Industry has commented that the applicability levels for the HAP concentration (50 ppmv) and the flow rate (0.005 standard cubic meter per minute) in the process vents provisions of the HON should be applicable to the refining industry. The purpose of the applicability levels is to avoid affecting large numbers of small vents whose cumulative emissions are small relative to the control costs and the costs of monitoring, recordkeeping and reporting. The EPA requests information to determine if there are large numbers of small vents with low HAP concentrations in the refining industry, and whether such vents are controlled. If such vents exist, the EPA also requests information to determine the applicability levels that would avoid affecting vents where the emission control and administrative costs are inordinately high relative to the emission reductions. If sufficient data are received and the MACT floor does not require control of such vents, the EPA will include appropriate applicability levels in the final rule.

Industry has commented that the EPA has overestimated the HAP and VOC emissions from the miscellaneous process vents—particularly from the alkylation and vacuum distillation units. The estimates are based on: (1) Information submitted by the petroleum refining industry in response to the EPA questionnaires, and (2) emission estimation extrapolations and assumptions by the EPA where reported data were insufficient. Industry has questioned the assumptions made by the EPA in their analysis. Industry maintained that part of the reported emissions may be from water

blowdowns, equipment leaks or from other emission sources that are not true process vents. The EPA will consider revising the emission estimates if the EPA receives new data demonstrating that revisions are appropriate.

Industry has commented that since the HAP to VOC ratio for reformers is dissimilar to other process units, the EPA should not use it to estimate HAP emissions from process units other than reformers. The EPA agrees with industry on this point and plans to revise the estimates after considering any new information submitted.

b. *New sources.* Because the best performing source controls all miscellaneous process vents by combustion, the new source MACT floor includes reduction of emissions from miscellaneous process vents by 98 percent or to a level of 20 ppmv. A 20 ppmv *de minimis* concentration was selected for the same reason as existing sources. There are no available control options that are generally applicable that can achieve emission levels more stringent than the floor. Therefore, the standard being proposed for miscellaneous process vents at new sources is the MACT floor. The cost and emission reduction for new source are presented in table 3.

2. Selection of Format

The format of the regulation for miscellaneous process vent streams depends on the kind of control device the refinery selects. For vent streams controlled by control devices other than flares, the format of the regulation is a combination of a weight-percent reduction and an outlet concentration. A weight-percent reduction format is appropriate for process vent streams with HAP concentrations above 1,000 ppmv, because a weight-percent limit is the best measure of the performance of combustion control devices and will assure that MACT is applied. For process vent streams with HAP concentrations below 1,000 ppmv, the format of the regulation is a 20 ppmv outlet concentration, because 98 percent HAP reduction may not be achievable.

For vent streams controlled by a flare, the proposal refers to the performance specifications in the General Provisions (40 CFR part 63, subpart A, section 63.11). An emission limit or percent reduction format was not selected because it is very difficult to measure the emissions from a flare to determine its efficiency.

The petroleum refinery fuel gas system is considered part of the refinery processes; therefore, any vent stream being recovered and routed to the fuel gas system is also considered part of the

process. These vent streams are not considered miscellaneous process vents and are not subject to subpart CC. Furthermore, these vents are already controlled to the most stringent levels achievable.

3. Selection of Performance Tests, Monitoring Requirements, and Test Methods

The standard specifies the performance tests, monitoring requirements, and test methods necessary to determine whether a miscellaneous process vent stream is required to apply control devices and to demonstrate that the allowed emission levels are achieved when controls are applied. The format of these requirements, as with the format of the miscellaneous process vent provisions, depends on the control device selected.

a. *Performance test.* Performance tests ensure that a control device can achieve the required control level and help establish operating parameters that indicate proper operation and maintenance. Initial performance tests are required for control devices other than flares and certain boilers and process heaters. Specifically, testing would be required for incinerators, and for boilers and process heaters smaller than 44 MW (150 million Btu/hr) where the vent stream is not used as the primary fuel or mixed with the primary fuel prior to being introduced into the boiler.

As previously stated, miscellaneous process vent streams routed to the refinery fuel gas system are not subject to these standards, and boilers and process heaters that use refinery fuel gas are not required to be tested.

An initial performance test is not required for boilers and process heaters larger than 44 MW (150 million Btu/hr) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, over 98 percent reduction or an outlet concentration of 20 ppmv is achieved. Therefore, a performance test is not necessary.

Because percent reduction and outlet concentration cannot feasibly be measured at flares, the flare must meet the requirements for operating conditions in § 63.11 of 40 CFR part 63 subpart A.

b. *Test methods.* The proposed miscellaneous process vent provisions would require the use of approved test methods to ensure consistent and verifiable results for initial performance tests and compliance demonstrations. The proposed regulation refers to the

HON (40 CFR part 63, subpart G) for performance test provisions; but the rationale for the use of these provisions for petroleum refineries is presented below. For performance tests, Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, are specified for measuring vent stream flow rate. Method 18 of 40 CFR part 60, appendix A, is specified for measuring total vent stream HAP or TOC concentration at the outlet of the control device to determine whether outlet HAP concentration is below 20 ppmv or at both the inlet and outlet of the control device to determine if HAP emissions are reduced by 98 percent. In order to allow owners or operators greater flexibility, the proposed provisions also allow the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A.

The EPA considered allowing Method 25A as an alternative to Method 18 for demonstrating compliance of control devices applied to process vents; however, Method 25A is not included as an alternative for demonstrating compliance with the emissions reduction. The basis for the decision was that the EPA determined that the results obtained with Method 25A would not consistently demonstrate HAP control efficiency. Miscellaneous process vent streams often contain mixtures of multiple organic HAP's and other organic compounds. The TOC measurements obtained with Method 25A would vary depending on how the method is calibrated, because response factors for individual compounds vary. Furthermore, some compounds are not well detected by Method 25A. Another concern is that the relative proportion of individual organic compounds may change across the combustor. Therefore, specifying calibration with the principal HAP in the inlet would not necessarily produce reliable results.

c. Monitoring. Control devices used to comply with the proposed standard need to be maintained and operated properly if either a 98 percent reduction or outlet concentration of 20 ppmv is to be achieved on a continuing basis. Monitoring of the control device operating parameters can be used to determine if the emission limit is being met on a continuous basis. The monitoring of operating parameters constitutes enhanced monitoring, as discussed in section VI.F of this notice.

The EPA considered two monitoring options: (1) the use of CEMS to measure HAP's and (2) continuous monitoring of control device operating parameter. Continuous emission monitoring systems are not currently available for all of the organic HAP found in

miscellaneous process vent streams. Thus, direct monitoring of HAP emission reduction or concentration is not possible for every stream. Furthermore, for those HAP's where CEMS are available, the costs of installing, calibrating, operating, and maintaining CEMS and flow monitors at both the inlets and outlets of every control device (which would be needed to determine percent reduction) would be much higher than the costs of parameter monitoring. The use of CEM's would, therefore, increase the cost impacts of the rule.

It is proposed that the continuous monitoring of control device operating parameters be used to determine whether continuous compliance is achieved. The proposed standard lists the parameters that can be monitored for the common types of combustion devices: thermal incinerators, catalytic incinerators, boilers and process heaters, and flares. These parameters were selected because they are good indicators of combustion device performance, and instruments are available at a reasonable cost to monitor these parameters continuously. The proposed rule also allows the owner or operator to request to monitor parameters not listed in the proposed standard on a site-specific basis.

The proposed standard would require the owner or operator to establish site-specific parameter ranges through the Notification of Compliance Status report or the operating permit submitted to comply with Title V of the Act. Site-specific parameter ranges accommodate site-specific differences in control design and process vent stream characteristics. Failure to maintain the established values of the monitored parameters would be an enforceable violation of the emission limits of the standard.

The proposed petroleum refineries NESHAP does not require monitoring boilers or process heaters with a heat capacity of 44 MW (150 million Btu/hr) or greater, or boilers or process heaters with a heat capacity less than 44 MW (150 million Btu/hr) that introduce the process vent stream as a primary fuel or mix it with the primary fuel and introduce it through the same burner. These devices operate at temperatures and residence times that the EPA has concluded will ensure compliance with the emission limits (at least 98 percent reduction of total HAP). Therefore, if the vent stream is routed to the devices as described above and enters at the specified locations, continuous compliance is demonstrated.

C. Selection of Storage Vessel Provisions

1. Selection of Emission Control Requirements

This section summarizes the MACT floors for new and existing sources as they relate to storage vessels, regulatory alternatives more stringent than the floors, and the rationale for the selected alternatives for storage vessels.

a. Existing sources. Based on information on storage vessel control levels and vessel capacities and vapor pressures submitted to the EPA by petroleum refineries, the MACT floor level of control was determined to be: storage vessels with capacities greater than or equal to 177 m³ storing liquids with true vapor pressures greater than or equal to 8.3 kPa must control to the level of 40 CFR part 60 subpart Kb with the exception of fitting requirements for floating roof vessels. This represents the average level of storage vessel control achieved at the best-performing 12 percent of sources. The control applicability criterion of 177 m³ (1,115 barrels or 47,000 gallons) was selected because the best-performing sources do not control storage vessels with capacities below this size. The vapor pressure of 8.3 kPa (1.2 psia) was determined by screening the data set for controlled tanks (tanks that met subpart Kb seal requirements) at increasing vapor pressures until the cumulative number of tanks identified as controlled equalled 12 percent of the entire data set. The average vapor pressure of the petroleum liquids in these controlled tanks was 8.3 kPa.

The EPA also considered two alternative levels of emission limitation. Each required control to subpart Kb levels including controlled fittings for floating roof vessels and were for control of vessels with capacities greater than or equal to 151 m³ (950 barrels or 40,000 gallons). However, each of the alternatives had a different true vapor pressure applicability criterion. The first alternative required that vessels storing liquids with a true vapor pressure greater than or equal to 5.2 kilopascals (0.75 psia) be controlled. This alternative was analyzed because it also corresponds to one of the applicability tiers of subpart Kb of 40 CFR part 60. The second alternative was for controls being required for vessels storing liquids with a true vapor pressure greater than or equal to 0.014 kilopascals (0.002 psia). This alternative was chosen in order to assess the impact of control of vessels storing low vapor pressure liquids such as diesel/distillate, jet kerosene/kerosene, heavy gas oil, residual fuel oil, and asphalt. Table 3 presents the emission reductions and

cost for the MACT floor level of control and the two options above the floor.

The EPA is co-proposing the floor level of control, and option 1, for storage tanks in order to promote comment on both options. The floor requires that petroleum liquids with true vapor pressures of 8.3 kPa (1.2 psia) or higher be placed in floating roof storage tanks equipped with seals that comply with the NSPS for volatile organic liquids (subpart Kb of 40 CFR part 60). The floor control will reduce the current HAP emissions from storage tanks by 14 percent. This relatively small emission reduction is due to the fact that most volatile petroleum liquids are stored in floating roof tanks to reduce product losses or to comply with VOC control requirements in ozone nonattainment areas. The emission reductions associated with upgrading the seals on such tanks to comply with subpart Kb requirements are, in many cases, modest.

Controlling both the fittings and the seals to subpart Kb requirements was evaluated as option 1. The EPA seeks comment on whether the floor level or control or option 1 should be selected. In particular, the EPA requests comment on whether or not the incremental cost effectiveness of option 1—\$4,400 per ton of HAP emissions reduced—should be viewed as making that option unachievable considering cost. The EPA also requests comment on whether option 1 should be selected because of a combination of factors. Specifically, option 1 achieves a greater degree of pollution prevention because even less product is lost due to evaporation. In addition, the vapor pressure and storage tank size applicability levels for option 1 correspond to the HON's applicability levels for large storage tanks. Also, since HAP emissions represent roughly 10 percent of VOC emissions, additional cost-effective VOC reductions would result from option 1. Finally, option 1 would provide a 20 percent reduction, rather than a 14 percent reduction, in emissions of the types of HAP emitted from petroleum refinery storage tanks.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed rule. The controls required by the proposed requirements are not expected to create any secondary emissions of carbon monoxide or nitrogen oxides.

b. *New sources.* The MACT floor for new sources is control of vessels equal to or greater than 151 m³ (950 barrels or 40,000 gallons) with vapor pressures equal to or greater than 3.4 kPa (0.5 psia), and vessels with capacities equal

to or greater than 76 m³ (475 barrels or 20,000 gallons) storing liquids with vapor pressures equal to or greater than 77 kPa (11.1 psia). Such vessels would be required to meet requirements essentially equivalent to 40 CFR part 60 subpart Kb (i.e., use of floating roofs with proper seals and controlled fittings, or a closed vent system with a 95 percent efficient control device). The applicability criteria are based on the most stringent regulations that apply to petroleum refinery storage vessels including Rule 463 of California's South Coast Air Quality Management District and the storage vessel NSPS (subpart Kb).

The MACT floor and an option more stringent than the floor requiring control of storage vessels with vapor pressures above 0.014 kPa (0.002 psia) (which is the same as option 3 for existing sources) was also considered. The proposed level of control for new sources is the MACT floor. Vessels with capacities greater than or equal to 151 m³ (950 barrels or 40,000 gallons) storing liquids with true vapor pressures greater than or equal to 3.4 kPa (0.5 psia), and vessels with capacities greater than or equal to 76 m³ (475 barrels or 20,000 gallons) storing liquids with vapor pressures equal to or greater than 77 kPa (11.1 psia) would be required to comply with the subpart Kb (including the controlled fitting requirements). The option more stringent than the floor was not selected because it would result in high costs relative to HAP emission reduction.

2. Selection of Format

The storage vessel provisions in the HON rule are very similar to the requirements of subpart Kb. The HON storage provisions are clearer and give more details in explaining the controlled fitting requirements than subpart Kb. The HON provisions have an allowance for existing source owners and operators to wait for the next scheduled maintenance for the upgrading of certain seals and installation of fittings on vessels already equipped with floating roofs; this provision is not in subpart Kb because it applies only to new storage vessels. In addition, the HON storage vessel provisions clarify the provisions that apply when an EFR is converted to an IFR as a means of compliance. Because of all these reasons, the EPA elected to refer directly to the requirements in the HON. The format of the HON includes equipment and work practice standards; if control devices are used, there is an emission standard (percent reduction) format. For storage vessels at existing sources the HON storage vessel

provisions are referred to without the controlled fitting requirements. For storage vessels at new sources all of the requirements in the HON storage vessel provisions are referred to.

The proposed regulation differs from the HON in that storage vessels that contain petroleum liquids with true vapor pressures of 5.0 psia or greater are required to comply with the proposed rule within 3 years. That is, refiners are not permitted to wait until the next scheduled maintenance to install the emission controls if such maintenance is beyond the compliance date. Calculations indicate that when the true vapor pressure of the material in the tanks exceeds 5.0 psia, the emission reductions that result from installing controls within 3 years more than offset the HAP emissions created from cleaning and degassing the storage vessels. The EPA requests comment on this conclusion with supporting data and calculations.

3. Selection of Compliance Determination Provisions

The proposed compliance determination provisions for storage vessels include inspections of floating roofs and design evaluations and monitoring of closed vent systems and control devices. The use of monitoring and inspections to determine continuous compliance constitute enhanced monitoring.

For storage vessels controlled with floating roofs, it is not feasible to capture and continuously monitor emissions. Therefore, periodic inspection of roof seals for IFR's and EFR's and seal gap measurements for EFR's are used to determine compliance with the storage vessel equipment and work practice standards. If defects are found during inspections they must be repaired within specified times. There are provisions for requests for extensions and delay of repair of certain conditions are met. These inspection and repair provisions are similar to the HON, and the proposed rule cross-references the HON where appropriate. Failure to perform inspections or to complete repairs as specified constitutes an enforceable violation of the standards.

For storage vessels controlled by closed vent systems and control devices, the EPA considered the use of CEMS to measure HAP's and control device operating parameter monitoring. Continuous emissions monitoring was determined to be infeasible for the same reasons described in the miscellaneous process vents section. Furthermore, emissions from storage vessels have low flow rates and also have highly variable

flows and concentrations with the majority of emissions occurring during filling. These characteristics would complicate emission monitoring. Control device operating parameter monitoring is proposed as a means of determining continuous compliance with the percent reduction specified for control devices. The petroleum refineries rule, which cross-references the HON, provides for sources to establish site-specific control device operating parameters and ranges appropriate to their storage vessel control system.

D. Selection of Wastewater Collection and Treatment Operation Provisions

1. Selection of Emission Control Requirements

This section summarizes the determination of the MACT floors for new and existing sources as they apply to wastewater, regulatory alternatives more stringent than the floors, and the rationale for the selected alternative for wastewater.

The alternative selected for proposal is the floor level of control (compliance with BWON). The BWON controls 75 percent of the benzene in refinery wastewater nationwide and 76 percent of the volatile organic HAP in refinery wastewater. (For more information, refer to the memorandum in the docket entitled "The Effectiveness of the Benzene Waste Operations NESHAP for Controlling Volatile HAP Loading in Petroleum Refinery Wastewater"). The EPA believes that benzene is an effective surrogate for indicating the presence of all HAP compounds in petroleum refinery wastewater because data show that the majority of the total HAP compound loading in wastewater consists of compounds that are very similar to benzene in terms of both chemical structure and volatility (from the water phase to the air phase). Volatile HAP compounds are present in a fairly constant ratio to benzene (approximately four-to-one on a mass basis) except in two circumstances, product blending and MEK dewaxing units. Because of the different nature of these processes, different ratios would be expected. In both of these process units HAP's are added. In the case of MEK dewaxing units the benzene concentration is relatively low, less than 1 ppmw on average; however, the baseline volatile HAP emissions from MEK dewaxing units are also relatively low, less than 1 percent of the HAP baseline emissions. For product blending, the benzene concentration is relatively high, greater than 10 ppmw on average; therefore, even though the

HAP-to-benzene ratio is not the same as with other process units, wastewater streams from product blending process units have a sufficient benzene concentration that control would be required at applicable facilities. Thus, the EPA maintains that benzene is a good surrogate for all HAP compounds. The EPA requests comment on this position and any supporting data.

Because the proposed standard for wastewater requires compliance with the existing BWON, no additional emission reduction, cost, energy, or other environmental or health impacts are associated with the proposed standard.

a. *Wastewater: Existing sources.* The best performing wastewater control systems are those that are in place to comply with the BWON. These systems control not only benzene, but are also expected to control the other organic HAP's in petroleum refinery wastewater. The BWON applies to wastewater streams that contain 10 ppmw benzene or greater, have a flow of 0.02 l/min or greater, and are located at facilities with a TAB loading of at least 10 Mg/yr in waste and wastewater. Based on data provided to the EPA through the BWON 90-day reports, the EPA determined that the BWON was applicable to 43 percent of the refineries. No refineries are known to have more stringent controls than the BWON. Therefore, the MACT floor, or the average of the top performing 12 percent of sources, is control to the BWON level of control.

The EPA considered an alternative level of emission reduction more stringent than the MACT floor that would be achieved by controlling all wastewater streams with at least 10 ppmw benzene at any refinery regardless of the size of its annual benzene loading. Table 3 presents the cost and emission reductions for the MACT floor and the alternative more stringent than the floor.

Alternative control option 1 was not selected because the additional emission reduction achieved through further control was not significant, given the associated costs (see table 3). Also, this option would primarily affect small refineries and it is expected that it could have significant impact on small businesses. There may be some additional nonair quality benefits, such as reduced generation of hazardous waste and reduced water contamination, and air quality benefits from reduction of non-HAP VOC; however, these benefits could not be quantified.

b. *Wastewater: New sources.* The analysis of the data base also showed that the maximum emission reduction

being achieved at any source is determined by the control requirements for the BWON. Thus, the floor for new sources is control to the BWON level of control. The floor alternative was selected as the proposed level of control for new sources. As with existing sources, the option more stringent than the floor was considered, and the impacts are shown in table 3. Option 1 was rejected for new sources for the same reasons described above for existing sources.

2. Selection of Format

Because the BWON is the basis of the selected level of control for both new and existing sources, the EPA elected to refer directly to those requirements. The provisions for controlling air emissions from wastewater streams are a combination of equipment, operational, work practice, and emission standards. The reasons for selection of these formats are described in the preamble to the proposed BWON standards (54 FR 38083, September 14, 1989).

3. Selection of Testing and Monitoring Provisions

Because the proposed refineries NESHAP refers directly to the BWON equipment, operational, work practice, and emission standards, it is also appropriate to refer to the testing and monitoring requirements of BWON for compliance determination. The monitoring procedures required by the BWON would be used to determine compliance with the standard. Failure to maintain the established values of monitored parameters, or failure to conduct the required measurements and inspections would be an enforceable violation of the standards.

E. Selection of Equipment Leak Provisions

1. Selection of Emission Control Requirements

This section of the preamble summarizes the MACT floors as they relate to equipment leaks within new and existing sources, regulatory alternatives more stringent than the floors, and the rationale for the selected alternative for equipment leaks. As mentioned in section VI.B.1 of this preamble, the EPA requests comment on consideration of pollution prevention, environmental equity, affordability, and technology innovation as additional criteria in the selection of MACT.

a. *Equipment leaks: Existing sources.* The EPA's analysis indicated that the average control level of the best-controlled 12 percent of sources, the MACT floor level of control, is between

the level of control required by the petroleum refinery CTG and the petroleum refinery NSPS. For costing purposes, the petroleum refinery NSPS level of control was used for the MACT floor option. This was done because it would have been difficult to determine the requirements for an option in between the two levels of control. Also by using the NSPS the results were a conservative estimate of the cost of the MACT floor; and the option was not less stringent than the floor.

Two options above the floor were also considered based on the negotiated rule for equipment leaks (40 CFR part 63, subpart H). As discussed in the preamble presenting the rationale for the negotiated rule (57 FR 62659 and 57 FR 62660), the framework developed in the regulatory negotiation was the presumptive basis for the refinery standard. The EPA also agreed in the negotiation to consider whether the numerical standards and leak definitions established for SOCOMI sources were achievable by refineries. While both options 1 and 2 are based on the negotiated rule, option 1 does not include the connector provisions. Table 3 presents the estimated cost and emission reduction for the floor and the two additional options.

The proposed standard is the negotiated rule without the connector provisions and with a few exceptions. (The exceptions to the negotiated rule are discussed in the remainder of this subsection.) This option, which is similar to option 1, was selected because it is consistent with the negotiated rule, and it achieves significant emission reduction at a reasonable cost relative to the MACT floor. As discussed later in this section, more frequent valve monitoring is allowed in place of connector monitoring because, as shown in the table for option 2, the cost of connector monitoring is high relative to the emission reduction achieved, and additional valve control is a more cost effective way to reduce emissions.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed requirements.

In light of the agreements made during the negotiation, the EPA considered whether leaks should be defined differently in the proposed refinery standard than in subpart H, what performance level should be established in phase III of the pump and valve standards, and which provisions in the negotiated rule were relevant and applicable to refinery operations.

Available monitoring data from a few refineries and differences between typical refinery operations and SOCOMI operations (e.g., turnaround schedules, line sizes, percent HAP in process fluids, line pressures) were considered. The differences were found to affect the availability of some low emission technologies and the achievable performance levels. The EPA concluded that a few changes to the provisions of the negotiated rule (40 CFR part 63 subpart H) were necessary to ensure that the proposed standard for refineries is achievable. The changes to the provisions and the reasons for the changes are discussed below.

One change that was considered was a change to the definition of "in organic hazardous air pollutant service." Using the definition from the negotiated rule, equipment that contains or comes in contact with fluid that is less than 5 percent by weight total organic HAP's would not be subject to the equipment leak provisions.

Pump standard. The negotiated rule for equipment leaks implements the leak detection and repair program for pumps in three phases, with lower leak definitions in the later phases. The EPA considered the available information on emission performance of mechanical seals and concluded that the negotiated standard for pumps was achievable. The proposed standard for refineries, however, has been simplified to specify only one leak definition in phase III. The negotiated provisions for pumps in polymerizing monomer service and food/medical service are not relevant to this category, and therefore have not been included in the refinery standard. In addition, to simplify the rule, a leak has been defined as a concentration of 2,000 ppm or greater. This change makes the level at which repair is required the same as the leak definition. Additionally, low emission single seal technology has progressed to the point where these seals can achieve a 2,000 ppm leak definition for certain process services. It is expected that this will result in lower costs to comply than if dual seals were necessary.

Additionally, in examining the appropriateness of the pump standard to refinery operations, the EPA considered whether to extend some of the concepts of the negotiated valve standard to the pump standard for refineries. Specifically, the EPA considered whether to allow reduced monitoring frequency for better performance and to allow increased monitoring frequency as an alternative to the QIP for poor performance. The negotiated valve standard included incentive provisions to encourage better performance and

two forms of penalty options to consider differences among facilities' ability to undertake a QIP. After considering the predicted differences in effectiveness of different monitoring intervals for pumps, the EPA concluded that an incentive for better performance could be included in the pump standard and still assure better emission performance. The pump standard for refineries thus would allow facilities that achieve less than 3 percent of pumps leaking, or one pump leaking, to monitor pumps quarterly; and facilities that have greater than 3 percent (or 1 pump) but fewer than 10 percent, or 3 pumps, leaking would be required to conduct monthly monitoring of pumps. The EPA considered whether an alternative to the QIP could be provided for those facilities that have greater than 10 percent, or 3 pumps, leaking. It was determined that in such situations, the only alternative is an engineering analysis to determine the cause of the high leak frequency. Therefore, facilities with 10 percent, or 3 pumps, leaking or greater will still be required to implement a QIP for pumps.

The EPA also considered whether LDAR should be required for reciprocating pumps in heavy liquid service. In most cases when drips are observed, monitored concentration is below the leak definition, and elimination of such drips would be infeasible due to spare or design limitations. The replacement of such pumps would be very expensive, and would result in little emission reduction. Therefore, the EPA concluded that requirements to monitor and repair such pumps would be unproductive.

The proposed rule would require monitoring and repair for reciprocating pumps in light liquid service. The EPA requests comment on the feasibility and cost of controlling leaks from reciprocating pumps in light liquid service. Commenters are requested to include technical information to support their comments.

Similarly, comment is requested on the feasibility and cost of control measures for reciprocating compressors. As with pumps, there may be space and design constraints that may preclude adding seals and repair or replacement could be costly.

Valve standard. The EPA considered whether the negotiated standard was appropriate for valves, and proposes to adjust the leak definition for phases II and III. The proposed leak definition of 1,000 ppm for phases II and III was selected based on consideration of monitoring data from a few facilities, existing state programs, and the

expected emission reduction and cost associated with different leak definitions. The EPA considered but rejected using 10,000 ppm as the concentration that defines a leak because several state programs recently established leak definitions of 500 to 1,000 ppm. However, there is only one State program that has a leak definition/performance standard framework consistent with subpart H and leak definition lower than 10,000 ppm. This program has been in effect for a number of years and controls refineries with a leak definition of 1,000 ppm. This program has shown that a valve performance standard for refineries can be reliably implemented and is achievable with a leak definition of 1,000 ppm. This program and the fact that significant additional emission reduction can be achieved cost-effectively, led the EPA to conclude that a 1,000 ppm leak definition was practical and achievable. A leak definition lower than 1,000 ppm was not selected because the additional emission reduction achievable was small (<1 percent) and the lack of data from refineries with performance standards utilizing a leak definition of less than 1,000 ppm.

Owing to the limited data available in this rulemaking, the EPA selected the performance levels considering the differences in total HAP content of process fluids in SOCOMI processes and refinery processes and the performance levels selected in the equipment leak negotiation. It was determined that with an equipment leak definition of 1,000 ppm, a performance standard based on 5 percent allowable leaking valves for petroleum refineries is equivalent to the subpart H performance standard for the SOCOMI. This determination was based on the calculation procedures in "Protocol for Equipment Leak Emission Estimates," (EPA-453/R-93-026) and average HAP/VOC ratios for process fluids.

The EPA also evaluated what monitoring frequencies should be established for given performance levels (i.e., percent leaking valves). Using the average HAP to VOC ratio estimated for HON, the EPA concluded that equivalent performance requirements would be established if the refinery standard required quarterly monitoring for facilities achieving less than 5 percent leaking valves. Similarly, semiannual monitoring would be allowed for facilities achieving less than 4 percent leaking valves; and annual monitoring for facilities achieving less than 3 percent leaking valves.

In addition to the basic valve program described above, EPA developed an

optional, more stringent performance standard, that can be used by facility owners or operators electing not to implement a connector program. EPA has concluded a connector LDAR program is a costlier way to achieve emission reductions, as compared with a more stringent valve standard. The EPA, thus concluded that a more cost effective approach would be to allow facilities the option to elect lower performance levels for valves in lieu of implementing a connector LDAR program.

Based on the Protocol document, an equivalent emissions reduction can be achieved by a one percent differential of the allowable leakers at the 1,000 ppm leak definition. Therefore, a facility electing not to implement the connectors LDAR program can elect to comply with a valve performance standard of 4 percent leaking valves with quarterly LDAR, 3 percent leaking valves with semi-annual LDAR and 2 percent leaking valves with annual LDAR program.

The nonrepairable valve allowance was also adjusted to consider differences between refinery operations and SOCOMI operations. The proposed standard would allow exclusion of 1 percent per year up to a maximum of 3 percent of the valves in HAP service from the calculation of percent leaking valves. The nonrepairables provision is structured in this manner to take into consideration the typically longer turnaround schedules in refineries than in SOCOMI process units, while recognizing that some refinery units may operate on shorter schedules.

Connectors in gas/vapor and light liquid service. The EPA considered whether application of the negotiated standard for connectors to refinery operators was appropriate. In this evaluation, the EPA considered differences between designs, capacities, and operations of refinery and SOCOMI units and how these might alter the cost of a LDAR program for connectors. Because the existing connector emission factor predicts very low emission rates from connectors, it appears that a connector LDAR program is relatively costly to achieve additional emission reductions. Table 3 provides a comparison of the costs and emission reductions for control alternatives that include and control alternatives that exclude the negotiated rule's connector standard. The EPA, thus, concluded that a more cost effective approach would be to allow sources the option to elect less frequent monitoring for valves if a connector LDAR program is implemented.

The proposed equipment leak provisions give three options for a connector LDAR program which, if any of these are implemented, would allow for less frequent monitoring of valves. The three options are: (1) A random 200 connector survey; (2) a connector inspection program, and (3) the negotiated rule's connector program. In the random 200 connector survey, the monitoring frequency depends on the percent leaking connectors identified in 200 randomly chosen connectors. At higher leak frequencies, the owner or operator has to survey connectors more frequently and repair any leaking connectors detected. In the connector inspection program, all connectors of 2 in. or greater nominal diameter in gas/vapor service are to be monitored using Method 21 of 40 CFR part 60, appendix A, and all connectors of 2 in. or greater nominal diameter in light liquid service are to be inspected for indications of liquids dripping. This alternative was developed because the majority of connectors in refinery process units that will be subject to the equipment leak provisions of the standard are in light liquid service and a visual inspection program should be less costly to implement than Method 21 monitoring of these connectors. The monitoring frequency of this program also varies with the percentage of leaking connectors. The negotiated rule's program is included as a third option, because some refinery units may be required under their state program to implement these provisions.

A nonrepairable connector allowance is included because increased monitoring frequency, if triggered by nonrepairable components, would be of little benefit. The proposed alternative standard for connectors allows for excluding 1 percent of the connectors per year up to a maximum of 3 percent of the connectors from the calculation of the percentage of leaking connectors. The nonrepairable allowance was selected considering the need to provide an incentive to limit the number of nonrepairable connectors while also trying to avoid imposition of unproductive costs.

b. Equipment leaks: New sources. The floor for new sources is between the NSPS and the rule proposed for existing sources. Available data shows that many refineries are complying with the NSPS and several are also complying with State rules that have lower leak definitions (i.e., 1,000 ppm for valves). The EPA therefore did not consider the NSPS as an option for new sources because it would be below the floor. For costing purposes, the same requirements as option 1 for existing sources were

considered the floor for new sources. The EPA considered option 2 for existing sources as another option for new sources (option 1 for new sources). (See table 3 and the text in section VI.E.1.a of this preamble.) The proposed standard for new sources, which is similar to the option costed as the new source floor, is the negotiated rule (40 CFR part 63 subpart H) without the connector provisions and with a few other differences. This is the same as the standard proposed for existing sources. This option was selected because it is at least as stringent as the floor and achieves significant emission reduction at a more reasonable cost than option 1 for new sources. No nonair quality health impacts, energy, or other environmental impacts were expected from either of the alternatives, so these considerations did not affect the choice of the proposed requirements. The rationale for not requiring connector LDAR and the rationale for the differences between the proposed rule and subpart H are discussed in section VI.E.1.a.

One difference between the proposed rule for new and existing sources is that pumps and valves at new sources must be in compliance with phase II at start-up, rather than phase I. This is consistent with the negotiated rule. It is reasonable to expect new sources to be designed to achieve the phase II level of control because they do not experience retrofit constraints that affect existing sources.

c. Equipment leaks: Small refineries. The EPA is considering whether it is appropriate to establish a different standard for small refineries. As proposed, the equipment leaks provisions would be the same for small and large refineries, except that all equipment at small refineries would be allowed 18 months to begin compliance (instead of requiring one-third of the equipment to comply in 6 months, one-third in 12 months, and the remainder in 18 months). Compliance in 6 or 12 months could be infeasible for many small refineries. Many are located in attainment areas and have never been required to implement LDAR programs and their owners or operators do not have expertise in setting up and operating such programs. It will require more time for these refineries to develop and implement LDAR programs and the associated recordkeeping and reporting systems.

The EPA is also considering a less stringent standard and a longer compliance time for small refineries. In particular, small refinery existing sources could be required to comply with the provisions of the equipment

leaks NSPS 40 CFR part 60 subpart GGG instead of the proposed option. As discussed in section VI.E.1.a, the MACT floor for equipment leaks at existing sources is between the CTG and the NSPS, so the NSPS is at least as stringent as the MACT floor. The NSPS has a leak detection level of 10,000 ppm and does not have the phased-in lower leak definitions and performance levels or the QIP provisions of the proposed rule. Thus, the NSPS would be simpler and less costly for small refiners to implement. There is also concern that because of start-up costs for the LDAR program and the relationship of costs to refinery complexity, the cost per Mg of emission reduction for options above the floor could be somewhat higher for small refiners. The EPA solicits comments on whether the standard for small refineries should be based on the NSPS instead of the negotiated rule. In particular, documentation of the control level of small refineries, and the costs of complying with the NSPS versus the proposed rule would be helpful. Commenters should provide the technical bases for their cost estimates and other comments.

The EPA is also considering allowing small refineries 3 years to achieve compliance with the NSPS level of control. As previously stated, small refineries may need additional time to design and implement LDAR programs. Section 112 of the Act allows the EPA to establish compliance times up to a maximum of 3 years for existing sources. New sources would be required to comply upon start-up or promulgation of the rule, whichever is later, as required by the Act. The EPA requests comments and supporting rationale on what compliance times are reasonable for small refineries.

2. Selection of Format

Because it is not practical to measure emissions from equipment leaks, an equipment and work practice format was chosen for the standards. Format selection is discussed in the preamble to the proposed HON (57 FR 62608). Because the HON negotiated rule for equipment leaks is the basis of the standard chosen to regulate petroleum refinery equipment leaks for both new and existing sources, the EPA elected to refer directly to the requirements in the negotiated rule. The differences for pumps, valves, and connectors are specified in the proposed subpart CC.

3. Selection of Monitoring and Compliance

Determination Provisions. Because the equipment leak provisions of the proposed rule are work practice and

equipment standards; monitoring, repairing leaks, and maintaining the required records constitutes compliance with the rule. The HON equipment leak provisions are appropriate to determine continuous compliance with the petroleum refinery equipment leak standards. In summary, these provisions require periodic monitoring with a portable hydrocarbon detector to determine if equipment is leaking. If leaks are detected, repair is required within specified time periods. There are provisions for delay of repair in certain circumstances. Failure to perform the required monitoring or to repair leaking equipment within the specified time period or document a delay of repair would constitute an enforceable violation of the standards.

F. Use of Continuous Monitoring to Determine Compliance

The EPA has considered how sources subject to this NESHAP should demonstrate continuous compliance with the standards. The EPA has concluded that where CEMS were not feasible operating parameter monitoring can be used for this purpose. As explained under miscellaneous process vents in section VI.B of this notice, use of CEMS is not feasible for measuring emissions from petroleum refineries; however, continuous operating parameter monitoring is required for some emission points. An excursion of a parameter outside the established range would constitute a violation of the emission standards. Owners or operators are required to establish site-specific ranges for operating parameters based on performance test data and/or other information. This allows owners or operators to demonstrate the parameter ranges that correspond to meeting the emission limits for their particular emission points and control devices. If a parameter is outside the range it would be considered a violation of the emission limits unless the excursion is caused by a start-up, shutdown, or malfunction that meets the criteria for a malfunction specified in the NESHAP general provisions (40 CFR part 63 subpart A).

A daily averaging period for monitored parameters was selected for determining whether an excursion has occurred. This averaging period allows for short-term (e.g., 15-minute or hourly) parameter fluctuations that are expected and unavoidable for the types of control devices required, and gives the owner or operator a reasonable period of time to take action if there is a problem. If a shorter averaging period (for example 3 hours) were selected, sources would be likely to have multiple excursions

caused by the same operational problem because it would not be possible to correct problems in one 3-hour reporting period.

The EPA requests comment on the proposed approach for determination of compliance based on continuous parameter monitoring, and on possible alternative approaches.

As explained in section VI.B, (Miscellaneous Process Vents section) not all vents are required to use continuous monitors. Most miscellaneous process vents would probably be ducted to the refinery fuel gas system for combustion in boilers, and such vents would not be regulated under the proposed rule and would not be required to perform any monitoring.

For some emission points, such as storage vessels equipped with floating roofs and equipment leaks, continuous monitoring is not feasible. In such cases, failure to comply with the required inspection and repair procedures would constitute a violation of the equipment and work practice standards.

G. Selection of Reporting and Recordkeeping Provisions

The proposed rule would require sources to submit up to four types of reports: Initial Notification, Notification of Compliance Status, Periodic Reports, and Other reports. The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all draft reports to be submitted to the "Administrator". The term Administrator means either the Administrator of the EPA, an EPA regional office, a State agency, or other authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the General Provisions (subpart A) of 40 CFR part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. A few records pertaining to equipment design would be kept for the life of the equipment.

1. Initial Notification

The proposed rule would require owners or operators who are subject to subpart CC to submit an Initial Notification. This report establishes early communication between the source and the regulatory agency, allowing both to plan for regulatory compliance. If the information contained in the Initial Notification has already been submitted to the operating permit authority, no Initial Notification

is required for this rule. For existing sources, the Initial Notification is due 120 days after the date of promulgation. For new sources, the Initial Notification is due as soon as practicable before construction or reconstruction is planned to commence but it need not be sooner than 90 days after promulgation of subpart CC.

The Initial Notification must include a list of the petroleum refining processes at the source that are subject to subpart CC, and which provisions may apply (e.g., the provisions for miscellaneous process vents, storage vessels, or equipment leaks). A detailed identification of emission points is not required, because these data would be included in the operating permit application.

2. Notification of Compliance Status

The Notification of Compliance Status would be submitted 150 days after the source's compliance date. For new sources, the compliance date is at start-up or the promulgation date of subpart CC, whichever is later. For existing sources, the proposed compliance date is 3 years after promulgation, except that equipment leaks compliance would be staggered, with one-third of the equipment complying 6 months after promulgation, another third in 12 months, and the remainder in 18 months. The timing of compliance-related reporting for equipment leaks is specified in 40 CFR part 63 subpart H, which was referenced by subpart CC. The Notification of Compliance Status contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. If this information has already been submitted as part of a Title V operating permit program it does not have to be repeated in a Notification of Compliance Status. If it is not already submitted, however, it must be submitted as specified in this rule.

Sources with a large number of emission points are likely to submit results of multiple performance tests for each kind of emission point. For each test method used for a particular kind of emission point (e.g., a process vent), one complete test report would be submitted. For additional tests performed for the same kind of emission point using the same method, the results would be submitted, but a complete test report is not required. Results would include values needed to determine compliance (e.g., inlet and outlet concentrations, flow rates, and percent emission reduction) as well as the values of monitored parameters averaged over the period of the test.

Submitting one test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures and has done calculations correctly. Complete test reports for other emission points may be kept at the plant rather than submitted. This reporting system was established to ensure that reviewing authorities have sufficient information to evaluate the monitoring and testing used to demonstrate compliance with the petroleum refineries NESHAP, while minimizing the reporting burden.

Another type of information to be included in the Notification of Compliance Status is the specific range for each monitored parameter for each emission point, and the rationale for why this range indicates compliance with the emission standards. (If this range has already been established in the operating permit, it does not need to be repeated in the Notification of Compliance Status.)

Although in some previous NSPS and NESHAP, the EPA has specified a predetermined range of operating parameter values, such values could be considered inadequate given the increased importance of parameter monitoring in determining and certifying compliance due to the new requirements in section 114 of the Act. For the proposed petroleum refinery NESHAP, the EPA is requiring sources to establish site-specific ranges. Allowing site-specific ranges for monitored parameters accommodates site-specific variation in emission point characteristics and control device designs. Based on the information available at proposal, it appeared to be difficult to establish ranges or minimum or maximum values that would be applicable in all cases.

The proposed system for establishing operating parameter ranges attempts to balance the need for technical certainty and operational feasibility. The ranges may be established by performance testing supplemented by engineering assessments and manufacturer's recommendations. However, the performance test is not required to be conducted over the entire range of permitted parameter values because such a requirement could impose significant technical difficulties and costs on the source. The EPA believes that a performance test conducted for a smaller, yet representative, range of operating conditions can still provide a range for the operating parameters that ensures compliance with the emission limit. For emission points and control devices where a performance test is not required (for example, a closed vent system and control device on a storage

vessel), the range may be established by engineering assessment.

As an example, for a miscellaneous process vent controlled by an incinerator, the notification of compliance status would include the site-specific minimum firebox temperature that will ensure that the emission limit is met and the data and rationale to support this minimum temperature.

3. Periodic Reports and Records of Monitoring Data

Periodic Reports are required to ensure that the standards continue to be met and that control devices are operated and maintained properly. Generally, Periodic Reports would be submitted semiannually. If monitoring results show that the parameter values for a particular emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitor is out of service for more than 5 percent of the time, the implementing agency may request that the owner or operator submit quarterly reports for that emission point. After 1 year, the source can return to semiannual reporting, unless the regulatory authority requests continuation of quarterly reports.

The EPA has established this reporting system in order to provide an incentive (less frequent reporting) for good performance. Because of uncertainty about the periods of time over which sources are likely to experience excursions outside the parameter ranges or monitoring system failures, the EPA is seeking comment on the 1 and 5 percent criteria triggering more frequent reporting. In particular, data are requested on both the frequency of excursions and monitoring system downtime.

Periodic Reports specify periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status or operating permit. If the values of the monitored parameters are within the established range, records are kept, but the values are not reported. This will reduce the volume of information in reports and will reduce the reporting burden while still allowing determination of continuous compliance.

For continuous parameter monitoring, records must be kept of the parameter recorded once every 15 minutes. If a parameter is monitored more frequently than once every 15 minutes, 15-minute or more frequent averages may be recorded instead of the individual values. For days when the monitored values are not outside their ranges, the

owner or operator may convert the 15-minute values to hourly averages and then discard the 15-minute values.

These provisions ensure that there will be enough monitoring values recorded and retained to be representative of the monitoring period, while reducing by a factor of four the burden that would be associated with digital conversion of data, transferring data to tape or hard copy, copying, and storing the data if all the 15-minute values had to be retained.

The proposed rule would allow sources to request approval to use alternative monitoring and recordkeeping systems. This will reduce the burden by allowing greater use of existing systems. Alternative monitoring systems specifically discussed in the rule include nonautomated systems and data compression systems. These systems will be allowed on a site-specific basis, dependent upon approval of the implementing agency. The proposed rule includes specific minimum requirements for applications to use nonautomated systems. For example, parameters must be manually read and recorded at least once per hour and the source must demonstrate that the frequency is sufficient to represent control device operating conditions. Data compression systems do not record monitored operating parameter values at a set frequency, but record all values that meet set criteria for variation from previously recorded values. The proposed rule would require sources applying to use such systems to show that they are designed to: Measure and record at least four representative values per hour, recognize and alert the operator to unchanging data, and calculate daily averages. Additional details and rationale for these provisions are contained in the preamble to the promulgated HON (59 FR 19402, April 22, 1994).

For some types of emission points and controls, periodic (e.g., monthly, quarterly, or annual) inspections or measurements are required instead of continuous monitoring. Records that such inspections or measurements were done must be kept; but results are included in Periodic Reports only if a problem is found. This requirement is designed to minimize the recordkeeping and reporting burden of the proposed rule.

4. Other Reports

There are a very limited number of other reports. Where possible, subpart CC is structured to allow information to be reported in the Periodic Reports. However, in a few cases, it is necessary for the source to provide information to the regulatory authority shortly before

or after a specific event. For example, for storage vessels, notification prior to internal tank inspections is required to allow the regulatory authority to have an observer present. Requests for approval to monitor control device operating parameters other than those listed in the rule and requests for approval to use alternatives to continuous monitoring must be submitted 18 months prior to the compliance date for existing sources. This will allow the regulatory authority and the source to reach agreement on monitoring requirements prior to the compliance date. Certain notifications and reports required by the part 63 General Provisions must also be submitted.

H. Rationale for Emissions Averaging Provisions

The EPA is proposing that emissions averaging be allowed for miscellaneous process vents, storage tanks, and wastewater streams within petroleum refineries. The EPA requests comments on whether emissions averaging should be included in the final rule, and on specific features of the proposed emissions averaging provisions. Commenters should provide the reasons for their recommendations and supporting information.

The EPA proposed a NESHAP for Marine Tank Vessel Loading and Unloading Operations in the *Federal Register* Vol. 59, No. 92 on Friday, May 13, 1994. Marine Tank Vessel Loading and Unloading Operations is a source category included on the list of source categories for regulation under Section 112. The NESHAP addresses HAP from these operations; loading and unloading operations can occur at refineries as well as other types of plants.

Today's proposed rule addresses only the 4 emission points in refinery operations discussed earlier in this notice. Although no regulatory text is included in today's proposal, the EPA requests comments on the concept of expanding the petroleum refinery source category covered by today's rule to include marine vessel loading and unloading operations subject to the requirements of section 112 that occur at refineries. The marine vessel requirements proposed for purposes of compliance with section 183(f), however, would remain unchanged. If the above change is made to the petroleum refinery source category, the source category currently listed in accordance with section 112(c) as Marine Tank Vessel Loading and Unloading Operations would be split into two parts—those which are collocated at refineries and those which

are not. The ones collocated at refineries would be combined with and become part of the refinery source category addressed by today's proposed rule. The source category list would be amended accordingly. The purpose would be to allow emissions averaging between the HAP emissions from marine vessel loading and unloading and the HAP emissions from the refinery emission points identified in today's rule as suitable for emissions averaging. It appears that in some cases, there may be opportunities to control some of these emission points (e.g. storage tanks) more cost-effectively than marine vessel loading and unloading operations. In other cases, it may be more cost-effective to control marine vessel operation emissions than the refinery emission points. Integrating marine loading and unloading operations into the refinery category and utilizing emissions averaging may provide an opportunity for more emissions reductions at a lower cost than would occur if the categories remain separate. In addition, because of the 10 percent discount factor, additional emissions reductions will be achieved if emissions averaging is used. The EPA requests comments on whether there would be additional regulatory and enforcement complexities if this approach were adopted.

If the suggested approach were adopted, the limitations of the proposed emissions averaging provisions included in today's proposal would also apply to the loading and unloading operations. With regard to calculating the emissions for purposes of averaging, the May 13 proposal included procedures for determining HAP emissions from marine vessel loading operations for purposes of determining applicability of the rule; the EPA solicited comment on these procedures. These emission estimating procedures will also be considered for the purpose of emission averaging. The promulgation date, and thus the compliance date, for the marine vessel loading and unloading standard is currently expected to be earlier than the petroleum refinery standard. The EPA requests comments on whether and how these compliance dates should be made consistent, and what legal factors should be considered.

The EPA's database which serves as the basis for the May 13 proposed rule for marine vessels does not identify which loading and unloading operations occur at refineries as opposed to other types of plants. However, the EPA has no data to indicate that marine vessel loading operations at refineries are dissimilar to marine vessel loading

operations located at other facilities or that their control levels differ. Therefore, the EPA anticipates that the floors for neither the petroleum refinery nor the marine vessel rules would be affected by redefining the source categories as described. If any data were received which could lead to changes in the floor calculations, the public would be given an opportunity to review the data as well as an opportunity to comment on any proposed changes to the floors.

If the EPA expands the refinery source category to include marine vessel loading and unloading operations, loading operations at refineries would have an opportunity to average emissions and reduce costs. In addition, they would be required to achieve additional emission reductions in accordance with the 10 percent discount requirement contained in the emissions averaging provisions. Loading operations that stand alone would not have this same opportunity to reduce costs. Public comment is solicited on the magnitude of these impacts and the appropriateness of this distinction.

Some marine terminals handle products with low concentrations of HAP's but high concentrations of non-HAP VOC. In such circumstances, it may be cost-effective to forego control of HAP's from marine terminals by overcontrolling HAP's from another emission point. If, however, the emission point being controlled does not offset the non-HAP VOC foregone by not controlling the marine terminals, a net increase in non-HAP VOC could result. The EPA solicits comments on what considerations should be given to this type of situation in deciding to combine marine terminals and refineries for the purpose of emission averaging.

The EPA requests comment on the extent to which emissions averaging between marine vessel loading and unloading operations and other refinery operations could result in exposure spikes. This could occur if batch emission streams were left uncontrolled in exchange for control of continuous emission streams, or vice versa.

Several regulatory alternatives were considered for each emission point covered by today's rule. In some cases, more stringent alternatives than those selected as the basis of the proposal were rejected based on cost considerations. If the EPA were to decide to allow emissions averaging between marine vessel loading and unloading operations and those emission points allowed to average by today's proposal, sources would likely have an opportunity to reduce compliance costs. It is possible that

reduction in compliance costs could make other control options more affordable. Public comment is solicited on whether the 10 percent discount factor included in the emissions averaging provisions adequately addresses this issue or how the potential cost savings resulting from the redefinition of the source category should be considered when the EPA reevaluates the regulatory alternatives as part of the final rule.

The EPA also requests that commenters submit data on possible emission factors and/or alternative emission calculation procedures for marine vessel operations for consideration in the final rule.

The EPA will consider all comments and data received on this issue in publishing a final rule. If the EPA decides to promulgate a final rule allowing emissions averaging between marine vessel loading and unloading operations and other emission points at refineries, the Administrator may decide to publish a supplemental proposal or notice of data availability to provide the public an opportunity to comment, particularly on the specific averaging provisions of the rule.

1. Reasons for Proposing Averaging for the Four Emission Points

Emissions averaging is proposed as a means of providing sources flexibility to comply in the least costly manner while still maintaining a regulation that is workable and enforceable. Recently, the EPA and Amoco Corporation conducted a joint study of environmental releases at the Amoco facility in Yorktown, Virginia. A focus of the study was to identify cost-effective pollution prevention and control opportunities. Specific emission estimates and control strategies for the Yorktown facility may not apply to other refineries due to site-specific differences. However, the study did highlight the importance of compliance flexibility and the potential of pollution prevention strategies to achieve cost-effective emission reductions. Emissions averaging is one way to allow compliance flexibility within the statutory limitations of section 112 of the Act.

The EPA has included emissions averaging provisions in this rule as one way of providing operational flexibility, however, implementing agencies can seek approval of the State rules or authorities which differ in form from the federal rule developed under section 112 of the CAA. An implementing agency could submit a formal request under 40 CFR part 63, subpart E demonstrating that the State rule, among other criteria, is at least as stringent for

each affected source as the federal rule. Therefore, implementing agencies have the option of developing their own rule that provides operational flexibility through the State program approval and delegation process.

For some facilities, including small refineries, use of emissions averaging could prevent serious economic impacts or potential closures. For example, economic impacts could be caused by removing fixed roof storage vessels from service to retrofit controls when the number of products is increasing due to the upcoming reformulated gasoline rules, and all the vessels may need to be in service to maintain production levels. Facilities in Northern climates have a limited season during which retrofits could be done, which corresponds to the gasoline production season. Averaging would provide some flexibility to not retrofit all storage vessels if other emission points could be more easily over-controlled. Similarly, due to site-specific equipment configurations and emission characteristics, it may be infeasible to route a particular miscellaneous process vent to the existing fuel gas or flare system. Control of such a vent could be costly. Another case where averaging would be useful is where facilities already control storage vessels or process vents, but the controls do not fully meet the specifications of the regulation. It could be costly to retrofit such emission points, and might only result in a few percent emission reduction. Emissions averaging might allow facilities to retain the current control levels for such points and balance this by over-control of emission points that can be controlled more cost effectively.

The EPA requests comment on the usefulness of emissions averaging provisions for the petroleum refinery industry.

The EPA is also interested in making sure that any flexibility provisions be appropriately tailored to each particular source category so that environmental protection is continually assured, and real flexibility provided. For that reason, the EPA is requesting comment on the specific provisions of the emissions averaging approach discussed below (recordkeeping and reporting, monitoring, compliance periods, debits, credits, credit discount factors, limits on averaging, interpollutant trading and averaging, and scope).

This request for comment includes the threshold criteria (hazard or risk equivalency, discount factor) established in the HON for the use of averaging, and its appropriateness for this source category. For example,

during discussions on the HON rule, concerns were raised about interpollutant trades resulting from the use of averaging provisions. As a result of these concerns, threshold criteria were added to ensure equal or greater environmental protection by requiring a demonstration of equivalent protection, and by requiring a 10 percent increase in reductions resulting from the use of averaging. Given that emission points in SOCOMI sources and refinery sources have similar emission characteristics (multiple pollutant streams) which make interpollutant trading virtually inescapable under any averaging system, the EPA is seeking comment on these threshold criteria for use with this MACT standard.

For the purposes of this MACT standard, the EPA would also like to solicit comment on cost as a threshold criteria for the use of an interpollutant averaging scheme. The Agency's assumption is that cost would likely be a prime motivator for the use of any averaging. It may be, however, that an explicit criteria for the demonstration of extreme costs (e.g., related to space constraints, safety concerns, near term plans for process changes, or additional control of well controlled points), as a pre-condition for the use of an interpollutant averaging scheme, would better protect against potential risk increases. This criteria would also likely result in less flexibility for the source.

An alternative method of providing for operational flexibility would be to establish a case-by-case waiver system. This approach would allow sources that meet specific threshold criteria to determine an alternative compliance option for certain emission points. A source would need to demonstrate, to the satisfaction of the implementing agency, that MACT cannot be met for certain emission points because of extreme costs related to space constraints, safety concerns, near term process changes, or additional control of well controlled emission points. The alternative compliance option would, at a minimum, have to ensure that the control level for the entire source is at least as stringent as the MACT level of control. Some of the provisions of the HON averaging system (e.g., hazard [risk] equivalency, discount factor) could also be incorporated into this approach. While this approach only allows flexibility for those facilities that make the required demonstration, it provides sources and implementing agencies more flexibility to design a more tailored control scenario.

The EPA requests comment on the concept of a case-by-case waiver system, the specific threshold criteria and the

appropriateness of adopting HON-based provisions.

2. Overview of Averaging

In the emissions averaging scheme proposed for petroleum refineries, a system of emissions "credits" and "debits" is used to determine whether the required emission reductions are achieved. Basically, the petroleum refineries provisions for each kind of emission point require Group 1 points (those meeting certain applicability criteria) to achieve a particular emissions reduction or apply a certain control technology. These technologies are called the "reference control technologies," or RCT's, and the EPA has established a control efficiency (percent emission reduction) for the RCT for each kind of emission point. If an owner or operator does not achieve the control efficiency of the RCT for a Group 1 emission point, an emission debit is generated.

An owner or operator who generates an emission debit must control other emission points to a level more stringent than is required for that kind of point to generate emission credits. Credits may come from: (1) control of Group 1 emission points using technologies that the EPA has rated as being more effective than the appropriate RCT, (2) control of Group 2 emission points, and (3) pollution prevention projects that result in greater emission reduction than the standard requires for the relevant point or points.

Emission credits would need to exceed debits on an annual basis for a source to be in compliance. Monitoring and quarterly credit/debit ratio checks would also be used to determine compliance, as described in section H.3 below. Furthermore, prior to using emissions averaging, a source would need to demonstrate to the satisfaction of the implementing agency that the planned emissions average would not result in increased risk or hazard relative to compliance without averaging.

3. Selection of Averaging Provisions

This section describes the rationale for specific aspects of the proposed emissions averaging provisions and the alternative policies that were considered in developing these provisions.

a. *The scope of emissions averaging.* The EPA proposes to allow emissions averaging across miscellaneous process vents, storage vessels, and wastewater streams within a single existing source, as defined for the petroleum refining source category. This proposed scope allows as much flexibility as possible while adhering to statutory

requirements and maintaining an enforceable standard.

The EPA decided against allowing equipment leaks to be included in emissions averaging. While there are methods available for quantifying emissions from equipment leaks, equipment leaks cannot be included in emissions averages at this time because the proposed standard for equipment leaks has no fixed performance level. Although it would be possible to establish site-specific emission levels, the cost would be high, and it would also be costly to maintain the documentation necessary to demonstrate compliance.

Based on the complexity and cost of developing a scheme to include equipment leaks in emissions averaging and the likelihood of a high compliance determination burden for both the industry and enforcement agencies, the EPA decided the public cost of including equipment leaks in emissions averaging is not warranted at this time.

The EPA proposes not to allow emissions averaging at new sources. New sources have historically been held to a stricter standard than existing sources because it is most cost-effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason for allowing averaging is to permit existing sources flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most economically and technically reasonable fashion. This concern does not apply to new sources which can be designed and constructed with compliance in mind. Also, because new sources will have to comply with applicable NSPS (e.g., 40 CFR part 60 subpart Kb), there would be little opportunity for emissions averaging at new sources.

Averaging would be permitted only among emission points within the petroleum refineries source category. Other emission points (e.g., SOCOMI emission points) located within the contiguous facility could not be averaged with petroleum refinery emission points. The fundamental problem with allowing averaging among different source categories is that it allows averaging among multiple sources. The proposed petroleum refineries NESHAP defines the source as the collection of emission points within petroleum refinery processes within a major source. Many major sources containing such points will also contain other points that are not covered by this standard but are covered by different MACT standards (e.g., the HON). Each

of these standards may have a separate floor, and the statute requires that each standard be no less stringent than its floor.

It would be inconsistent with section 112(d) to allow averaging to be used to permit a source subject to a MACT standard to avoid compliance with that standard. In addition, different sources would have different compliance deadlines. Section 112(i) requires compliance by a source within a set timeframe. Transferring emission reduction obligations to points outside of the source would be inconsistent with the requirement of section 112(d) that standards be set for sources in a listed category and the requirement of section 112(i) that compliance with such standard be achieved by sources in the category.

b. *Interpollutant trading and risk analysis.* The majority of HAP emissions at refineries are composed of a few chemicals, including benzene, toluene, xylenes, ethylbenzene, and hexane. There is a narrower range of variation in emission stream composition among petroleum refinery emission points than there is in some other source categories (e.g., SOCOMI emission points regulated by the HON). However, the different HAP's emitted have different toxicities, and there are some variations in the concentrations of individual HAP's and the emission release characteristics of different emission points. Therefore, there is a potential that some emissions averaging scenarios could increase the health risk to the public relative to the risk of compliance without emissions averaging. For this reason, the EPA proposes that sources who elect to use averaging must demonstrate, to the satisfaction of the implementing agency, that compliance through averaging would not result in greater risk or hazard than compliance without averaging. The EPA would provide guidance for making the demonstration based on existing procedures, but the actual methodology to be used by the source would be chosen by the implementing agency. The EPA believes that this approach provides assurance of health protection while allowing for site-specific evaluations. This approach also gives all implementing agencies the authority to consider risk in approving averages. A more complete discussion of the reasons for this decision and the alternatives considered is provided in the preamble to the promulgated HON (59 FR 19402, April 22, 1994). The EPA requests comment on whether the provisions regarding risk or hazard demonstration should be the same for petroleum refineries as for the HON.

The EPA also requests comment on whether sources should be required to use the hazard ranking system developed for the purposes of section 112(g) to demonstrate that compliance through averaging would not result in greater hazard. States would still have the option of also requiring a risk analysis.

c. *Limits on averaging.* The EPA proposes that emissions averages be limited to 20 points at a source, or 25 points if pollution prevention measures are used to control some points in the average. A limitation on the number of points is proposed because the complexity of averaging across a large number of points would raise significant enforcement concerns, as well as concerns about the resource burden on implementing agencies. The EPA anticipates that most sources will not find a large number of opportunities to generate cost-effective credits. Hence, it can be anticipated that most averages will involve a limited number of emission points, and imposing a limit should not affect most sources. The limit of 20 points in an average, 25 points if pollution prevention measures are used, was chosen because the EPA anticipates that most sources will rarely want to include more than 20 points in an average. In addition, allowing much more than 20 points would make enforcement increasingly untenable. Thus, the competing interests of flexibility for sources and enforceability were balanced in this decision. A higher number of points is allowed where pollution prevention is used in order to encourage pollution prevention strategies, and because the same pollution prevention measure may reduce emissions from multiple points.

The proposed rule would grant State and local agencies the discretion to preclude sources from using emissions averaging to comply with the petroleum refineries NESHAP, without using the section 112(l) rule delegation process. Without this provision, if a State or local agency wished to receive delegation of authority to implement and enforce the NESHAP without averaging, a review by the EPA would be required. Including this provision in the NESHAP will reduce paperwork burdens on States, expedite delegation of the rule to States, and remove a potential source of uncertainty for sources subject to the rule. Even though the EPA supports the use of emissions averaging where it may be appropriate, its use must be balanced by the individual needs of States and local agencies that bear the responsibility for administering and enforcing the rule. A detailed rationale for allowing agencies

discretion to implement the NESHAP without emissions averaging is contained in the preamble for the promulgated HON (59 FR 19402, April 22, 1994).

d. *Credits.* The equations and procedures for calculating source wide credits are contained in § 63.650 of the proposed rule. The proposed emissions averaging would allow credits only for control or pollution prevention actions taken after November 15, 1990, the date of the 1990 Amendments. The EPA proposes not to allow actions taken before passage of the 1990 Amendments to be used to generate emission credits because such reductions would have occurred anyway, for reasons unrelated to the 1990 Amendments or the proposed rule. If the EPA allowed these actions to generate emission credits, then the source would be able to generate more emission debits and, thus, more total emissions. Emissions averaging is a method for complying with subpart CC and should not result in more emissions than the other compliance options.

Credits could be generated if miscellaneous process vents, Group 1 storage vessels, or Group 1 wastewater streams are controlled using equipment that EPA agrees has a higher efficiency than the RCT for those points. Credits can also be generated if a pollution prevention measure is used on a Group 1 point or a miscellaneous process vent, alone or in combination with a control technology, and it results in lower emissions than would use of the RCT alone. In order to take credit for reductions beyond the RCT level, the source would need to demonstrate the efficiency or level of emission reduction achievable through use of the control technology or pollution prevention measure. The process for application and approval of a "nominal efficiency" higher than the RCT efficiency is contained in § 63.650 of the proposed rule.

The EPA proposes not to allow credits for use of an RCT above its designated reference efficiency rating. (The RCT's for process vents, storage vessels, and wastewater, and their efficiencies are listed in the definitions section of the proposed rule.) Reference control efficiency ratings for RCT were established because each RCT has a minimum level of emissions reduction that can generally be achieved. The EPA acknowledges that RCT's can sometimes achieve greater emission reductions. However, providing credits for these instances is inappropriate because the magnitude of debits, not just credits, is based on the RCT's reference efficiency ratings. If it could be determined that

the RCT on a debit generator could achieve greater reductions than its rated efficiency, the magnitude of debits from the point would be greater. Thus, to give credit for reductions above an RCT's rated efficiency and not to increase the magnitude of debits as well would represent a windfall from averaging, and result in greater emissions than under point-by-point compliance.

Credit could be generated by applying a control technique or pollution prevention measure to a Group 2 storage vessel or wastewater stream. There are no Group 2 miscellaneous process vents under the refineries NESHAP because all miscellaneous process vents subject to the rule are required to apply control (i.e., are Group 1). The procedures for determining the efficiency of controls or pollution prevention measures applied to Group 2 storage vessels and wastewater streams are contained in § 63.650 of the proposed rule.

e. *Credit discount factors.* A discount factor of 10 percent is proposed for calculating credits. A discount factor would reduce the value of credits in the emissions average by a certain percentage before the credits are compared to the debits. In considering a discount factor, the EPA examined the requirements for determining MACT in section 112(d) of the Act. Section 112(d)(2) specifies that MACT standards shall require the maximum degree of reduction in emissions of HAP's, taking into consideration, among other things, the cost of achieving those reductions. By defining the source broadly and including the option for emissions averaging in the proposed rule, it could be argued that the EPA is providing flexibility for source owners and operators that would lower the costs of compliance. The EPA is persuaded that, to carry out the mandate of § 112(d)(2) of the Act, some portion of these cost savings should be shared with the environment by requiring sources using averaging to achieve more emission reductions than they would otherwise. The 10 percent discount factor is consistent with the HON and other programs. While realizing environmental benefits, the 10 percent factor is not so high as to preclude or strongly discourage emissions averaging.

Credits generated through use of a pollution prevention measure would not be discounted, because the EPA recognizes that encouraging pollution prevention will result in more overall emission reductions, possibly including multimedia reductions and lower overall releases into the environment.

f. *Debits.* The equations and procedures for calculating source-wide

debits are contained in § 63.650 of the proposed rule. Debits would be generated when a miscellaneous process vent or a Group 1 storage vessel is not controlled to the level required by the miscellaneous process vent or storage vessel provisions of the NESHAP. Debits could not be generated for Group 1 wastewater streams.

g. *Compliance period.* The EPA proposes that the credits and debits generated in emissions averages balance on an annual basis, and that debits do not exceed credits by more than 30 percent in any one quarter of the year. These two requirements are used together to establish an emissions averaging system that provides flexibility for changes in production over time without allowing for wide-ranging fluctuations in HAP emissions over time. The annual compliance period was selected for proposal to accommodate seasonal changes in production and provide sources flexibility in selecting points for inclusion in emissions averages. Annual averaging accommodates seasonal changes in feedstocks, product mix, and operating conditions. Seasonal changes in product mix are common at refineries which, for example, may maximize gasoline production during some parts of the year and maximize fuel oil (heating oil) during other seasons. With an annual compliance period, sources can average emission points that may not have the same emission rates during some periods of the year, as long as they are similar on an annual basis. This latitude will also be useful to accommodate averages with points that must undergo temporary maintenance shutdowns at different times during the year.

In selecting a compliance period for averaging, the EPA also considered the need to verify compliance and, when appropriate, take enforcement action in a timely fashion. One concern about an annual compliance period is that the EPA's authority to take administrative enforcement actions would be reduced because section 113(d) of the Act limits assessment of administrative penalties to violations that occur no more than 12 months prior to the initiation of the administrative proceeding. Administrative proceedings are far less costly than judicial proceedings for both the EPA and the regulated community. The requirement that debits not exceed credits by more than 30 percent in any quarter enables the EPA to use this administrative enforcement authority by providing a shorter period in which to verify compliance.

The EPA is, however, also considering compliance periods that are shorter than

annual. The EPA has concerns about the ability to take enforcement actions for violations that cover an entire year and thus involve the analysis and presentation of an entire year's data, which may make litigation complex. Specific alternatives could include a quarterly or semiannual block averaging period, where credits would need to equal or exceed debits for each 3-month or each 6-month period. Alternatively, a quarterly or semiannual block averaging period with banking for an additional 3-month or 6-month period could be specified. If banking were allowed across blocks, the source could reserve or "bank" extra emission credits from one period to offset debits in the next averaging period. At the end of the next averaging period, any unused banked credits would expire. Banking could avoid some noncompliance scenarios and accommodate seasonal variations; however, it could make compliance determination more complex. The EPA requests comments on whether one of these alternatives should be selected instead of the proposed annual compliance period.

h. Banking. The EPA considered "banking" of credits, which would allow excess credits generated in one compliance period to be saved and used to offset debits in a subsequent compliance period. The EPA proposes not to allow banking if an annual compliance period is selected for emissions averaging. While banking could provide additional compliance flexibility for sources, it would greatly increase the administrative burden of emissions averaging and would also increase the likelihood of peak HAP exposures. In years when banked credits were used, sources could be emitting beyond the standard. Banking is more fully discussed in the preambles to the proposed and promulgated HON (57 FR 62608, December 31, 1992 and 59 FR 19402 April 22, 1994).

i. Monitoring. Emission points in emissions averages would be subject to the same performance testing and monitoring requirements as the proposed rule requires for other emission points that are not included in averages. If monitoring shows that the controls in place on any given emission point in the emission average are not being operated to achieve their specified emission reduction, this would be separately enforceable from the credit/debit balance.

If a continuously monitored emission point in an emissions average experiences a period of excess emissions, the proposed presumption is that the point should be assigned either no credits or maximum debits. It is

proposed that either no credits and maximum debits, as applicable, will be assigned for periods of excess emissions because any other assumption would result in emission reductions that could not be verified or adequately enforced. However, if the source has data indicating that some partial credits or debits may be warranted, it can submit that information to the implementing agency with the next Periodic Report. Thus, partial credits and debits can be assigned with the approval of the implementing agency.

j. Recordkeeping and reporting. Under emissions averaging, sources would submit a detailed description of the planned emissions average in an implementation plan. The plan can be submitted in the operating permit application, an amendment to the application, or as a separate submittal. The emissions averaging plan would be approved by the operating permit authority, except that sources applying for credits for controls with nominal efficiencies beyond the RCT level would need to obtain EPA approval for the nominal efficiency rating.

The Notification of Compliance Status would contain performance test results for emission points in averages and first quarter debit and credit calculations. Periodic reports for points in emission averages would be submitted quarterly, instead of semiannually. Quarterly reporting of credits and debits would allow timely enforcement of the quarterly emissions check provisions previously described. Periods when monitoring data for an emission point indicate excess emissions would also be identified in the quarterly reports.

Recordkeeping for emission points in emissions averages would be similar to that for other emission points. In addition, records of monthly credit and debit calculations would be maintained.

These recordkeeping and reporting provisions were selected for proposal because they are as consistent as possible with the provisions for emission points that are not in averages, while also providing the additional credit and debit information needed to determine whether the emissions average is achieving the required level of emissions reduction.

VII. Amendments to Previous Regulations

Amendments to two previous regulations are being proposed along with the proposal of the Petroleum Refinery NESHAP: The Petroleum Refinery Wastewater NSPS, 40 CFR part 60 subpart QQQ; and the SOCM1 Equipment Leak NSPS, 40 CFR 60 subpart VV.

A. Amendment to 40 CFR Part 60 Subpart QQQ

Two amendments to subpart QQQ are being proposed. One clarifies a confusion regarding an exemption for tanks. The other allows the use of mechanical shoe seals on tanks.

Section 60.692-3(d), *Standards: Oil-water separator*, of subpart QQQ exempts tanks that are subject to the requirements of K, Ka, or Kb from the requirements of § 60.692-3. This exemption was placed in the standards section of the subpart with the intent that the exemption applied to tanks subject to the control and associated requirements of K, Ka, or Kb. There has been confusion regarding whether the exemption applies to tanks subject to the control requirements or to affected facilities as defined in K, Ka, and Kb.

The affected facilities to which K and Ka apply are storage vessels with capacities greater than or equal to 151 cubic meters. Subparts K and Ka require controls on affected facilities containing liquids with vapor pressures equal to or greater than 10.3 kPa.

The affected facility to which Kb applies is each storage vessel with a capacity greater than or equal to 40 cubic meters. However, each storage vessel with a capacity less than 75 cubic meters is exempt from the General Provisions (part 60 subpart A) and from the provisions of subpart Kb, except for the requirement that the operator keep records showing dimensions and capacity of vessel [§ 60.116(b)]. Subpart Kb requires controls on affected facilities with capacities greater than or equal to 151 cubic meters containing liquids with vapor pressures greater than or equal to 5.2 kPa.

The intent of subpart QQQ is to control emissions from the wastewater system down to and including primary treatment. The control technique is to prevent exposure to the atmosphere of the oily wastewater in the drain system and the oil-water separator. Subpart QQQ requires that each drain be equipped with a water seal control and each junction box and sewer line be covered. Subpart QQQ also requires each oil water separator tank, slop oil tank, storage vessel, or other auxiliary equipment be equipped and operated with a tightly sealed fixed roof.

Questions have arisen regarding whether § 60.692-3(d) would allow an open-top tank in the wastewater system at or upstream of the oil-water separator. For example, assume a tank is an affected facility under subpart QQQ and Subpart K, Ka, or Kb and contains an organic liquid with a vapor pressure less than 5.2 kPa. The operator would have

to meet recordkeeping requirements but the tank would not be required to have a fixed roof to comply with K, Ka, or Kb. This is obviously inconsistent with the intent of the control technology based standards of subpart QQQ.

The second proposed amendment is to allow use of mechanical shoe seals on oil/water separators. As described in the proposal preamble for subpart QQQ, 52 FR 16338 (May 4, 1987), the EPA only had information on the availability of two basic designs for primary seals that are applicable to oil-water separators. The two designs were vapor-mounted and liquid-mounted primary seals. The EPA solicited comments on the effectiveness of different types of seals applicable to oil-water separators. The EPA received no comments on the use or availability of mechanical shoe seals.

Since promulgation of subpart QQQ, the EPA has received several requests to allow the use of mechanical shoe seals to meet the requirements of subpart QQQ. Subpart Kb allows the use of liquid-mounted primary seals or mechanical shoe seals on external floating roofs on storage tanks.

According to the proposal preamble for subpart Kb, 49 FR 29702 (July 23, 1984), data from tests conducted on external floating roof tanks by the American Petroleum Institute show that a mechanical shoe primary seal in conjunction with a rim-mounted secondary seal is as effective as a liquid-mounted primary seal with a secondary seal. These same data were used to evaluate the efficiency of vapor-mounted primary seals in response to comments received on the proposed rule.

Since liquid-mounted primary seals and mechanical shoe primary seals both meet the requirements of the equipment standards in subpart Kb, it is determined, by analogy, that these two primary seal types meet the requirements of the alternative equipment standards in subpart QQQ. Thus, it is proposed that § 60.693-2 of subpart QQQ be amended to allow use of mechanical shoe seals.

B. Amendment to 40 CFR Part 60 Subpart VV

The EPA proposes to amend the definition of closed vent system in 40 CFR part 60 subpart VV to clarify that if equipment leak emissions are routed back to the process, this does not make the process subject to the closed vent system standards that require operation with no detectable leaks above 50 ppmv. In the case of petroleum refineries, equipment leaks may be sent to the refinery-wide fuel gas system. It was not EPA's intent to require the entire fuel

gas system to be subject to the 500 ppm requirement because the fuel gas system is an integral part of the process. Furthermore, the EPA's cost impact estimates did not include the large monitoring, recordkeeping, and reporting burden of complying with the 500 ppm limit, or the leak detection and repair requirements for the hundreds or thousands of valves, connectors, and other equipment associated with the refinery fuel gas system and the dozens of boilers or process heaters combusting the refinery fuel gas.

The EPA proposes to amend 40 CFR part 60 subpart VV § 60.482-5 to match the language in the equivalent section of the equipment leaks negotiated rule (40 CFR part 63, subpart H, § 63.166). The language from the negotiated rule more clearly represents the EPA's intentions. The current language in subpart VV requires sampling connection systems to be equipped with a closed purge system or a closed vent system. The negotiated rule requires closed purge sampling, closed-loop sampling, or a closed vent system. Closed-purge sampling systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system which is not open to the atmosphere for recycle or disposal. Closed-loop sampling systems also eliminate emissions due to purging by returning process fluid to the process through an enclosed system that is not directly vented to the atmosphere. Closed vent vacuum systems capture and transport the purged process fluid to a control device. *In situ* sampling systems would be exempted from these regulations.

It is proposed that paragraph (f) of § 60.482-10 of subpart VV be revised to be consistent with the requirements for closed vent systems developed for the HON (40 CFR part 63, subpart G, § 63.148). These revisions more clearly reflect the EPA's intent and specify the monitoring and recordkeeping necessary to demonstrate compliance with the requirement to operate with no detectable leaks above 500 ppmv. For closed vent systems constructed of hard-piping, compliance would be determined by an initial Method 21 inspection and an annual visual inspection. Because such systems are extremely unlikely to leak, an annual Method 21 inspection is considered to be overly burdensome. For systems constructed of ductwork, annual Method 21 inspections would be required. The proposed revisions specify the time period for repairs if leaks are detected. Provisions are included for delay of repair, equipment that is unsafe to inspect, and equipment

that is difficult to inspect. These provisions are very similar to those currently included in other sections of subpart VV (such as the valve standards), so they provide consistency.

VIII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 Federal Register 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" rule because it will have an annual effect on the economy of more than \$100 million, and is therefore subject to the requirements of Executive Order 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1692.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW (2136), Washington, DC 20460, or by calling (202) 260-2740. The public reporting burden for this collection of information is estimated to average 4,281 hrs per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: (1) Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and (2) the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small business entities. If a preliminary analysis (known as the initial regulatory flexibility analysis) would have a significant economic impact on a substantial number (usually taken as at least 20 percent) of small entities, then a final regulatory flexibility analysis must be prepared.

Regulatory Flexibility Act guidelines for regulations like this one whose start action notifications were filed before April 1992 indicated that an economic impact should be considered significant if it meets one of the following criteria:

- (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;
- (2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;
- (3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities, or
- (4) Regulatory requirements are likely to result in closure of small entities.

Data were not readily available to determine if criteria (1) and (3) were met or not, so the analysis focused on the other two. Results from the economic impact analysis indicate that potential closures range from none to a maximum of seven. The closures would occur in refineries that process less than 10,000 to 20,000 barrels of crude oil per day (refer to the "Economic Impact Analysis of the Regulatory Alternatives for the Petroleum Refineries NESHAP" in the Docket). While this percentage of net closures is less than 20 percent of the total number of small refineries (90), it was deemed high enough for carrying

out a Regulatory Flexibility Analysis on that basis alone. Criterion (2), however, was satisfied. The compliance costs to sales ratio for the small refineries was more than 10 percent greater than the same ratio calculated for all other refineries.

There are three reasons why small entities are disproportionately affected by the regulation. The first is the fact that they tend to own smaller facilities, and therefore have smaller economies of scale. Because of the smaller economies of scale, per-unit costs of production and compliance are higher for the small refineries compared to others. Related to this is the fact that small refineries have less ability to produce differentiated products. This ability, called complexity, increases with increasing refinery capacity. A large refinery can respond to a relative increase in production costs for one product by increasing production of a product now relatively cheaper to produce, an ability most small refineries rarely enjoy.

A second reason is they have fewer capital resources. Small refineries have less ability to finance the capital expenditures needed to purchase the equipment required to comply with the regulation. The third is the difference in internal structure. None of the small refineries are vertically or horizontally integrated, and in all but a few cases are not the subsidiary of a large parent company. The small refineries are typically independent owners and operators of their facilities, and most are owners of a single refinery. They do not possess the ability to shift production between different refineries and have less market power than their large competitors.

Another reason why smaller refineries experience greater economic impacts than other refineries is due to the small industry-level price increases (less than 1 percent in all cases). It is unlikely that small refineries will be able to recover annualized control costs by increasing product prices, since the large refineries will not be significantly impacted. As seen in the examination of criterion (2), the large refineries will not be significantly affected from compliance with the regulation.

In calculating the number of closures, the assumption was made that those refineries with the highest per-unit control costs were marginal after compliance with the regulation. While this assumption is often useful in closure analysis, it is not always true. The assumption is consistent with perfect competition theory that presumes all firms are price-takers. If a refiner does have some monopoly power in a particular market, then it is possible

the refineries could continue to operate for some period while complying with the regulation. It is a conservative assumption that likely biases the results to overstate the number of refinery closures and other impacts of the proposed regulation.

To mitigate these economic impacts on small refineries, the Agency is considering whether to subcategorize and develop separate MACT floors. As stated in section VI.A.1.e, comments are requested on whether a basis exists for subcategorizing small refineries, and if so, at what size, along with supporting data and rationale. In addition, the EPA would like to better understand the impact of the proposed rule on small refineries. To assist the EPA in assessing the impact of the proposed rule on small refineries, the Agency requests comment with supporting information on the level of competition between refineries that process less than 10,000 to 20,000 barrels of crude oil per day and the larger refineries. Moreover, there is additional uncertainty in predicting the economic impact since the EPA does not have the information to determine if or how small refineries will actually be affected by the proposed rule. For example, they would not be affected if the HAP emissions are below the 25 ton per year cutoff specified in the statute or they are processing crude oils or producing products whose vapor pressures and HAP contents are below the applicability levels specified in the rule. The EPA seeks comment and better information on these very small refineries as follows:

- (1) Are refineries that process less than 10,000 to 20,000 barrels per day of crude oil "major sources" as defined in section 112 of the Act?
 - (2) Are the HAP contents of the process vents below the 20 ppmv applicability level?
 - (3) Are the HAP contents of the petroleum liquids in the processing lines below the 5 percent (by weight) applicability level in the equipment leak provisions?
 - (4) Are the true vapor pressures of the petroleum liquids in the storage vessels below the 1.2 psia applicability level?
- Supporting data should be included with the responses to these questions.

D. Review

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health

data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Intergovernmental relations, Natural gas, Volatile organic compounds.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-17130 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 94-59; FCC 94-171]

Automatic Control on High Frequency Amateur Service Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to authorize the use of automatic control for amateur stations transmitting a digital emission on the High Frequency (HF) amateur service bands. The proposed rules are necessary so that amateur operators can engage in automated digital communications on the HF bands based upon the packet radio protocol used generally by amateur stations on other amateur service bands. This proposal would give better service to members of the amateur community because it would allow them to use automatic control on additional amateur service frequencies, and to take advantage of the propagation characteristics of the HF bands to communicate with other amateur stations, particularly with those in other countries.

DATES: Comments are due on or before October 1, 1994. Reply comments are due on or before November 1, 1994.

ADDRESSES: Federal Communications, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, adopted June 13, 1994, and released June 23, 1994. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street NW., Washington, DC. The complete text of this *Notice of Proposed Rulemaking*, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The variables affecting communications in the HF bands are highly complex. Establishing and maintaining a HF communications link, therefore, presents operating demands not encountered on the Very-High Frequency (VHF) and higher frequency bands above 30 MHz. To maintain the communications link and avoid causing interference to the communications of other amateur stations, the control operator constantly monitors the activity on the channel being used and adjusts the station's transmitting parameters as needed. Because the presence of the control operator has been imperative for proper operation on the HF bands, automatic control of an amateur station that is transmitting on these bands has not been authorized.

2. In 1986, the Commission indicated an interest in authorizing automatic control of amateur stations transmitting digital communications in the HF band. In this regard, the Commission noted that a feasibility study planned by The American Radio Relay League, Inc. (ARRL) would be helpful in determining if any rule changes were necessary to prevent interference to and from other amateur service communication.

3. The proposed rules allow an amateur service licensee to use automatic control of amateur stations in the HF bands, with the safeguards recommended by the petitioners. This proposal would make the transmission of data and RTTY emission types practical and effective.

4. It also proposed to authorize automatic control for stations transmitting data and RTTY emission types on specific subbands, and it proposed to authorize communications between a locally or remotely controlled station and an automatically controlled station on any frequency where data and

RTTY emission types are otherwise authorized.

5. These proposed rules are intended to facilitate the development of digital communications on the HF amateur service bands. Comments are invited on the entire proposal.

6. The proposed rules are set forth at the end of this document.

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

8. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 USC § 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications where the station licensee or control operator has a pecuniary interest. See § 97.113(a)(3).

9. This *Notice of Proposed Rule Making* and the proposed rule amendments are issued under the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC §§ 154(i) and 303(r).

10. A copy of this *Notice of Proposed Rule Making* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Automatic control, Radio.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Proposed Rules

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.109 is amended by revising paragraphs (d) and (e) to read as follows:

§ 97.109 Station control.

* * * * *

(d) When a station is being automatically controlled, the control

operator need not be at the control point. Only stations specifically designated elsewhere in this Part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(e) No station may be automatically controlled while transmitting third party communications, except a station transmitting a RTTY or data emission. All messages that are retransmitted must originate at a station that is being locally or remotely controlled.

3. New § 97.221 is added to read as follows:

§ 97.221 Automatically controlled digital station.

(a) This rule section does not apply to an auxiliary station, a beacon station, a repeater station, an earth station, a space station, or space telecommand station.

(b) A station may be automatically controlled while transmitting RTTY or data emissions on the 6 m or shorter wavelength bands, and on the 28.120–18.189 MHz, 24.925–24.930 MHz, 21.090–100 MHz, 18.105–18.110 MHz, 14.0950–14.0995 MHz, 14.1005–14–112 MHz, 10.140–10.150 MHz, 7.100–7.105 MHz, or 3.620–3.635 MHz segments.

(c) A station may be automatically controlled while transmitting A RTTY or data emission on any other frequency authorized for such emission types provided that:

(1) The station is responding to interrogation by a station under local or remote control; and

(2) No transmission from the automatically controlled station

occupies a bandwidth of more than 500 Hz.

[FR Doc. 94-16882 Filed 7-14-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 921232-2332; I.D. 092192B]

Threatened Fish and Wildlife; Listing of the Gulf of Maine Population of Harbor Porpoise as Threatened under the Endangered Species Act

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening the comment period on the proposed rule to list Gulf of Maine (GME) harbor porpoise to allow public comment on the population status of harbor porpoise following the receipt of new data and information on the 1990-93 bycatch rates.

DATES: Comments must be received by August 11, 1994.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, Room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne or Margot Bohan, 301/713-2322.

SUPPLEMENTARY INFORMATION: On January 7, 1993, NMFS proposed to designate the GME population of harbor porpoise as threatened under the Endangered Species Act (ESA). The final determination on the proposed rule to list harbor porpoise was extended at 58 FR 59230 on November 8, 1993, to allow for analysis of the 1993 bycatch data prior to final determination. At that time, NMFS also stated that it would reopen the comment period following completion of these analyses. Therefore, NMFS announces that it is reopening the comment period on the proposed rule to allow for public review and comment on the 1993 bycatch estimates, as well as on the 1990-92 estimates that were adjusted following comments received at a February 1994 workshop on the status of harbor porpoise in the GME.

The final 1990-93 bycatch estimates consider those harbor porpoise that are taken in the gillnets, but fall out of the net as the nets are being hauled back onto the vessel, and as a result have not been included in bycatch estimates to date. This has resulted in an increase in previously released bycatch estimates for 1990, 1991, and 1992 by 21 percent, 20 percent, and 33 percent, respectively. These bycatch estimates and proceedings from the 1994 harbor porpoise workshop are available upon request (see ADDRESSES).

Dated: July 11, 1994.

William W. Fox, Jr., Ph.D.,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 94-17180 Filed 7-12-94; 10:59 am]

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Notices

Federal Register

Vol. 59, No. 135

Friday, July 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 11, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Extension

- Economic Research Service
Survey of State Farm Credit Programs
Annually
State or local governments; 103
responses; 47 hours
Patrick J. Sullivan, (202) 219-0719
- Farmers Home Administration
7 CFR 1956-B, Debt Settlement—Farmer
Programs and Housing
FmHA 1956-1
On occasion
Individuals or households; State or local
governments; Farms; Businesses or
other for-profit; Small businesses or

- organizations; 29,900 responses;
14,825 hours
Jack Holston, (202) 720-9736
- National Agricultural Statistics
Service
Supplemental Qualification Statement
On occasion
Individuals or households; 180
responses; 540 hours
Larry Gambrell, (202) 720-5778
- Agricultural Marketing Service
Winter Pears Grown in Oregon,
Washington, and California—
Marketing Order No. 927
FV-118, FV-119, FV-120
Recordkeeping; On occasion; Biennially
Farms; Businesses or other for profit;
5,556 responses;
3,595 hours
Teresa L. Hutchinson, (503) 326-2724
- National Agricultural Statistics
Service
Honey Survey
Annually
Farms; 9,000 responses; 1,500 hours
Larry Gambrell, (202) 720-5778

Revision

- Farmers Home Administration
7 CFR 1942-K, Emergency Community
Water Assistance Grants
FmHA 1942-31
On occasion
State or local governments; Non-profit
institutions; Small businesses or
organizations; 1,050 responses; 1,200
hours
Jack Holston, (202) 720-9736
- Rural Development Administration
Annual Survey of Farmer Cooperatives
and Questionnaire to
Identify Farmer Cooperatives
ACS-13, 14-A, S, C, D, E, H
On occasion; Annually
Businesses or other for-profit; Small
businesses or organizations; 2,510
responses; 1,185 hours
Jack Holston, (202) 720-9736
- Agricultural Marketing Service
Olives Grown in California, Marketing
Order No. 932
Recordkeeping; On occasion; Monthly
Farms; Businesses or other for-profit;
Small businesses or organizations;
16,998 responses; 4,742 hours
Carolyn Thorpe, (202) 720-8139

Reinstatement

- Food and Nutrition Service
Target for Income and Eligibility
Verification System
Recordkeeping; Annually

Individuals or households; State or local
governments; 53 responses; 786,537
hours
Ed Speshock, (703) 305-2383
Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 94-17158 Filed 7-14-94; 8:45 am]
BILLING CODE 3410-M

Animal and Plant Health Inspection Service

[Docket No. 94-066-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant

Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered

organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for

the importation of interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|--------------------------------|---------------|--|-------------------------------|
| 94-161-01 | Du Pont Agricultural Products. | 6-10-94 | Canola plants genetically engineered to express altered genes affecting seed fatty acid composition. | Arizona. |
| 94-166-01 | Mycogen Corporation | 6-15-94 | Alfalfa plants genetically engineered to express a gene from <i>Bacillus thuringiensis</i> (Bt) for resistance to coleopteran insects. | California, Idaho, Wisconsin. |
| 94-167-01, renewal of permit 92-037-07, issued on 05-18-92. | Upjohn Company | 6-16-94 | Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus. | Arizona, California. |
| 94-168-01 | Calgene, Incorporated | 6-17-94 | Canola plants genetically engineered to express oil modification genes. | Arizona, Florida. |

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-17248 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-34-P

Soil Conservation Service

Pecos River Native Riparian Restoration Project, Eddy County, NM

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 Rules (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pecos River Native Riparian Restoration Project, Eddy County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Thomas A. Weber, State Conservationist, Soil Conservation Service, 517 Gold Avenue SW., room 3301, Albuquerque, NM 87102-3157. Telephone (505) 766-3277.

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, Thomas A. Weber, State

Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is to demonstrate effective, economical, and environmentally sound management of saltcedar invaded land in the project area. The action includes a combination of herbicide, mechanical, and vegetative management of saltcedar stands within the project area that will protect soil, water, air, plant, animal, cultural, and human resource and will correct resource problems associated with the invasion of saltcedar.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and 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. The environmental assessment has had a 45-day review by concerned Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Thomas A. Weber.

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: July 7, 1994.

Thomas A. Weber,

State Conservationist.

[FR Doc. 94-17181 Filed 7-14-94; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews. The Department also received requests to revoke in part two antidumping duty orders.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 353.22(a)(1993), for administrative reviews of various antidumping duty orders and findings with June anniversary dates. The Department also

received timely requests to revoke in part the antidumping duty orders on polyethylene terephthalate film from the Republic of Korea and Japan.

Initiation of Reviews

In accordance with section 19 CFR 353.22(c), we are initiating administrative reviews of the following

antidumping duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 1995.

Antidumping duty proceedings

| Antidumping duty proceedings | Period to be reviewed |
|--|-----------------------|
| Brazil: | |
| Frozen Concentrated Orange Juice, A-351-605 | |
| Citrovita Industrial S.A. ¹ | 05/01/93-04/30/94 |
| Certain Malleable Cast Iron Pipe Fittings, ¹ A-351-505 | |
| Fundicao Tupy, S.A. | 05/01/93-04/30/94 |
| Canada: | |
| Oil Country Tubular Goods, A-122-506 | |
| IPSCO, Inc. | 06/01/93-05/31/94 |
| Colombia: | |
| Certain Fresh Cut Flowers, A-301-602 | |
| Flores Santana ¹ | 03/01/93-02/28/94 |
| France: | |
| Large Power Transformers, A-427-030 | |
| Jeumont Schneider Transformateurs | 06/01/93-05/31/94 |
| Germany: | |
| High-Tenacity Rayon Filament Yarn, A-428-810 | |
| Akzo Faser AG | 06/01/93-05/31/94 |
| Italy: | |
| Large Power Transformers, A-475-031 | |
| Tamini Costruzioni Elettromeccaniche | 06/01/93-05/31/94 |
| Japan: | |
| Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, A-588-804 | |
| Nihon K.J., K.K. ¹ | 05/01/93-04/30/94 |
| Certain Forklift Trucks, A-588-703 | |
| Nissan Motor Company, Toyota Motor Corporation, Toyo Umpanki Company, Ltd | 06/01/93-05/31/94 |
| Fishnetting of Man-Made Fibers, A-588-029 | |
| Yamaji Fishing Net Co., Ltd | 06/01/93-05/31/94 |
| Industrial Belts, A-588-807 | |
| Mitsuboshi Belting, Ltd. Nakamichi Corporation | 06/01/93-05/31/94 |
| Large Power Transformers, A-588-032 | |
| Fuji Electric Co., Ltd | 06/01/93-05/31/94 |
| Polyethylene Terephthalate Film, Sheet and Strip, A-588-814 | |
| Nippon Magphane Co., Ltd., Teijin, Ltd., Toray Industries, Inc | 06/01/93-05/31/94 |
| Roller Chain, Other than Bicycle, ² A-588-028 | |
| Daido Kogyo, Enuma Chain, Hitachi Metals | 04/01/93-03/31/94 |
| New Zealand: | |
| Fresh Kiwifruit, A-614-801 | |
| New Zealand Kiwifruit Marketing Board | 06/01/93-05/31/94 |
| Taiwan: | |
| Certain Stainless Steel Butt-Weld Pipe Fittings, A-583-816 | |
| Ta Chen | 12/23/92-05/31/94 |
| The People's Republic of China: | |
| Axes/Adzes; Bars/Wedges; Hammers/Sledges; Picks/Mattocks, ³ A-570-803 | |
| Fujian Machinery & Equipment Import & Export Corporation (FMEC) Shandong Machinery Import & Export Corporation (SMC) | 02/01/93-01/31/94 |
| All other exporters of hand tools are conditionally covered by this review. | |
| Sparklers, A-570-804 | |
| Guangxi Native Produce Import and Export Company | 06/01/93-05/31/94 |
| All other exporters of sparklers are conditionally covered by this review. | |
| Romania: | |
| Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, A-485-801 | |
| Technoimportexport | 06/01/93-05/31/94 |
| All other exporters of TRBs are conditionally covered by this review. | |
| The Republic of Korea: | |
| Polyethylene Terephthalate Film, Sheet and Strip, A-580-814 | |
| Cheil Synthetics, Inc., Kolon Industries, Inc., SKC Limited, STC Corporation | 06/01/93-05/31/94 |

¹ Inadvertently omitted from previous initiation notice.

² This is a correction to 59 FR 24683, published May 12, 1994, for roller chain from Japan. The firms initiated should have read as stated here.

³ This is a correction to the amendment for 59 FR 30770, published June 15, 1994, for hand tools from the PRC. The June 15, 1994, notice should have read as follows: This is an amendment of the March 14, 1994, initiation notice (59 FR 11768) covering axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks from the People's Republic of China.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 353.25(c)(2).

Dated: July 11, 1994.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 94-17279 Filed 7-14-94; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-475-059]

Pressure Sensitive Plastic Tape From Italy Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/
International Trade Administration,
Department of Commerce.

ACTION: Notice of Final Results of
Antidumping Duty Administrative
Review.

SUMMARY: On April 13, 1994, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers one exporter, NAR, and the period October 1, 1992 through September 30, 1993. Since there were no shipments of the subject merchandise during the period of review, we determine that the dumping margin for NAR to be 1.24 percent, the rate NAR received in its most recent review.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT:
Todd Peterson or Thomas Futtner,
Office of Antidumping Compliance,
Import Administration, International
Trade Administration, U.S. Department
of Commerce, 14th Street and
Constitution Avenue, NW., Washington,
DC 20230; telephone (202) 482-4195 or
482-3814, respectively.

Background

On April 13, 1994, the Department of Commerce (the Department) published the preliminary results (59 FR 17513) of its administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy (42 FR 56110). The Department has now completed this administrative review in accordance with section 751 of the tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over 1 $\frac{3}{4}$ inches in width and not exceeding 4 miles in thickness, classifiable under item numbers 3919.10.20 and 3919.90.50 of the Harmonized Tariff Schedules (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

Final Results of Review

The Department received no comments on its preliminary results. Therefore, we have assigned NAR the rate applicable to it from its most recent administrative review as the estimated cash deposit rate. This rate is 1.24 percent.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in any review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise and (4) the "all other" rate for purposes of this review will be 12.66 percent, the "new shipper" rate established in the first notice of final results of administrative review, (48 FR 35686, August 5, 1983) as decided in *Flord Trade Council v. United States*, Slip op. 93-79 and *Federal-Mogal Corporation and the Torrington Company V. United States*, Slip Op. 93-83.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversation to judicial protection order is hereby requested. Failure to comply with regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 9, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 94-17278 Filed 7-14-94; 8:45 am]
BILLING CODE 3510-DS-M

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Abu Dhabi, Bahrain, Oman, and Qatar)

Notice is hereby given that the Department of Commerce is undertaking to determine, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), whether the Governments of Abu Dhabi, Bahrain, Oman, and Qatar, allow customs duties exemptions to aircraft of U.S. registry in connection with international commercial operations substantially reciprocal to those exemptions granted in the United States to aircraft of foreign registry. The basis of this undertaking is the request of the Government of Bahrain on behalf of Gulf Air Company, G.S.C., for a finding of such reciprocity effective June 1, 1994.

The Tariff Act of 1930, as amended, provides exemptions for aircraft of foreign registry from payment of import duties on the import of supplies into the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context cover a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions are allowed upon a finding by the Secretary of Commerce, or his designee, and communicated to the Secretary of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry

with respect to import of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Mr. Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, Room 4102, U.S. Department of Commerce, Washington, DC

FOR FURTHER INFORMATION CONTACT: Eugene Alford, Office of Service Industries, International Trade Administration, Room 1112, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 482-5071.

Dated: July 11, 1994.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 94-17154 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 14, 1994 the binational Panel issued its decision in the review of the final determination made by the Deputy Minister of National Revenue (Customs, Excise and Taxation) respecting Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America. The Binational Secretariat assigned Secretariat File No. CDA-93-1904-08 to this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final

determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Background

In the June 14, 1994 decision, the binational panel affirmed in part and remanded in part the investigating authorities' final determination. The binational panel instructed the investigating authority to provide its Determination on Remand within 90 days of the panel decision (by September 12, 1994).

Dated: July 8, 1994.

Caratina L. Alston,

Deputy U.S. Secretary, NAFTA Secretariat.

[FR Doc. 94-17277 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final determination made by the Canadian International Trade Tribunal respecting Certain Flat Hot-Rolled Carbon Steel Sheet Products

Originating in or Exported from the United States of America is completed. (Secretariat File No. CDA-93-1904-07)

SUMMARY: This notice is effective June 30, 1994, the 31st day following the date on which the responsible Secretary issued the Notice of Final Panel Action.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th Street and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended and published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with these Rules, as amended.

Background

On May 18, 1994, the binational panel affirmed the investigating authority's determination respecting Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America. No Request for an Extraordinary Challenge Committee has been filed with the responsible Secretary. Therefore, pursuant to subrule 80(b) of the *Article 1904 Panel Rules*, this Notice of Completion is effective on June 30, 1994, the 31st day following the date on which the responsible Secretary issued the Notice of Final Panel Action.

Dated: July 8, 1994.

Caratina L. Alston,

Deputy U.S. Secretary, NAFTA Secretariat.

[FR Doc. 94-17276 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-GT-M

Minority Business Development Agency

Business Development Center Applications: Indianapolis, Indiana MSA (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from January 1, 1995 to December 31, 1995 is estimated at \$198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05-10-95001-01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDC funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques

and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDC. Final award selections shall be based on the number of points received, the demonstrated responsibility of the application, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDC based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 31, 1994. Applications must be postmarked on or before August 31, 1994.

ADDRESSES: Chicago Regional Office, 55 E. Monroe Street, Suite 1406, Chicago, Illinois 60603, (312) 353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353-0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. A pre-bid conference will be held on August 2,

1994, at 10 a.m. at the Federal Building, 575 North Pennsylvania Street, Conference Room 284, Indianapolis, Indiana. Questions concerning the preceding information can be answered by the contact person in Chicago indicated above, and copies of application kits and applicable regulations can be obtained at the above Chicago Regional Office address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—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, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

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."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" 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 Part 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.

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.

Lower Tier Certifications—Recipients shall require applications/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 DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or 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).

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: July 11, 1994.

David Vega,

Regional Director, Chicago Regional Office

[FR Doc. 94-17192 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Houston MBDC I.D. No. 06-10-95001-01

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from January 1, 1995 to December 31, 1995 is estimated at \$499,839. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Houston, Texas geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such

assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDC shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 27, 1994.

Applications must be postmarked on or before August 27, 1994.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Bobby Jefferson, Acting Regional Director, Dallas Regional office, telephone (214) 767-8001.

A pre-bid conference will be held on August 9, 1994, in the Earl Cabell Federal Building, Room 7B23, 1100 Commerce Street, Dallas, Texas at 10:00 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. Questions

concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—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, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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, prejury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certification

Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" 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 part 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.

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.

Lower Tier Certifications—Recipients shall require applications/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 DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or 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).

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: July 11, 1994.

Bobby Jefferson,
Acting Regional Director, Dallas Regional
Office.

[FR Doc. 94-17189 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[I.D. 070794A]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold meetings on July 27-28, 1994, in the Iris Room of the Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI; telephone: (808) 941-6611. The meetings will begin at 8:30 a.m. and end at 5:00 p.m. each day.

The SSC will discuss, and may make recommendations to the Council regarding the following topics:

- (1) Pelagic Fisheries Research Program, including fishing industry and vessel economics projects;
- (2) Regional plan for cultural, social, and economic research;
- (3) Draft regulations for Hawaii humpback whale national marine sanctuary;
- (4) Research results on Northwestern Hawaiian Islands bottomfish fisheries;
- (5) 1993 annual reports and recommendations for bottomfish and pelagics;
- (6) NMFS biological opinion regarding turtles and longlines;
- (7) SSC mission and charge; and
- (8) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522-8220, at least 10 days prior to the meeting date.

Dated: July 8, 1994.

David S. Crestin,

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

[FR Doc. 94-17261 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 070794B]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Vessel Monitoring System (VMS) Committee will hold a meeting on July 29, 1994, at the Pacific Ocean Producers conference room, 965-B North Nimitz Highway, Honolulu, HI; telephone: (808) 537-2905. The meeting will begin at 1:30 p.m. and will end at 3:30 p.m.

The Committee will review, and may make recommendations to the Council regarding implementation of the Hawaii longline VMS program, including:

- (a) Proposed regulations,
- (b) Software and hardware development,
- (c) Equipment procurement,
- (d) Vendor certification and training,
- (e) Installation timetable,
- (f) Unresolved operational details such as signal masking, and
- (g) Other topics as necessary.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522-8220.

Dated: July 11, 1994.

David S. Crestin,

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

[FR Doc. 94-17262 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 070794C]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) and its

standing committees will hold meetings on August 3-5, 1994, at the Royal Kona Resort, 75-5852 Alii Drive, Kailua-Kona, HI; telephone: (800) 774-5662. The meetings will begin at 9:00 a.m. and end at 5:00 p.m. each day. Standing Committees will meet in the Resolution Room on August 3, and the full Council will meet in the Alii Surf Room on August 4-5.

The Council will discuss, and may take action on, the following topics:

- (1) Activities of scientific, management, and enforcement agencies;
- (2) NMFS biological opinion regarding turtles and longlines;
- (3) Draft regulations for Hawaii humpback whale national marine sanctuary;
- (4) Pelagic fisheries research and management, including NMFS longline observer program; Council request for designation as the lead Council for management of Pacific pelagic species, Hawaii fishing industry and vessel economics project, economic characteristics of the Hawaii charterboat fishery; 1993 annual report and recommendations;
- (5) Bottomfish fishery research and management, including Northwestern Hawaiian Islands (NWHI) catch reporting system, State of Hawaii management of Main Hawaiian Islands bottomfish, 1993 annual report and recommendations;
- (6) Crustacean fishery research and management, including status of stocks, fishery prospects and quota for the 1994 NWHI lobster season;
- (7) Native fishing rights;
- (8) Joint Interior-Commerce working group to review Federal fishery policy in the Pacific;
- (9) Federal definition of recreational/commercial fishermen;
- (10) Magnuson Act reauthorization;
- (11) Western Pacific Fisheries Information Network funding;
- (12) Possible changes to Statement of Organization, Practices, and Procedures related to conflict of interest;
- (13) Administrative matters; and
- (14) Other business as required.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522-8220, at least 10 days prior to the meeting date.

Dated: July 8, 1994.

David S. Crestin,

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

[FR Doc. 94-17263 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 070894A]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council's *ad hoc* working group to review Federal fisheries policy in the Pacific, as it affects U.S. insular areas, will hold a meeting on July 28-29, 1994, in the Lieutenant Governor's Conference Room of the Leiopapa A. Kamehameha Building (State Office Tower, Room 1402), 235 South Beretania Street, Honolulu, HI; telephone: (808) 522-8220. The meeting will begin at 9:00 a.m. and end at 5:00 p.m. each day.

The working group will discuss and may make recommendations regarding the following topics:

- (a) Magnuson Act reauthorization, including domestic and foreign fishing fees, indigenous fishing rights, cooperative enforcement, and islands' abilities to take a greater role in the regional negotiations and management of their respective Exclusive Economic Zones;
- (b) Nicholson Act exemptions;
- (c) Island authority over non-living resources;
- (d) Marine Research;
- (e) NMFS funding;
- (f) Competitive fisheries trade issues;
- (g) American Samoa tuna cannery tax payments;
- (h) Histamine testing of tuna shipments;
- (i) Aquaculture development; and
- (j) Other business as required.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522-8220, at least 10 days prior to the meeting date.

Dated: July 11, 1994.

David S. Crestin,

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

[FR Doc. 94-17264 Filed 7-14-94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From
People Who Are Blind or Severely
Disabled.

ACTION: Proposed Additions to
Procurement List.

SUMMARY: The Committee has received
proposals to add to the Procurement List
commodities and services to be
furnished by nonprofit agencies
employing persons who are blind or
have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR
BEFORE:** August 15, 1994.

ADDRESSES: Committee for Purchase
From People Who Are Blind or Severely
Disabled, Crystal Square 3, Suite 403,
1735 Jefferson Davis Highway,
Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41
U.S.C. 47(a)(2) and 41 CFR 51-2-3. Its
purpose is to provide interested persons
an opportunity to submit comments on
the possible impact of the proposed
actions.

If the Committee approves the
proposed additions, all entities of the
Federal Government (except as
otherwise indicated) will be required to
procure the commodities and services
listed below from nonprofit agencies
employing persons who are blind or
have other severe disabilities.

I certify that the following action will
not have a significant impact on a
substantial number of small entities.
The major factors considered for this
certification were:

1. The action will not result in any
additional reporting, recordkeeping or
other compliance requirements for small
entities other than the small
organizations that will furnish the
commodities and services to the
Government.

2. The action does not appear to have
a severe economic impact on current
contractors for the commodities and
services.

3. The action will result in
authorizing small entities to furnish the
commodities and services to the
Government.

4. There are no known regulatory
alternatives which would accomplish
the objectives of the Javits-Wagner-
O'Day Act (41 U.S.C. 46-48c) in
connection with the commodities and
services proposed for addition to the
Procurement List.

Comments on this certification are
invited. Commenters should identify the
statement(s) underlying the certification
on which they are providing additional
information.

The following commodities and
services have been proposed for
addition to Procurement List for
production by the nonprofit agencies
listed:

Commodities

Marker, Tube Type
7520-01-383-7924
7520-01-383-7929

NPA: Dallas Lighthouse for the Blind, Inc.
Dallas, Texas.

Printing and Binding "En Garde" Newsletter
7690-00-NSH-0079
(Requirements for the Government Printing
Office, New York, NY)

NPA: Consolidated Industries of Greater
Syracuse, Inc. Syracuse, New York.

Services

Grounds Maintenance, Vandenberg Air Force
Base, California

NPA: Santa Maria Association for the
Retarded, Santa Maria, California.

Janitorial/Custodial, John F. Shea Federal
Building, 777 Sonoma Avenue, Santa
Rosa, California

NPA: Goodwill Industries of the Redwood
Empire, Santa Rosa, California.

Janitorial/Custodial, U.S. Post Office,
Courthouse and Customs House, 301
Simonton Street, Key West, Florida

NPA: Brevard County Community
Achievement Center, Inc., Rockledge,
Florida.

Janitorial/Custodial, Federal Law
Enforcement Training Center, Building
252 and Outdoor Ranges, Glynco,
Georgia

NPA: Goodwill Industries of the Coastal
Empire, Inc., Savannah, Georgia.

Janitorial/Custodial, Landrum Federal
Building and U.S. Post Office, Jasper,
Georgia

NPA: Burnt Mountain Center, Jasper,
Georgia.

Janitorial/Custodial, U.S. Customhouse,
Savannah, Georgia

NPA: Goodwill Industries of the Coastal
Empire, Inc., Savannah, Georgia.

Janitorial/Custodial, Federal Building, U.S.
Post Office and Courthouse, Valdosta,
Georgia

NPA: Goodwill Industries of South
Georgia, Albany, Georgia.

Janitorial/Custodial, Red Rock Canyon
Visitor Center, Red Rock National
Conservation Area, Las Vegas, Nevada

NPA: Opportunity Village Association for
Retarded Citizens, Las Vegas, Nevada.

Janitorial/Custodial, Federal Complex,
Raleigh, North Carolina

NPA: Goodwill Industries of East Central
North Carolina, Durham, North Carolina.

Janitorial/Custodial, Charles E. Kelly Support
Facility, Oakdale, Pennsylvania

NPA: Hancock County Sheltered
Workshop, Weirton, West Virginia.

Janitorial/Custodial, Davis Federal Building,
Memphis, Tennessee

NPA: Lakeview Center, Inc., Pensacola,
Florida.

Janitorial/Minor Maintenance, Lennon
Federal Building and U.S. Courthouse,
Wilmington, North Carolina

NPA: New Hanover Workshop,
Wilmington, North Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-17280 Filed 7-14-94; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase From
People Who Are Blind or Severely
Disabled.

ACTION: Proposed Additions to
Procurement List.

SUMMARY: The Committee has received a
proposal to add to the Procurement List
commodities to be furnished by
nonprofit agencies employing persons
who are blind or have other severe
disabilities.

**COMMENTS MUST BE RECEIVED ON OR
BEFORE:** August 15, 1994.

ADDRESSES: Committee for Purchase
From People Who Are Blind or Severely
Disabled, Crystal Square 3, Suite 403,
1735 Jefferson Davis Highway,
Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41
U.S.C. 47(a)(2) and 41 CFR 51-2-3. Its
purpose is to provide interested persons
an opportunity to submit comments on
the possible impact of the proposed
actions.

If the Committee approves the
proposed addition, all entities of the
Federal Government (except as
otherwise indicated) will be required to
procure the commodities listed below
from nonprofit agencies employing
persons who are blind or have other
severe disabilities.

I certify that the following action will
not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Transparency Film, Xerographic
7530-00-NIB-0099 (8½" x 11" Clear)
7530-00-NIB-0100 (8½" x 11" Red, Blue, Green, Yellow)
7530-00-NIB-0101 (8½" x 11" Clear w/ strip)

NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94-17281 Filed 7-14-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On April 15 and May 27, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 18104 and 27538) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Adhesive Tape, Surgical
6510-01-370-4099
6510-00-926-8882 (Requirements for the VA only)
6510-00-926-8883 (Requirements for the VA only)
6510-01-370-4100
6510-01-368-2659
6510-01-368-2660
6510-01-285-3896
6510-01-284-5110
6510-01-107-0223
6510-01-060-1639

Services

Food Service Attendant, Arizona National Guard, Tucson Air National Guard Base, Tucson, Arizona
Janitorial/Custodial, Hazard Park U.S. Army Reserve Center, Los Angeles, California

This action does not affect current contracts awarded prior to the effective

date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94-17282 Filed 7-14-94; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0115; FAR Case 91-20]

Clearance Request for Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. The Government often does not receive adequate and timely notice of this event.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated at 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 100; responses per respondent, 1; total annual responses, 100; preparation hours per response, 1; and total response burden hours, 100.

Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 100; hours per recordkeeper, .25; and total recordkeeping burden hours, 25.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0115, FAR case 91-20, Notification of Ownership Changes, in all correspondence.

Dated: July 11, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94-17227 Filed 7-14-94; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG94-75-000, et al.]

Entergy Power Development Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 11, 1994.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Development Corporation

[Docket No. EG94-75-000]

On July 6, 1994, Entergy Power Development Corporation ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. In *Richmond Power Enterprises, L.P., et al.*, 62 FERC ¶ 61,157 (1993), and *Entergy Power Development Corp.*, 67 FERC ¶ 61,344 (1994), the Commission determined that Applicant is an exempt wholesale generator. Applicant now intends to indirectly own or operate, or

both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy EDEGEL II, Inc.

[Docket No. EG94-76-000]

On July 6, 1994, Entergy EDEGEL II, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Power Development Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Entergy EDEGEL I, Inc.

[Docket No. EG94-77-000]

On July 6, 1994, Entergy EDEGEL I, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Power Development Corporation, which in turn is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. EP EDEGEL, Inc.

[Docket No. EG94-78-000]

On July 6, 1994, EP EDEGEL, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is owned approximately 72 percent by Entergy Edegel I, Inc. and Entergy Edegel II, Inc., collectively, and approximately 28 percent by PSI Argentina, Inc. Entergy Edegel I, Inc. and Entergy Edegel II, Inc. are both wholly-owned by Entergy Power Development Corporation, which in turn is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935 ("PUHCA"). PSI Argentina, Inc. is owned by PSI Resources, Inc., an exempt public utility holding company under Section 3(a)(1) of PUHCA. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of

692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wartsila Diesel Development Corp., Inc.

[Docket No. EG94-79-000]

On July 6, 1994 Wartsila Diesel Development Corp., Inc. (DDC) (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

DDC is a Delaware corporation formed to develop, own, and/or operate eligible facilities. DDC will operate two diesel electric generating facilities in the Dominican Republic and one diesel electric generating facility in Guyana. DDC states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: August 1, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Intercoast Power Marketing Company

[Docket No. ER94-6-000]

Take notice that on June 22, 1994, Intercoast Power Marketing Company tendered for filing additional information to its October 5, 1993 filing in the above-referenced docket.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER94-938-000]

Take notice that on May 27, 1994, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER94-1107-000]

Take notice that on June 20, 1994, Kansas City Power & Light Company tendered for filing an amendment to its March 31, 1994 filing in the above-referenced docket.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER94-1127-001]

Take notice that on May 30, 1994, Entergy Services, Inc. (Entergy Services), as agent for Mississippi Power & Light Company (MP&L), tendered for filing a revised Service Schedule LF to the Interconnection Agreement between South Mississippi Electric Power Association (SMEPA) and MP&L, dated July 18, 1979, as amended. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the service to become effective as of June 1, 1994. To the extent necessary, Entergy Services also requests waiver of the requirements of § 35.13 of the Commission's regulations.

Comment date: July 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. East Texas Electric Cooperative, Inc.

[Docket No. ES94-30-000]

Take notice that on June 27, 1994, East Texas Electric Cooperative, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to assume liability for a long-term secured loan in the amount of not more than \$34,415,231 from the National Rural Utilities Cooperative Finance Corporation.

Comment date: July 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Chambers Cogeneration Limited Partnership

[Docket Nos. QF87-433-002 and EL94-29-000]

On July 8, 1994, Chambers Cogeneration Limited Partnership tendered for filing additional information in support of its request for waiver of the technical standards relating to its cogeneration facility.

Comment date: July 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-17231 Filed 7-14-94; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-312-000]

Columbia Gulf Transmission Co. and Texas Eastern Transmission Corp.; Joint Petition for Approval of Stipulation

July 11, 1994.

Take notice that on July 1, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gulf Transmission Company (Columbia Gulf) and Texas Eastern Transmission Corporation (Texas Eastern) filed a joint petition requesting that the Commission issue an order approving a stipulation entered into by Columbia Gulf and Texas Eastern on June 29, 1994. Petitioners state that the stipulation terminates two firm transportation contracts between Columbia Gulf and Texas Eastern by the payment of a negotiated Account No. 858 exit fee by Texas Eastern to Columbia Gulf in consideration for Columbia Gulf's agreement to the termination and abandonment of the contracts.

The stipulation is contingent upon Commission approval, including Commission recognition of Texas Eastern's right to recover the exit fee paid to Columbia Gulf as a stranded Account No. 858 cost pursuant to Order No. 636 and/or pursuant to Texas Eastern's global settlement approved by the Commission on May 12, 1994, in Docket No. RP85-177-119, *et al.* Columbia Gulf also seeks Section 7(b) abandonment authorization for the two contracts.

Any person desiring to be heard or to protest the petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 18, 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 petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-17173 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP94-59-000, 001, CP93-226-000]

Cove Point LNG Limited Partnership, Columbia LNG Corporation; Public Meeting on Environmental and Safety Issues

July 11, 1994.

The Federal Energy Regulatory Commission (FERC) staff will conduct a public meeting at 7 p.m. on August 4, 1994 at the Holiday Inn, 155 Holiday Drive, Solomons, Maryland to discuss environmental and safety issues associated with the construction of a liquefaction unit and recommissioning part of the existing LNG facilities at Columbia LNG Corporation's (Columbia LNG) terminal located at Cove Point, Calvert County, Maryland.

Background

On February 26, 1993, Columbia LNG filed an application in Docket No. CP93-226-000 proposing to construct a liquefaction unit and recommission its existing facilities at its Cove Point import terminal in Calvert County, Maryland. The liquefaction unit would have been capable of liquefying up to 20.0 million cubic feet per day (MMcfd) of natural gas for storage. Existing LNG vaporizers would have provided up to 1.0 billion cubic feet per day (Bcfd) of sendout during the winter season. Additionally, Columbia LNG proposed to provide LNG ship terminaling services where it would unload LNG tankers at its existing offshore facilities.

On April 8, 1993, the FERC staff issued a Notice of Intent (NOI) To Prepare an Environmental Assessment (EA) for the above project and requested

comments on its scope. The notice and requests for comments were sent to Federal, state and local environmental agencies, parties to the proceeding, and the public.

On November 3, 1993, Columbia LNG withdrew its application filed in Docket No. CP93-226-000 and concurrently refiled a new application in Docket No. CP94-59-000 under a limited partnership called Cove Point LNG Company, L.P. This name was later changed in Docket No. CP94-59-001 to Cove Point LNG Limited Partnership (Cove Point LNG).

The new application has some obvious differences from the initial application filed on February 26, 1993. Offshore facilities are no longer being considered for recommissioning. The 20 MMCFD liquefaction unit has been downsized to 15 MMCFD. The recommissioning of the remaining existing facilities would be conducted in two phases. Phase 1, which involves two of the four storage tanks, four of the ten vaporizers, two of the three first-stage sendout pumps, four of the ten second-stage sendout pumps, one of the two boiloff blowers, boiloff compressors, and other related equipment, would be initially recommissioned. Phase 2 would recommission the remaining facilities (except the offshore facilities) within three years after the in-service date for the peaking services, provided that such recommissioning commences within three years after the in-service date. If recommissioning of any of the identified facilities is not commenced within the three-year period, Cove Point LNG will return to the FERC to obtain further authority to recommission such facilities.

Public Participation

Given the downsizing of the project, the FERC staff did not supplement its original NOI to Prepare an EA. Some comments were originally received as a result of the NOI. They have been analyzed and the EA is nearing completion. Since few comments were received, staff is making an additional effort to reach out to the public and will conduct a public meeting as noted at the beginning of this notice. It is hoped that the local public near the LNG plant will attend this meeting and offer their viewpoints.

Persons who would like to make oral presentations at the public meeting should contact the FERC Project Manager below to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available for sign-up at the public meeting.

Priority will be given to those persons representing groups.

In addition to the public meeting, the FERC staff will be conducting separate discussions during the course of August 4 and 5 with the Cove Point LNG and its design contractors to examine the cryogenic engineering design aspects of the proposal. Because much of the design data is proprietary and submitted to Cove Point LNG on a confidential basis, these discussions are limited to those who have direct access to the design data and can technically discuss the design aspects of the plant. Staff will however be available at the August 4 evening meeting to answer any general questions concerning these separate design discussions.

Further information concerning the public scoping meeting or about this project in general is available from Hugh Thomas, Project Manager, at (202) 208-0980.

Lois D. Cashell,
Secretary.

[FR Doc. 94-17168 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-306-001]

Mississippi River Transmission Corporation; Rate Change Filing

July 11, 1994.

Take notice that on July 7, 1994 Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 10, to be effective July 1, 1994.

On June 30, 1994 MRT filed a Gas Supply Realignment Cost recovery filing proposed to be effective July 1, 1994 in Docket No. RP94-306-000. MRT recently discovered that the June 30 filing contained an inadvertent error in Footnote No. 1 on Fourth Revised Sheet No. 10.

MRT states that the purpose of the instant filing is to resubmit Sheet No. 10 to correctly state in Footnote No. 1 that the GSRC surcharges are \$.404 in the FTS Reservation Charges for the Market Zone and Field Zone, and \$.0390 in the SCT Usage Charges for the Market Zone and Field Zone.

MRT states that a copy of this letter with the tariff sheet is being mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with § 3875.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 18, 1994. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-17172 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP94-646-000]

**National Fuel Gas Supply Corporation;
Request Under Blanket Authorization**

July 11, 1994.

Take notice that on July 7, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94-646-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities with respect to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83-4-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a new delivery tap located in Washington Township, Erie County, Pennsylvania. The purpose of the delivery tap is for general residential use by Distribution customers in Washington Township, Pennsylvania.

National indicates that the total volume to be delivered to the customer is estimated to be 1,200 Mcf annually. National states that the total volumes to be delivered to the customer would not exceed the total volume authorized prior to this request. National states that its FERC Gas Tariff does not prohibit the addition of new delivery taps. National further states that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantaged to its other customers and that this will have a minimal impact on its peak day and annual deliveries.

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 Rules of Practice and Procedure (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 is deemed to be authorized effective on 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. 94-17170 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR94-16-000]

**Southern California Gas Co.; Technical
Conference**

July 11, 1994.

Take notice that a technical conference has been scheduled for Wednesday, August 10, 1994, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, to discuss Southern California Gas Company's filing in this proceeding.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,
Secretary.

[FR Doc. 94-17171 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP94-630-000]

**Williams Natural Gas Company;
Request Under Blanket Authorization**

July 11, 1994.

Take notice that on June 27, 1994, Williams Natural Gas Company (WNG), One Williams Center Post Office Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP94-630-000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a tap and appurtenant facilities to deliver transportation gas to a processing plant currently under construction in Hemphill County, Texas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the NGA, all as

more fully set forth in the request which is open to the public for inspection.

WNG proposes to install a 10-inch tap and appurtenant facilities on its Pampa 20-inch pipeline located in Hemphill County, Texas. William Gas Processing—Mid-Continent Region Company (WGP-MCR), an affiliate of WNG, has requested this tap to allow delivery of unprocessed gas to a cryogenic turboexpander gas plant which is currently under construction by Williams Field Services—Mid-Continent Region Company, another WNG affiliate. WNG estimates the cost of the construction of these facilities to be \$35,566 which, would be reimbursed by WGP-MCR. WGP-MCR estimates the annual volume would be approximately 16,425,000 Mcf and the peak day volume would be 45,000 Mcf.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,
Secretary.

[FR Doc. 94-17169 Filed 7-14-94; 8:45 am]
BILLING CODE 6717-01-M

**Office of Energy Efficiency and
Renewable Energy**

[Docket No. EE-RM-94-210]

**Building Energy Standards Program:
Updating State Building Codes
Regarding Energy Efficiency**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Pursuant to section 304 of the Energy Conservation and Production Act, the Department of Energy (DOE or Department) is announcing guidance and procedures for the use of States concerning their review of the energy-related provisions of their residential building codes in light of the relevant version of the Council of American Building Officials' Model Energy Code

(Model Energy Code), and of their commercial building codes in light of the American Society of Heating, Refrigerating and Air Conditioning Engineers/Illuminating Engineering Society of North America Standard 90.1-1989 (Standard 90.1-1989). The guidance and procedures cover Certifications, Statements of Reasons and Requests for Extensions of Deadlines from States pursuant to section 304.

In addition, the Department today determines that the Model Energy Code, 1993 compared to the Model Energy Code, 1992 would achieve greater energy efficiency in residential buildings. Consequently, States should review their residential building codes during the next two years using the Model Energy Code, 1993 as the standard.

DATES: Certifications or Statements of Reasons with regard to Model Energy Code, 1992 are due October 24, 1994. Certifications or Statements of Reasons with regard to Model Energy Code, 1993 are due two years from the publication of this notice. Certifications with regard to Standard 90.1-1989 are due October 24, 1994.

ADDRESSES: Certifications, Statements of Reasons, and Requests for Extensions of Deadlines for Certification Statements by States should be directed to the Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Station EE-43, 1000 Independence Avenue, Washington, DC 20585. Envelopes or packages should be labeled, "State Certification of Building Codes Regarding Energy Efficiency."

FOR FURTHER INFORMATION CONTACT: Stephen P. Walder, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-432, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202-586-9209, FAX: 202-586-4617.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act of 1976, as amended (Act) establishes mandated requirements for the Building Energy Standards Program. 42 U.S.C. 6831-6837. The Act applies to all State building codes which by definition includes the codes of units of general purpose local government. 42 U.S.C. 6832. As stated in the Act, the term "State" is defined to include the District of Columbia, the Commonwealth of

Puerto Rico, any territory and possession of the United States, as well as the 50 States.

1. *Residential Building Codes.* Under the Act, each State, not later than two years after the enactment of the Energy Policy Act of 1992 (October 24, 1992), is required to certify to the Secretary of Energy (Secretary) that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise its residential building code provisions to meet or exceed the Model Energy Code, 1992 or any successor of such code that improves energy efficiency. The determination is to be: (1) made after public notice and hearing; (2) made in writing; (3) based on findings included in such determination and evidence presented at the hearing; and (4) available to the public. 42 U.S.C. 6833(a)(1), (a)(2). In addition, if a State makes a determination that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons for the determination which is to be made available to the public. 42 U.S.C. 6833(a)(4).

Furthermore, whenever the Model Energy Code, 1992, or any successor to such code is revised, the Secretary is required to make a determination, not later than 12 months after such revision, whether such amendment would improve the energy efficiency of residential buildings and to publish notice of such determination in the *Federal Register*. If the Secretary determines that the revision of Model Energy Code, 1992, or any successor thereof, improves the energy efficiency in residential buildings, then not later than two years after the date of the publication of such determination, each State is required to certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for the State to revise its residential building code. 42 U.S.C. 6833(a)(5).

As of the date that this notice was issued, only one State had submitted a certification with regard to the Model Energy Code, 1992.

2. *Commercial Building Codes.* Under the Act, each State, not later than two years after enactment of the Energy Policy Act of 1992, is required to certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. The certification must include a demonstration that the State's code provisions meet or exceed the

requirements of Standard 90.1-1989. Whenever the provisions of Standard 90.1-1989, or any successor standard, are revised, the Secretary is required to make a determination, not later than 12 months after the date of such revision, whether such amendment would improve energy efficiency in commercial buildings and to publish notice of such determination in the *Federal Register*. 42 U.S.C. 6833(b)(1) and (b)(2). If the Secretary publishes an affirmative determination, then the States have up to 2 years to review and update their commercial building codes accordingly. *Id.*

3. *Requests for Extension of Deadlines.* The Act authorizes the Secretary to permit extensions of the deadlines for the certification requirements relative to both residential and commercial building codes, if the State can demonstrate that it has made a good faith effort to comply with the requirements and that it has made significant progress in doing so. 42 U.S.C. 6833(c).

II. Discussion

A. Updating Residential Building Codes Regarding Energy Efficiency

1. *Determination.* As stated above, section 304(a)(2) requires each State to make a determination as to whether it is appropriate for such State to revise its residential building code regarding energy efficiency. The determination shall be: (1) made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. The States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in newspapers of general circulation.

The Department realizes that some States do not have a State residential code or have a code that does not apply to all newly constructed residential buildings. If local building codes regulate residential building design and construction rather than a State code, the State must provide for review of those local codes and determine whether it is appropriate for each of its units of general purpose local government to revise the provisions of its residential building code regarding energy efficiency to meet or exceed the Model Energy Code. States may base their determinations and certifications on reasonable preliminary determinations by units of general

purpose local government after they have held an adequate public hearing.

States should be aware that high-rise multi-family residential buildings (greater than three stories) and hotel, motel, and other transient residential building types of any height have historically been treated for energy code purposes as commercial buildings. Consistent with the treatment of high-rise multi-family residential buildings and hotels, motels, and other transient residential building types in Standard 90.1-1989 as if they were commercial buildings, the Department is of the view that the energy efficiency requirements of building codes applicable to such buildings should be reviewed and updated by the States and units of general purpose local government pursuant to the Act as if they were commercial building code requirements. Consequently, residential buildings, for the purposes of certification, would include one- and two-family detached and attached buildings, townhouses, row houses, and low-rise multi-family buildings (not greater than three stories) such as condominiums and garden apartments.

2. *Certification.* As stated above, section 304(a) requires each State to certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise the provisions of such residential building code to meet or exceed the Model Energy Code, 1992. The certification must be in writing. If a State intends to certify that its residential building code(s) already meet or exceed the requirements of the Model Energy code, 1992, it would be appropriate for the State to provide an explanation of the basis for this certification, e.g. the Model Energy Code, 1993, is incorporated by reference, the results of the Departments' comparative analysis or the results of an independent analysis. The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official such as the Director of the State energy office, State code commission, utility commission, or equivalent having primary responsibility for residential building code promulgation and adoption to provide the certification to the Secretary, including certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

3. *Statement of reasons.* Section 304(a)(4) requires that if a State makes

a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State is to submit to the Secretary, in writing, the reasons for this determination. The statement of reasons should define and summarize the pertinent issues and problems regarding its determination; and provide an explanation as to why the State came to its conclusion. If local building codes are applicable in the absence of a State code, the State may rely on reasons provided by the units of general purpose local government. Upon receipt, the Department will publish in the *Federal Register* a notice of availability, stating that a copy has been placed in its Freedom of Information Reading Room in the Forrestal Building in Washington, D.C., so that members of the public may inspect it.

4. *DOE Determination of Improved Energy Efficiency from a Revised Model Energy Code.* At the beginning of 1993, the Council of American Building Officials published a new edition of the Model Energy Code. Differences between the two versions include: (1) the 1993 Edition incorporates the heating, ventilation, and air conditioning minimum energy efficiency standards requirements from Standard 90.1-1989 which includes the Department's appliance energy conservation regulations, 10 CFR Part 430. (2) the 1993 Edition incorporates revised U₀¹ values for walls; (3) the 1993 Edition includes revised air infiltration values for windows and doors; and (4) the 1993 Edition incorporated the air leakage requirements of Standard 90.1-1989.

Based on the above, the Department has determined that the 1993 update would improve the energy efficiency of residential building codes. Section 304(a)(5) of the Act provides for States to certify their codes [using the procedures in section 304(a)(2)] after reviewing them in light of a revised version of the Model Energy Code, such as the 1993 update, not later than two years from the Department's determination that the revised version would improve energy efficiency. With regard to the Model Energy Code, 1993, that period for revision begins today.

As noted above, only one State has submitted a certification with regard to its residential building code as of the date that this notice was issued. States that have not yet made substantial

¹ U₀ = the area-weighted average thermal transmittance of the gross area of the building envelope; i.e., the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, British thermal unit/(hour × square feet × degrees Fahrenheit).

progress in reviewing the energy efficiency provisions of their residential building codes may wish to review and certify their codes in light of the Model Energy Code, 1993. If a State is able to complete its review and certification with regard to the Model Energy Code, 1993 on or before October 24, 1994, there is no need to separately review and certify with respect to the Model Energy Code, 1992. States that have made substantial progress in reviewing the energy efficiency provisions of their residential building codes in light of the Model Energy Code, 1992 may wish to complete their review and submit an appropriate certification by the October 24, 1994 statutory deadline before considering the Model Energy Code, 1993.

B. State Certification and Demonstration Regarding Updating of Commercial Building Codes

1. *Certification.* Section 304(b) requires that not later than October 24, 1994 each State shall certify in writing to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. The certification is required to include a demonstration that the commercial building code provisions regarding energy efficiency meet or exceed the requirements of Standard 90.1-1989. As discussed in section A herein, commercial buildings include hotels, motels and other transient buildings of any height as well as high-rise (greater than three stories) multi-family residential buildings (such as apartments and condominiums).

The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official such as the Director of the State energy office, State code commission, utility commission or equivalent having primary responsibility for commercial building code promulgation and adoption to provide the certification to the Secretary. The Department realizes that some States do not have a State commercial code or have a code that does not apply to all newly constructed commercial buildings. Where local building codes regulate commercial building design and construction rather than a State code, the State must provide for the review and updating of those codes regarding energy efficiency to meet or exceed Standard 90.1-1989. With respect to local building codes, States may base their review and update on reasonable preliminary review and certifications presented to the State by its units of general purpose local government.

2. *Demonstration.* It would be appropriate for the demonstration to include a copy of the State and local government (if applicable) commercial building codes regarding energy efficiency or copies of legislation or regulations adopting either Standard 90.1-1989, or the codified version of Standard 90.1-1989, by reference or incorporation into its State or local building codes. If a State has not adopted Standard 90.1-1989 by reference or incorporation, it would be appropriate to include an analysis showing that its code meets or exceeds Standard 90.1-1989, or the State could accept the conclusions provided the State by the Department in its comparative analysis of the State code relative to Standard 90.1-1989 as a part of the technical assistance provided under section 304(d). In conjunction with the effort to update its residential building code, States should be aware that the Model Energy Code, 1993 adopts Standard 90.1-1989 by reference for commercial and high-rise residential buildings. As such, State adoption of the Model Energy Code, 1993 would automatically satisfy the Act as it relates to commercial buildings.

Demonstrations for local government building codes may be based on reasonable preliminary review and analyses presented to the State by its units of general purpose local government.

C. Request for Extensions

Section 304(c) of the Act requires that the Secretary permit extensions of the deadlines for the certification requirements under sections 304(a) and (b) if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting the provisions of section 304. Such demonstrations could include one or more of the following: (1) a plan for response to the requirements stated in section 304; (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of section 304; or (3) a notice of public hearing.

States should submit separate requests for extension of deadlines for their residential and the commercial building code certifications.

D. Submittals

When submitting any of the above-described documents in this notice, the Department requests that the original documents be accompanied by one copy of the same.

Issued in Washington, DC, on June 7, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94-17259 Filed 7-14-94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5013-1]

Access to Data for Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of access to data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) has previously transferred information, under contract #68-W0-0027, to its contractor, Science Applications International Corporation (SAIC), and SAIC's subcontractors Eastern Research Group, Appl Inc. and Research Technical Corp. EPA will also transfer, under contract #68-W2-0027, information which has been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). As part of the Hazardous and Solid Waste Amendments of 1984, EPA's Office of Solid Waste is required to make determinations concerning identification of specified hazardous wastes. SAIC and its subcontractors, are developing a schedule for reviewing listed hazardous wastes for possible land disposal restrictions. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than July 25, 1994.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (5303) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Access to Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (5305) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 260-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is required, by the Hazardous and Solid Waste Amendments of 1984 to make determinations concerning land disposal for specified hazardous wastes, and to develop a schedule for reviewing

all other listed hazardous wastes for possible land disposal restrictions. EPA is also mandated to list new hazardous waste streams determined to pose a significant public health and environmental hazard. In order to carry out these legislative mandates, EPA must develop land disposal restriction regulations.

SAIC and its subcontractors, under EPA Contract 68-W0-0027, have assisted and, under EPA Contract 68-W2-0027, will continue to assist the Characterization and Assessment Division of the Office of Solid Waste to develop a schedule for reviewing all other listed hazardous wastes for possible land disposal restrictions; to analyze regulatory options and impacts, human and ecological health effects, and industry and plant profiles; to perform chemical and physical analyses of waste samples; and to develop materials and planning activities for public education and involvement. The information to which SAIC and its subcontractors need access is required to fulfill Congressional mandates to determine those wastes which are hazardous for possible disposal controls and restriction. SAIC and its subcontractors also need access to the Agency's Industry Studies Data Base to obtain some of the above information. The information being transferred to SAIC and its subcontractors may have been or will be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC and its subcontractors require access to confidential business information submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer confidential business information to these firms, on a need-to-know basis. Upon completing their use of the confidential business information, SAIC and their subcontractors will return all of it to EPA.

SAIC and its subcontractors are required to sign non-disclosure agreements before they are permitted access to confidential information. Also SAIC and its subcontractors are required to establish security procedures as specified in EPA's "RCRA Confidential Business Information Security Manual". EPA reviews and approves security procedures prior to transferring any RCRA confidential business information.

Dated: July 6, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94-17301 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4713-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 27, 1994 Through July 1, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the *Federal Register* dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D-APH-A82124-00 Rating EO2, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA expressed environmental objections to the mandated use of methyl bromide to treat whole logs. EPA requested that other alternatives be considered.

ERP No. D-BLM-K67023-CA Rating EC2, Oro Cruz Operation of the American Girl Canyon Project, Surface and Underground Mining, Plan of Operations Approval, Imperial County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality, wetlands and wildlife and the need for additional information in the final EIS on water quality, air quality and the mitigation of environmental impacts.

ERP No. D-USN-K11053-CA Rating EC2, Miramar Landfill General Development Plan/Fiesta Island Replacement Project/Northern Sludge Processing Facility/West Miramar Landfill Phase II/Overburden Disposal, Implementation, Funding, COE Section 404 Permit and NPDES Permit, Naval Air Station Miramar, San Diego County, CA.

Summary: EPA expressed environmental concerns with potential impacts to air quality, water resources, wetlands and biological resources. EPA

recommended that project construction be restricted during peak air quality nonattainment periods and that the project be designed to avoid vernal pool wetlands.

ERP No. DS-NOA-E64014-00 Rating EC2, Coral and Coral Reefs Fishery Management Plan, Updated Information, Amendment 2 of the Gulf of Mexico and South Atlantic.

Summary: EPA expressed environmental concerns and requests additional information on the proposed alternatives.

Final EISs

ERP No. F-FHW-K40192-CA CA-41 Improvements, Elkhorn Avenue to North Avenue, Funding, Fresno County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. F-GSA-K80033-CA Sacramento Federal Building—United States Courthouse, Site Selection and Construction within a portion of the Central Business District, City of Sacramento, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. F-GSA-K81020-CA Ronald Reagan Federal Building—United States Courthouse, Site Selection and Construction in the Central Business Area and Approval of Permits, City of Santa Ana, Orange County, CA.

Summary: EPA had no objections to the proposed project.

ERP No. F-USN-E11023-NC Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC.

Summary: EPA had no objections to the proposed wastewater upgrade at Camp Lejeune.

Regulations

ERP No. R-NRC-A09819-00 10 CFR Parts 34 and 150, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations, FR 59.9429.

Summary: EPA reviewed the proposed rule and recommended that the frequency for field inspections remain quarterly until there is enough experience with the revised regulation to warrant changing it.

ERP No. R-UAF-A10068-00 32 CFR Part 989, Environmental Impact Analysis Process (EIAP) for the United States Air Force, Proposed Rule (59 FR 17061).

Summary: EPA commended the Air Force on the proposed revisions and

made suggestions for documenting mitigation and for clarifying categorical exclusions.

Dated: July 12, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities

[FR Doc. 94-17286 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4713-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed July 04, 1994 Through July 08, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940266, Draft Supplement, SCS, WV, Upper Buffalo Creek Watershed Flood Prevention and Watershed Protection, Additional Information, Funding, City of Mannington, Marion County, WV, Due: August 29, 1994, Contact: Rollin N. Swank (304) 291-4151.

EIS No. 940267, Final EIS, AFS, OR, Newberry Geothermal Pilot Project, Construction and Operation of a 33-megawatt Power Plant, Approvals, Deschutes National Forest, Fort Rock Ranger District, Deschutes County, OR, Due: August 15, 1994, Contact: Alice Doremus (503) 383-4703.

EIS No. 940268, Draft EIS, VAD, HI, Veterans Affairs Medical and Regional Office Center Relocation to Tripler Army Medical Center, Construction and Renovation, Approval and NPDES Permit, Oahu, HI, Due: August 29, 1994, Contact: Eugene Keller (202) 233-2463.

EIS No. 940269, Final EIS, UAF, TX, Carswell Air Force Base (AFB) Disposal and Reuse, Implementation, Tarrant County, TX, Due: August 15, 1994, Contact: Dan Mooney (210) 536-3839.

EIS No. 940270, Draft EIS, COE, CA, Petaluma River Flood Control Improvements, Implementation, City of Petaluma, Sonoma County, CA, Due: August 29, 1994, Contact: Gary Flickinger (415) 744-3341.

EIS No. 940271, Final EIS, FHW, CA, Adoption—Calexico East Border Station Construction and Road Construction, CA-7 between the New Port of Entry and CA-98 that borders the United States and Mexico, Funding and Right-of-way Permit, City of Calexico, Imperial County, CA, Due: August 15, 1994, Contact: Leonard E. Brown (916) 551-1307.

The US Department of Transportation's Federal Highway Administration (FHWA) has adopted the US General Services Administration's final EIS filed with the US Environmental Protection Agency on 8-9-93. The FHWA was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary Under § 1506.3(c) of the Council on Environmental Quality Regulations. EIS No. 940272, Draft EIS, COE, PR, Rio Guanajibo River Basin Flood Protection Project, Implementation and NPDES Permit, Mayaguez and San German, PR, Due: August 29, 1994, Contact: William J. Fonferek (904) 232-2803.

EIS No. 940273, Draft EIS, FEM, CA, Oakland City Administration Building Project, Construction, Funding and Permit Approval, for Replacement of City Hall in the City Hall Plaza, Oakland, CA, Due: August 29, 1994, Contact: Sandro Amaglio (415) 923-7284.

EIS No. 940274, Final EIS, FAA, MN, Minneapolis-St. Paul International Airport, Runway 4-22 Extension, Funding, Wold-Chamberlain Field, Hennepin County, MN, Due: August 15, 1994, Contact: Glenn Orcutt (612) 725-4221.

Amended Notices

EIS No. 940250, Draft EIS, DOE, NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation, Due: September 30, 1994, Contact: Tom Wichmann (800) 682-5583.

Published FR 07-01-94 Title Change and Contact Person and Telephone Number Change.

Dated: July 12, 1994.

Richard E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 94-17285 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-U

[OPPTS-59984; FRL-4900-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before

manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94-118, June 28, 1994.

Y 94-119, 94-120, June 29, 1994.

Y 94-121, July 10, 1994.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (4708), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NE-B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94-118

Manufacturer. Confidential.
Chemical. (G) Acrylic terpolymer.
Use/Production. (S) Additive for industrial coatings to improve surface appearance. Prod. range: Confidential.

Y 94-119

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Additive for magnetic tapes. Prod. range: Confidential.

Y 94-120

Manufacturer. Seydel Companies.
Chemical. (G) Acid terminated terephthalate/isophthalate polyesther resin.
Use/Production. (S) Textile sizing other processes, adhesives. Prod. range: Confidential.

Y 94-121

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester resin.
Use/Production. (S) Mine bolt resin. Prod. range: Confidential.

List of Subjects

Environmental protection,
Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-17291 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59983; FRL-4900-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94-108, May 29, 1994.

Y 94-109, May 30, 1994.

Y 94-110, 94-111, 94-112, June 2, 1994.

Y 94-113, 94-114, June 6, 1994.

Y 94-115, 94-116, June 20, 1994.

Y 94-117, June 21, 1994.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NE-B607 at the above address between 12 noon and 4 p.m., Monday

through Friday, excluding legal holidays.

Y 94-108

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.
Use/Importer. (S) Resin for powder coating on metal surface. Import range: 20,000-30,000 kg/yr.

Y 94-109

Manufacturer. Confidential.
Chemical. (G)

Poly(alkylmethacrylate),
Use/Production. (S) Lube oil additive and hydrocarbon process stream additive. Prod. range: Confidential.

Y 94-110

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94-111

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94-112

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94-113

Manufacturer. Estron Chemical, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) . Prod. range: Confidential.

Y 94-114

Manufacturer. Bostik, Inc.
Chemical. (G) Polyester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94-115

Manufacturer. Confidential.
Chemical. (G) Saturated polymer.
Use/Production. (G) Sheet molding compound resin. Prod. range: Confidential.

Y 94-116

Manufacturer. Confidential.
Chemical. (G) Polyamide graft copolymer.

Use/Production. (G) Polymeric material: open, non-dispersive. Prod. range: Confidential.

Y 94-117

Manufacturer. Confidential.
Chemical. (G) Alkyd polyester resin.
Use/Production. (G) Sheet molding compound resin. Prod. range:

List of Subjects

Environmental protection,
Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-17292 Filed 7-14-94; 8:45 am]
BILLING CODE 6560-50-F

[OPPTS-61834; FRL-4871-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 125 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94-896, 94-897, 94-898, 94-899, 94-900, 94-901, 94-902, 94-903, 94-904, 94-905, 94-906, May 18, 1994.

P 94-907, 94-908, 94-909, 94-910, May 22, 1994.

P 94-911, 94-912, 94-913, 94-914, 94-915, 94-916, 94-917, 94-918, 94-919, 94-920, 94-921, 94-922, 94-923, 94-924, May 23, 1994.

P 94-925, 94-926, May 24, 1994.

P 94-927, 94-928, 94-929, May 25, 1994.

P 94-930, 94-931, 94-932, 94-933, 94-934, 94-935, 94-936, 94-937, 94-938, May 28, 1994.

P 94-939, 94-940, May 29, 1994.

P 94-941, 94-942, May 28, 1994.

P 94-943, May 29, 1994.

P 94-944, 94-945, 94-946, 94-947, 94-948, 94-949, 94-950, 94-951, 94-952, 94-953, 94-954, 94-955, 94-956, 94-957, 94-958, May 30, 1994.

P 94-959, 94-960, 94-961, 94-962, 94-963, 94-964, 94-965, 94-966, 94-967, 94-968, 94-969, 94-970, 94-971, 94-972, 94-973, 94-974, 94-975, 94-976, 94-977, 94-978, 94-979, 94-980, 94-981, 94-982, May 31, 1994.

P 94-983, 94-984, 94-985, June 1, 1994.

P 94-986, May 31, 1994.

P 94-987, 94-988, 94-989, June 4, 1994.

P 94-990, 94-991, 94-992, June 5, 1994.

P 94-993, 94-994, 94-995, 94-996, 94-997, June 6, 1994.

P 94-998, 94-999, June 5, 1994.

P 94-1000, June 7, 1994.

P 94-1001, 94-1002, 94-1003, June 6, 1994.

P 94-1004, 94-1005, 94-1006, 94-1007, June 7, 1994.

P 94-1008, June 4, 1994.

P 94-1009, 94-1010, 94-1011, 94-1012, 94-1013, 94-1014, 94-1015, 94-1016, June 11, 1994.

P 94-1017, 94-1018, 94-1019, 94-1020, June 12, 1994.

Written comments by:

P 94-896, 94-897, 94-898, 94-899, 94-900, 94-901, 94-902, 94-903, 94-904, 94-905, 94-906, April 18, 1994.

P 94-907, 94-908, 94-909, 94-910, April 22, 1994.

P 94-911, 94-912, 94-913, 94-914, 94-915, 94-916, 94-917, 94-918, 94-919, 94-920, 94-921, 94-922, 94-923, 94-924, April 23, 1994.

P 94-925, 94-926, April 24, 1994.

P 94-927, 94-928, 94-929, April 25, 1994.

P 94-930, 94-931, 94-932, 94-933, 94-934, 94-935, 94-936, 94-937, 94-938, April 28, 1994.

P 94-939, 94-940, April 29, 1994.

P 94-941, 94-942, April 28, 1994.

P 94-943, April 29, 1994.

P 94-944, 94-945, 94-946, 94-947, 94-948, 94-949, 94-950, 94-951, 94-952, 94-953, 94-954, 94-955, 94-956, 94-957, 94-958, April 30, 1994.

P 94-959, 94-960, 94-961, 94-962, 94-963, 94-964, 94-965, 94-966, 94-967, 94-968, 94-969, 94-970, 94-971, 94-972, 94-973, 94-974, 94-975, 94-976, 94-977, 94-978, 94-979, 94-980, 94-981, 94-982, May 1, 1994.

P 94-983, 94-984, 94-985, May 2, 1994.

P 94-986, May 1, 1994.

P 94-987, 94-988, 94-989, May 5, 1994.

P 94-990, 94-991, 94-992, May 6, 1994.

P 94-993, 94-994, 94-995, 94-996, 94-997, May 7, 1994.

P 94-998, 94-999, May 6, 1994.

P 94-1000, May 8, 1994.

P 94-1001, 94-1002, 94-1003, May 7, 1994.

P 94-1004, 94-1005, 94-1006, 94-1007, May 8, 1994.

P 94-1008, May 5, 1994.

P 94-1009, 94-1010, 94-1011, 94-1012, 94-1013, 94-1014, 94-1015, 94-1016, May 12, 1994.

P 94-1017, 94-1018, 94-1019, 94-1020, May 13, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51834]" and the specific PMN number should be sent to: Document Control Center (4707), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099 Washington, DC 20460 (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (4708), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEM-B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94-896

Manufacturer. Confidential.
Chemical. (G) Substituted alkyl dianlide.
Use/Production. (G) Chemical intermediate. Prod. range: 58,000 kg/yr.

P 94-897

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyldecanoic acid.
Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94-898

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyldecanoic acid.
Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94-899

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyldecanoic acid.
Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94-900

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-901

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyl-1-decanol.
Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 300,000-600,000 kg/yr.

P 94-902

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyl-1-decanol.
Use/Import. (G) Solubilizer agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-903

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyl-1-decanol.
Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-904

Importer. Vista Chemical Company.
Chemical. (S) 2-Butyl-1-decanol.
Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-905

Importer. Vista Chemical Company.
Chemical. (S) 2-Hexadecyl-1-octadecanol.
Use/Import. (G) Solubilizer agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-906

Importer. Vista Chemical Company.
Chemical. (S) 2-Hexadecyl-1-eicosanol.
Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000-600,000 kg/yr.

P 94-907

Manufacturer. Confidential.
Chemical. (G) Modified vinyl ester copolymer.
Use/Production. (S) Architectural paint vehicle. Prod. range: Confidential.

P 94-908

Manufacturer. Confidential.
Chemical. (G) Modified vinyl acetate polymer.
Use/Production. (S) Architectural paint vehicle. Prod. range: Confidential.

P 94-909

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial air dry and force dry coatings for metal substrates. Prod. range: Confidential.

P 94-910

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial air dry and force dry coatings for metal substrates. Prod. range: Confidential.

P 94-911

Manufacturer. Nalco Chemical Company.
Chemical. (G) Carbohydrazone.
Use/Production. (S) Oxygen scavenger gas boiler feed water. Prod. range: Confidential.

P 94-912

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94-913

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94-914

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer salt.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94-915

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer salt.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.conf.

P 94-916

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer saltsociometrics.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94-917

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer salt.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94-918

Manufacturer. Confidential.
Chemical. (G) Water borne polyurethane.
Use/Production. (S) Adhesive for footwear. Prod. range: Confidential.

P 94-919

Manufacturer. Angus Chemical Company.
Chemical. (G) Reaction product of an alkanolamine and boric acid.

Use/Production. (S) Corrosion inhibitor in metal working fluids. Prod. range: Confidential.

P 94-920

Manufacturer. Croda Inc.
Chemical. (S) Polyoxyethylene (1700) pentaerythritol tetrastearate/palmitate.
Use/Production. (S) Thickening agent. Prod. range: 15,000 kg/yr.

P 94-921

Manufacturer. Confidential.
Chemical. (S) Phenol, 4,4'-methylenebis(2,6-dimethyl-).
Use/Production. (S) Phenolic intermediate and crosslinking agent. Prod. range: Confidential.

P 94-922

Importer. Confidential.
Chemical. (G) Substituted resorcinol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 94-923

Importer. Confidential.
Chemical. (G) Substituted phenol.
Use/Import. (G) A component of the material for IC fabrication, Import range: Confidential.

P 94-924

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid/polymer.
Use/Production. (G) Water treatment additive. Prod. range: Confidential.

P 94-925

Manufacturer. Teknor Apex Company.
Chemical. (G) Polyol ester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94-926

Manufacturer. Teknor Apex Company.
Chemical. (S) Polyol ester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94-927

Importer. 3M Company.
Chemical. (G) Fluorochemical acrylate polymer.
Use/Import. (G) Coating. Import range: Confidential.

P 94-928

Manufacturer. Confidential.
Chemical. (G) Dialkyl crown ether.
Use/Production. (G) Reversible extractment of strontium and lead. Prod. range: Confidential.

P 94-929

Manufacturer. Confidential.
Chemical. (G) Aromatic crown ether.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94-930

Manufacturer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94-931

Manufacturer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94-932

Manufacturer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94-933

Manufacturer. Sannor Industries, Inc.
Chemical. (G) Amine neutralized phosphoric acid esters.
Use/Production. (G) Prod. range: Confidential.

P 94-934

Manufacturer. Confidential.
Chemical. (G) Terephthalate esterq. basestock. Prod. range: Confidential.

P 94-935

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000-400,000 kg/yr.

P 94-936

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000-400,000 kg/yr.

P 94-937

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000-400,000 kg/yr.

P 94-938

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000-400,000 kg/yr.

P 94-939

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94-940

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94-941

Importer. Lenzing Performance Inc.
Chemical. (G) Polyamideimide.
Use/Import. (S) Wire coating, griding wheels, reinforcement polymer, membranes, and moulded parts. Import range: Confidential.

P 94-942

Manufacturer. Confidential.
Chemical. (G) Polyimide.
Use/Production. (S) Wire coating, grinding wheels, reinforcement polymer, membranes and moulded parts. Prod. range: Confidential.

P 94-943

Manufacturer. Confidential.
Chemical. (G) Alkyl-aminophenol.
Use/Production. (S) Intermediate in the manufacture of fluorescent whitening agent. Prod. range: 42,200 kg/yr.

P 94-944

Manufacturer. Confidential.
Chemical. (G) Chemically modified cyclodextrin.
Use/Production. (G) Inclusion complexation agent. Prod. range: Confidential.

P 94-945

Manufacturer. Confidential.
Chemical. (G) Substituted heterocyclic azo trisubstituted benzeneamine.
Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 94-946

Manufacturer. Confidential.
Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary aminonium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-947

Manufacturer. Confidential.
Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary aminonium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-948

Manufacturer. Confidential.

Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary ammonium salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-949

Manufacturer. Confidential.

Chemical. (G) Substituted aromatic acid chloride.

Use/Production. (G) Chemical intermediate. Prod. range: 5,000 kg/yr.

P 94-950

Manufacturer. Confidential.

Chemical. (S) An isophthalic acid, phthalic anhydride, neopentyl glycol, trimethylol, propane, ethylene glycol, 2-butyl-2-ethyl-1,3 propanediol polyester.

Use/Production. (G) Polyesters resin for use in industrial coatings. Prod. range: Confidential.

P 94-951

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-952

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-953

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-954

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-955

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-956

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-957

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-958

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-959

Importer. Confidential.

Chemical. (G) 1,2-Propanediol, 2 (or 3)-1-propenyloxy]-, polymer with x hydroxy-w-hydroxypoly (oxy-1,4-butanediyl) and 1,1' methylenebis (4-isocyanatobenzene).

Use/Import. (S) Rubber and plastics resin. Import range: 110,000-250,000 kg/yr.

P 94-960

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate (MDI) prepolymer.

Use/Production. (S) For the production of shoe soles, inner soles, sandals and boots. Prod. range: Confidential.

P 94-961

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate (MDI) prepolymer.

Use/Production. (S) For the production of shoe soles, inner soles, sandals and boots. Prod. range: Confidential.

P 94-962

Manufacturer. Confidential.

Chemical. (G) Poly condensate of aliphatic dicarboxylic acid and alkanediol polyurethane of aliphatic polyester.

Use/Production. (G) Molding compound. Prod. range: Confidential.

P 94-963

Manufacturer. Confidential.

Chemical. (G) Polyurethane of aliphatic polyester.

Use/Production. (G) Molding compound. Prod. range: Confidential.

P 94-964

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and apolyol calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-965

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-966

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-967

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-968

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-969

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-970

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-971

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-972

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-973

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-974

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-975

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-976

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-977

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-978

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94-979

Manufacturer. Confidential.

Chemical. (G) Amine carboxylic acid alkali salt.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-980

Manufacturer. Confidential.

Chemical. (G) Copolymeric fluoroalkylphatic ester.

Use/Production. (S) Stain resistant agent for carpet or general fabrics. Prod. range: 1,000-30,000 kg/yr.

P 94-981

Manufacturer. Confidential.

Chemical. (S) Fatty acids, lard.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 94-982

Manufacturer. Confidential.

Chemical. (G) Methyl amine esters.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 94-983

Manufacturer. Petrolite Corporation.

Chemical. (S) 2-Propenoic acid, alcohols C₁₄' esters.

Use/Production. (G) Additive. Prod. range: Confidential.

P 94-984

Manufacturer. Uni-Star Industries, Ltd.

Chemical. (G) Rosin, maleated, polymer with.

Use/Production. (S) Foam loose fill and foam sheet packaging material. Prod. range: Confidential.

P 94-985

Manufacturer. American Maize-Products Company.

Chemical. (G) Chemically modified cyclodextrin.

Use/Production. (G) Inclusion complexation agent. Prod. range: Confidential.

P 94-986

Importer. Rhone-Poulenc nc.

Chemical. (S) Phosphoric acid, lanthanum (3+) salt (1:1).

Use/Import. (S) Catalyst for organic synthesis, phosphor for TV picture tubes and fluorescent lights. Import range: Confidential.

P 94-987

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane acrylate.

Use/Production. (G) Resin or resin additive. Prod. range: Confidential.

P 94-988

Manufacturer. Hercules Incorporation.

Chemical. (G) Hydrophobically modified hydroxyethylcellulose.

Use/Production. (S) Thickening agent for paints, paper coatings, hair and skin care applications. Prod. range: Confidential.

P 94-989

Importer. Ciba-Geigy Corporation.

Chemical. (G) Naphthalenedisulfonic acid, bis-3-(2-acetyl-amino)-4-((3-substituted-5-propylamino)amino triazine) phenyl azo.

Use/Import. (S) Thickening agent for paints, paper coatings, hair and skin care applications. Import range: Confidential.

P 94-990

Importer. DIC Trading (U.S.A.), Inc.

Chemical. (G) Polyester polyurethane. *Use/Import.* (G) Polyurethane for adhesives. Import range: Confidential.

P 94-991

Importer. DIC Trading (U.S.A.), Inc.

Chemical. (G) Acrylic modified epoxy ester.

Use/Import. (S) Automobile parts coatings. Import range: Confidential.

P 94-992

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Hydroxyl groups containing acrylic copolymer.

Use/Production. (S) Air-drying and stoving industrial paints. Prod. range: 10,000-30,000 kg/yr.

P 94-993

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.

Use/Production. (S) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-994

Manufacturer. Confidential.

Chemical. (G) Modified ethylene ethylene/aromatic copolymer.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-995

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-996

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-997

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-998

Manufacturer. Morton International, Inc.

Chemical. (S)

Bis(cyclopentadienyl)magnesium.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-999

Manufacturer. Morton International, Inc.

Chemical. (S)

Bis(methylcyclopentadienyl)magnesium.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94-1000

Importer. AKZO Resins.

Chemical. (G) Polyester resin.

Use/Import. (S) Resin used to manufacture industrial coatings. Import range: Confidential.

P 94-1001

Manufacturer. Confidential.

Chemical. (G) Guerbet alcohol ester.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1002

Importer. DIC Trading (U.S.A.), Inc.

Chemical. (G) Chlorinated polypropylene modified acrylic copolymer.

Use/Import. (S) Industrial coating for polypropylene goods. Import range: Confidential.

P 94-1003

Importer. Confidential.

Chemical. (G) Reaction products formed between tannins and amines in the presence of hydrochloric acid.

Use/Import. (G) Open, non-dispersive: product of emulsifier for binder use in construction and maintenance of roads. Import range: Confidential.

P 94-1004

Manufacturer. Confidential.

Chemical. (G) Reaction products of chloromethyl oxirane, bisphenol A, and polyoxyethylene-polyoxypropylene block copolymer.

Use/Production. (G) Modifier for water-redcurable epoxy resins. Prod. range: Confidential.

P 94-1005

Manufacturer. Anitec Division of International Paper.

Chemical. (S) 6-Bromo-1,3-benzodioxole-5-carboxaldehyde.

Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30-60 kg/yr.

P 94-1006

Manufacturer. Anitec Division of International Paper.

Chemical. (S) 5-Bromo-6-nitro-1,3-benzodioxole.

Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30-60 kg/yr.

P 94-1007

Manufacturer. Anitec, Division of International Paper.

Chemical. (S) Bis (4,5-(methylenedioxy)-2-nitrophenyl) disulfide.

Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30-60 kg/yr.

P 94-1008

Manufacturer. Confidential.

Chemical. (G) Rosin derivative metal resinate.

Use/Production. (S) Resin for printing ink or adhesives. Prod. range: Confidential.

P 94-1009

Importer. Confidential.

Chemical. (G) Trifunctional aliphatic blocked urethane cross-linker.

Use/Import. (G) Protective coating for resin. Import range: 2,000-5,000 kg/yr.

P 94-1010

Manufacturer. Eastman Chemical Company.

Chemical. (G) Substituted amino-anthraquinone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1011

Manufacturer. Eastman Chemical Company.

Chemical. (G) Substituted amino-anthraquinone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1012

Manufacturer. Eastman Chemical Company.

Chemical. (G) Substituted amino-anthraquinone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1013

Manufacturer. Eastman Chemical Company.

Chemical. (G) Substituted amino-anthraquinone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1014

Manufacturer. Eastman Chemical Company.

Chemical. (G) Substituted amino-anthraquinone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1015

Importer. Confidential.

Chemical. (G) Reaction products formed between tannins and amines in the presence of hydrochloric acid.

Use/Production. (G) Open, non-dispersive: product of emulsifier for binder used in construction and maintenance of roads. Import range: Confidential.

P 94-1016

Manufacturer. Confidential.

Chemical. (S) 2-Pyrrolidone, 1-ethenyl-, polymer with 1-triacontene.

Use/Production. (S) Explosive/pyrotechnic binder/stabilizer. Prod. range: Confidential.

P 94-1017

Manufacturer. Confidential.

Chemical. (G) Substituted urea.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94-1018

Manufacturer. Confidential.

Chemical. (G) Substituted guanidine.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94-1019

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium halide.

Use/Production. (G) Catalyst for use in manufacture of chemical intermediate. Prod. range: Confidential.

P 94-1020

Manufacturer. S. C. Johnson & Sons, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

List of Subjects

Environmental protection,
Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.

[FR Doc. 94-17293 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51835; FRL-4874-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of 152 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94-1021, 94-1022, 94-1023, 94-1024, 94-1025, 94-1026, 94-1027, 94-1028, 94-1029, 94-1030, 94-1031, 94-1032, 94-1033, 94-1034, 94-1035, 94-1036, 94-1037, 94-1038, 94-1039, 94-1040, 94-1041, 94-1042, 94-1043, 94-1044, 94-1045, 94-1046, 94-1047, 94-1048, 94-1049, 94-1050, 94-1051, 94-1052, 94-1053, 94-1054, 94-1055, 94-1056, 94-1057, 94-1058, 94-1059, 94-1060, 94-1061, 94-1062, June 12, 1994.

P 94-1063, 94-1064, June 13, 1994.
P 94-1065, 94-1066, 94-1067, 94-1068, 94-1069, 94-1070, 94-1071, 94-1072, 94-1073, 94-1074, 94-1075, 94-1076, June 15, 1994.

P 94-1077, June 18, 1994.

P 94-1078, June 15, 1994.

P 94-1079, 94-1080, 94-1081, 94-1082, 94-1083, 94-1084, 94-1085, 94-1086, 94-1087, 94-1088, 94-1089, 94-1090, 94-1091, 94-1092, June 19, 1994.

P 94-1093, 94-1094, 94-1095, June 20, 1994.

P 94-1096, 94-1097, 94-1098, 94-1099, 94-1100, 94-1101, 94-1102, 94-1103, 94-1104, 94-1105, 94-1106, 94-1107, 94-1108, 94-1109, 94-1110, 94-

1111, 94-1112, 94-1113, 94-1114, 94-1115, 94-1116, 94-1117, 94-1118, 94-1119, 94-1120, June 19, 1994.

P 94-1121, June 11, 1994.

P 94-1122, 94-1123, 94-1124, 94-1125, 94-1126, 94-1127, June 21, 1994.

P 94-1128, June 27, 1994.

P 94-1129, 94-1130, 94-1131, 94-1132, June 21, 1994.

P 94-1133, 94-1134, 94-1135, 94-1136, June 22, 1994.

P 94-1137, 94-1138, 94-1139, 94-1140, 94-1141, 94-1142, June 25, 1994.

P 94-1143, June 15, 1994.

P 94-1144, 94-1145, 94-1146, 94-1147, 94-1148, 94-1149, 94-1150, 94-1151, June 25, 1994.

P 94-1152, 94-1155, 94-1156, 94-1163, 94-1164, 94-1165, 94-1166, 94-1167, 94-1168, 94-1169, June 26, 1994.

P 94-1170, 94-1171, 94-1172, 94-1173, 94-1174, 94-1175, 94-1176, 94-1177, 94-1178, 94-1179, 94-1180, June 27, 1994.

Written comments by:

P 94-1021, 94-1022, 94-1023, 94-1024, 94-1025, 94-1026, 94-1027, 94-1028, 94-1029, 94-1030, 94-1031, 94-1032, 94-1033, 94-1034, 94-1035, 94-

1036, 94-1037, 94-1038, 94-1039, 94-1040, 94-1041, 94-1042, 94-1043, 94-

1044, 94-1045, 94-1046, 94-1047, 94-1048, 94-1049, 94-1050, 94-1051, 94-

1052, 94-1053, 94-1054, 94-1055, 94-1056, 94-1057, 94-1058, 94-1059, 94-

1060, 94-1061, 94-1062, May 13, 1994.

P 94-1063, 94-1064, May 14, 1994.

P 94-1065, 94-1066, 94-1067, 94-1068, 94-1069, 94-1070, 94-1071, 94-

1072, 94-1073, 94-1074, 94-1075, 94-1076, May 16, 1994.

P 94-1077, May 19, 1994.

P 94-1078, May 16, 1994.

P 94-1079, 94-1080, 94-1081, 94-1082, 94-1083, 94-1084, 94-1085, 94-

1086, 94-1087, 94-1088, 94-1089, 94-1090, 94-1091, 94-1092, May 20, 1994.

P 94-1093, 94-1094, 94-1095, May 21, 1994.

P 94-1096, 94-1097, 94-1098, 94-1099, 94-1100, 94-1101, 94-1102, 94-

1103, 94-1104, 94-1105, 94-1106, 94-1107, 94-1108, 94-1109, 94-1110, 94-

1111, 94-1112, 94-1113, 94-1114, 94-1115, 94-1116, 94-1117, 94-1118, 94-

1119, 94-1120, May 20, 1994.

P 94-1121, May 12, 1994.

P 94-1122, 94-1123, 94-1124, 94-1125, 94-1126, 94-1127, May 22, 1994.

P 94-1128, May 28, 1994.

P 94-1129, 94-1130, 94-1131, 94-1132, May 22, 1994.

P 94-1133, 94-1134, 94-1135, 94-1136, May 23, 1994.

P 94-1137, 94-1138, 94-1139, 94-1140, 94-1141, 94-1142, May 26, 1994.

P 94-1143, May 16, 1994.

P 94-1144, 94-1145, 94-1146, 94-1147, 94-1148, 94-1149, 94-1150, 94-1151, May 26, 1994.

P 94-1152, 94-1155, 94-1156, 94-1163, 94-1164, 94-1165, 94-1166, 94-1167, 94-1168, 94-1169, May 27, 1994.

P 94-1170, 94-1171, 94-1172, 94-1173, 94-1174, 94-1175, 94-1176, 94-1177, 94-1178, 94-1179, 94-1180, May 28, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51835]" and the specific PMN number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099 Washington, DC 20460 (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEM-B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94-1021

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1022

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1023

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1024

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1025

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1026

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1027

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1028

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1029

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1030

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1031

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1032

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1033

Manufacturer. S. C. Johnson & Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1034

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1035

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1036

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1037

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range:
Confidential.

P 94-1038

Manufacturer. Siltech Inc.
Chemical. (G) Dimethicone copolyol amine.

Use/Production. (S) Textile softener.
Prod. range: Confidential.

P 94-1039

Importer. Confidential.
Chemical. (G) Disazo-substituted carbomonocyclic metal complex.
Use/Import. (S) Leather dye. Import
range: Confidential.

P 94-1040

Manufacturer. Scher Chemicals, Inc.
Chemical. (S) N-Alkyl-(3,aminopropyl)-N-N-Dimethyl-N-ethyl ammonium ethyl sulfate.

Use/Production. (G) Floor treatment additive. Prod. range: Confidential.

P 94-1041

Manufacturer. H. B. Fuller Company.
Chemical. (G) Triethylaminium salt polyurethane polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94-1042

Manufacturer. Fairmount Chemical Company, Inc.

Chemical. (G) Methylene-bis-benzotriazolylphenols.
Use/Production. (S) Processing polycarbonates, polymer additive for ultraviolet stabilization-high temperature. Prod. range: Confidential.

P 94-1043

Manufacturer. Confidential.
Chemical. (G) Methylene-bis-benzotriazolylphenols.
Use/Production. (S) Halogen (chlorine or bromine) stabilizer in swimming pools and spas. Prod. range: 34,000-136,000 kg/yr.

P 94-1044

Manufacturer. Confidential.
Chemical. (G) Acrylic polymers.
Use/Production. (G) Adhesive for industrial application to substrates.
Prod. range: Confidential.

P 94-1045

Manufacturer. Confidential.
Chemical. (G) Acrylic polymers.
Use/Production. (G) Adhesive for industrial application to substrates.
Prod. range: Confidential.

P 94-1046

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1047

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1048

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1049

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1050

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1051

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1052

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1053

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94-1054

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1055

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1056

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1057

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1058

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1059

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1060

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1061

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod.
range: Confidential.

P 94-1062

Manufacturer. International Specialty
Products.
Chemical. (G) Chloro alkene.
Use/Production. (G) Chemical
intermediate. Prod. range: Confidential.

P 94-1063

Importer. Confidential.
Chemical. (G) Siloxanes and silicones,
polyether modified.
Use/Import. (G) Additive, open, non-
dispersive use. Import range:
Confidential.

P 94-1064

Importer. Confidential.
Chemical. (G) Acrylic acid copolymer,
polyoxyethylene modified.
Use/Import. (G) Additive, open, non-
dispersive use. Import range:
Confidential.

P 94-1065

Importer. Confidential.

Chemical. (G) Hydroxy acrylic
polymer.
Use/Import. (G) Automotive refinish
paint. Import range: Confidential.

P 94-1066

Manufacturer. Confidential.
Chemical. (G) Pentaerythritol
tetraesters of mixed fatty acids.
Use/Production. (G) Synthetic
industrial lubricant for contained use.
Prod. range: Confidential.

P 94-1067

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters
of mono and dipentaerythritol.
Use/Production. (G) Synthetic
industrial lubricant for contained use.
Prod. range: Confidential.

P 94-1068

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters
of mono and dipentaerythritol.
Use/Production. (G) Synthetic
industrial lubricant for contained use.
Prod. range: Confidential.

P 94-1069

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters
of mono and dipentaerythritol.
Use/Production. (G) Component of
dispersively applied coating. Prod.
range: Confidential.

P 94-1070

Manufacturer. Confidential.
Chemical. (G) Modified acrylate
methacrylate polymer.
Use/Production. (G) Polyester
component of a polyurethane adhesive.
Prod. range: Confidential.

P 94-1071

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional
polymers.
Use/Production. (G) Highly dispersive
use. Prod. range: Confidential.

P 94-1072

Manufacturer. Confidential.
Chemical. (G) Styrenated hydroxy
functional acrylic.
Use/Production. (G) Highly dispersive
use. Prod. range: Confidential.

P 94-1073

Manufacturer. Confidential.
Chemical. (G) Mixed unsaturated
aliphatic esters.
Use/Production. (G) Component of
coating with open use. Prod. range:
64,000-85,000 kg/yr.

P 94-1074

Manufacturer. H. B. Fuller
Corporation.

Chemical. (G) Polyester isocyanate
polymer.
Use/Production. (S) Adhesive. Prod.
range: Confidential.

P 94-1075

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
polymer.
Use/Production. (S) Adhesive. Prod.
range: Confidential.

P 94-1076

Importer. Confidential.
Chemical. (G) Modified polyester
resin.
Use/Import. (G) Adhesive. Import
range: Confidential.

P 94-1077

Importer. Spies Hecker, Inc.
Chemical. (S) 1,6-Hexanediol;
hexanedioic acid; 1,3-
benzenedicarboxylic acid; 1,3-
benzenedicarboxylic acid; 1,4-
benzenedicarboxylic acid;
dimethylolpropionic acid; isophorone
diisocyanate;
dimethylisopropanolamine.
Use/Import. (S) Binder for paints.
Import range: 100-1,000 kg/yr.

P 94-1078

Manufacturer. Confidential.
Chemical. (G) Vinyl acetate
copolymer.
Use/Production. (G) Protective
coating, (open, non-dispersive use).
Prod. range: Confidential.

P 94-1079

Manufacturer. Arizona Chemical
Company.
Chemical. (G) Petroleum hydrocarbon
resin (cyclopentadiene type) as the basic
polymer.
Use/Production. (S) Tackifier
component of adhesives. Resin
component in production of heat-set,
wed off-set and sheet fed inks. Prod.
range: Confidential.

P 94-1080

Manufacturer. Olin Corporation.
Chemical. (G) Alcohol alkoxylate.
Use/Production. (S) Surfactant/rinse
aid household, and industrial automatic
dishwashing. Prod. range: Confidential.

P 94-1081

Manufacturer. Confidential.
Chemical. (G) Hydroxy terminated
saturated polyester resin.
Use/Production. (G) Intermediate for
laminating adhesive. Prod. range:
Confidential.

P 94-1082

Manufacturer. Confidential.
Chemical. (G) Isocyanate-terminated
polyester polyurethane.

Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94-1083

Manufacturer. Confidential.
Chemical. (G) Trimethylolpropane triesters with mixed fatty acids.

Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94-1084

Manufacturer. Arizona Chemical Company.

Chemical. (G) Petroleum hydrocarbon resin (cyclopentadiene type), as the basic polymer.

Use/Production. (S) Tackifier component of adhesives. Resin component in the production of heat-set, off-set and sheet inks. Prod. range: Confidential.

P 94-1085

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1086

Manufacturer. Confidential.

Chemical. (G) Mono and amine salt carboxylate.

Use/Production. (G) Urethane foam catalyst. Prod. range: Confidential.

P 94-1087

Manufacturer. R. T. Vanderbilt Company, Inc.

Chemical. (S) Thiodicarbonic diamide, tetrakis (2-methylpropyl)-.

Use/Production. (S) Polymer and elastomer accelerator. Prod. range: Confidential.

P 94-1088

Manufacturer. Confidential.

Chemical. (G) Alkyl polyester resin, carboxy terminated.

Use/Production. (G) Resin for powder coating. Prod. range: Confidential.

P 94-1089

Importer. Confidential.

Chemical. (G) Polyurethane adduct.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94-1090

Importer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (S) Docosanoic acid, mono ester with 1,2,3-propanediol.

Use/Import. (G) Polymer additive non-dispersive use. Import range: Confidential.

P 94-1091

Manufacturer. Eastman Kodak Company.

Chemical. (G) Aromatic amino substituted naphthalenecarboxamide.

Use/Production. (G) Chemical intermediate. Prod. range: 150-1,500 kg/yr.

P 94-1092

Manufacturer. Stockhausen, Inc.

Chemical. (G) Polglycoetheracrylate telomer with acrylic and sulfonic acid sodium salts.

Use/Production. (S) Dispersing agent, sequestering agent for all and processes in textile finishing (dyeing, printing); Prod. range: 50,000-500,000 kg/yr.

P 94-1093

Manufacturer. Confidential.

Chemical. (G) Polysulfide aralkylchlorosilane.

Use/Production. (G) Intermediate chlorosilane used for the production of silane esters. Prod. range: Confidential.

P 94-1094

Manufacturer. Confidential.

Chemical. (S) A 2-Methyl-1,3 propendiol, isophthalic anhydride, 2-oxepanone (epsilon-caprolactone) extended polyester.

Use/Production. (G) Polyester for use in industrial coating. Prod. range: Confidential.

P 94-1095

Manufacturer. Confidential.

Chemical. (G) Amine salt of a brominated polyester, cyclohexane, 1,1 methylene bis(4-isocyanate) based polyurethane.

Use/Production. (S) Fabric coating. Prod. range: 100,000-500,000 kg/yr.

P 94-1096

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1097

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenol, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1098

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in

lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1099

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1100

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1101

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1102

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1103

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1104

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1105

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in

lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1106

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1107

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1108

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1109

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1110

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1111

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1112

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in

lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1113

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1114

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1115

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1116

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1117

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1118

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1119

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in

lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1120

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94-1121

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1122

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalenesulfonic acid.

Use/Production. (S) Reactive dye for cellulose. Prod. range: 5,000-30,000 kg/yr.

P 94-1123

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalenesulfonic acid.

Use/Production. (S) Reactive dye for cellulose. Prod. range: 5,000-30,000 kg/yr.

P 94-1124

Manufacturer. Confidential.

Chemical. (G) Mixed pentaerythritol tetraester reaction products with alkylated diarylamino.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 94-1125

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (G) Coating for: flexible substrate, wood industrial coatings, printing inks and glass fiber sizing. Prod. range: 100,000-300,000 kg/yr.

P 94-1126

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (S) Coating for: flexible substrate, wood, and industrial coatings, printing inks and glass fiber sizing. Prod. range: 340,000-680,000 kg/yr.

P 94-1127

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (S) Coating for: flexible substrate, wood, and industrial coatings, printing inks and glass fiber sizing. Prod. range: 340,000-680,000 kg/yr.

P 94-1128

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Ethylene copolymer.
Use/Production. (G) Hot melt sealant. Prod. range: Confidential.

P 94-1129

Importer. Confidential.
Chemical. (G) Alkyl cyano substituted pyridazo benzoate.

Use/Import. (G) This substance is used as one of the yellow components of color sheet cassette. Import range: Confidential.

P 94-1130

Importer. Confidential.
Chemical. (G) 3-(Alkyloxyphenyl)-7-phenyl-1,5-dioxo-s-indacen-2,6-dione.
Use/Import. (G) Disperse dye colorant for coloration of polyester textile. Import range: Confidential.

P 94-1131

Importer. Confidential.
Chemical. (G) Naphthylazotriazinylamino-naphthalene disulfonic acid.

Use/Import. (G) Dye for cotton. Import range: Confidential.

P 94-1132

Manufacturer. Confidential.
Chemical. (G) Amine catalyst.
Use/Production. (G) Epoxy catalyst. Prod. range: Confidential.

P 94-1133

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Oil modified urethane.
Use/Production. (G) Coating resin. Prod. range: Confidential.

P 94-1134

Manufacturer. Confidential.
Chemical. (S) Modified acrylic polymer.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.

P 94-1135

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94-1136

Manufacturer. Confidential.
Chemical. (G) Acrylic resin/ acrylic polymer.

Use/Production. (G) The acrylic polymer is to be used as a polymeric binder in light-sensitive photoresists. Prod. range: Confidential.

P 94-1137

Manufacturer. Confidential.
Chemical. (G) N-Alkyl phthalimide.
Use/Production. (S) Intermediate for surfactant. Prod. range: 5,000-25,000 kg/yr.

P 94-1138

Manufacturer. Confidential.
Chemical. (G) N-Alkyl phthalimide.
Use/Production. (S) Intermediate for surfactant. Prod. range: 5,000-25,000 kg/yr.

P 94-1139

Manufacturer. Confidential.
Chemical. (G) Amidocarboxy benzoic acid salt.
Use/Production. (S) Surfactant for hard surface cleaners. Prod. range: 5,000-25,000 kg/yr.

P 94-1140

Manufacturer. Confidential.
Chemical. (G) Amidocarboxy benzoic acid salt.
Use/Production. (S) Surfactant for hard surface cleaners. Prod. range: 5,000-25,000 kg/yr.

P 94-1141

Manufacturer. Confidential.
Chemical. (G) Styrene-acrylic polymer.
Use/Production. (S) Additive for polymers. Prod. range: Confidential.

P 94-1142

Importer. UBE Industries (America), Inc.
Chemical. (S) Magnesium hydroxide sulfate trihydrate.
Use/Import. (S) Reinforcing material for plastics and rubbers. Import range: 5,000-10,000 kg/yr.

P 94-1143

Manufacturer. United Organics Corporation.
Chemical. (S) Antimony tributyrate.
Use/Production. (S) Polyester catalyst. Prod. range: 25,000-1,000,000 kg/yr.

P 94-1144

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1145

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1146

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1147

Manufacturer. Confidential.
Chemical. (S) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1148

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1149

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1150

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1151

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94-1152

Manufacturer. Cytec Industries, Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94-1155

Manufacturer. Cytec Industries Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94-1156

Manufacturer. Cytec Industries Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94-1163

Manufacturer. The Dow Chemical Company.

Chemical. (S) Styrene; para-methyl styrene.

Use/Production. (G) Plastic film and container applications. Prod. range: Confidential.

P 94-1164

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94-1165

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (G) Plastic film for container applications. Import range: Confidential.

P 94-1166

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94-1167

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94-1168

Manufacturer. Shell Oil Company.

Chemical. (G) Polyester of saturated polyol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94-1169

Manufacturer. Confidential.

Chemical. (G) Alkylated melamine resin.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 20,000-100,000 kg/yr.

P 94-1170

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1171

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1172

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1173

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1174

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1175

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94-1176

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94-1177

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; sodium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94-1178

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; potassium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94-1179

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; monoethanolamine; 2,6-bis(1,1-dimethanoamine); 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94-1180

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C₁₂-C₂₁ branched chain mono-olefins; caprolactam; diethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

List of Subjects

Environmental protection,
Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.

[FR Doc. 94-17295 Filed 7-14-94; 8:45 am]

BILLING CODE 6580-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office Of Management And Budget For Review

July 11, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: None

Title: Section 1.402, Pioneer's preference

Action: Reinstatement of a preciously approved collection for which approval has expired

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 3 responses; 500 hours average burden per response; 1,500 hours total annual burden

Needs and Uses: A Report and Order was adopted in April 1991 creating a "pioneer's preference" for those entities whose proposals foster the introduction and development of new communications technologies and services in the spectrum allocation and authorization process. A Memorandum Opinion and Order was adopted in February 1992 modifying the rule section. Specifically, a deadline was established for the filing of pioneer's preference requests and certain rules were clarified. Information submitted by applicants for a pioneer's preference will be used by the Commission to determine whether initiation of a rulemaking proceeding is warranted and, if so, whether applicants are entitled to preferences. If the information is not collected, it would not be possible to award preferences.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-17203 Filed 7-14-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1033-DR]

Georgia; 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 Georgia (FEMA-1033-DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 7, 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 July 7, 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 Georgia, resulting from torrential rain, high wind, tornadoes and flooding resulting from Tropical Storm Alberto on July 3, 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 Georgia.

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 and Public Assistance in the designated areas. 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 Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Bibb, Clayton, Dougherty, and Sumter Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94-17237 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1033-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1033-DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Butts, Calhoun, Coweta, Crawford, Dooly, Early, Fayette, Fulton, Henry, Houston, Jones, Lamar, Lee, Macon, Meriwether, Monroe, Peach, Pike, Randolph, Spalding, Talbot, Taylor, Terrell, Troup, Twiggs, Upson, and Webster Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-17235 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1033-DR]**Georgia; Amendment to Notice of a Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1033-DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Crisp and Worth Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-17236 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1034-DR]**Alabama; 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 Alabama (FEMA-1034-DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 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 July 8, 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 Alabama, resulting from severe storms and flooding

resulting from Tropical Storm Alberto on July 2, 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 Alabama.

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 and Public Assistance in the designated areas. 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 Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston, and Randolph Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94-17234 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1032-DR]**North Dakota; 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 North Dakota (FEMA-1032-DR), dated July 1, 1994, and related determinations.

EFFECTIVE DATE: July 1, 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 July 1, 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 North Dakota, resulting from severe storms, flooding and ground saturation due to high water tables on March 5, 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 North Dakota.

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 Public Assistance in the designated areas. 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 David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Benson, Foster, Griggs, Hettinger, LaMoure, Logan, McIntosh, McKenzie, Nelson, Oliver, Ramsey, Steele, Stutsman, Towner, Walsh, Wells and Williams Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94-17238 Filed 7-14-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOUSING FINANCE BOARD

[No. 94-N02]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR Part 936) that were published in the *Federal Register* on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. 2901 *et seq.*,

(CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the second quarter review (1994-95 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date for Member Community Support Statements for Members Selected in Second Quarter Review:* August 31, 1994.

Due Date for Public Comments on Members Selected in Second Quarter Review: August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408-2825, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408-2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board currently reviews all FHLBank System members that are subject to CRA once every two years. Approximately one-eighth of the

FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

The Finance Board is currently in the process of promulgating amendments to the Community Support regulation that would specify the procedures to be used to evaluate those members that are not subject to CRA (insurance companies and credit unions). As soon as these regulations are adopted, this review will include those members that are not subject to CRA.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Second Quarter, Grouped by FHLBank District

| Member | City and state |
|--|--------------------|
| Federal Home Loan Bank of Boston—District 1 Post Office Box 9106, Boston, Massachusetts 02205-9106 | |
| Branford Savings Bank | Branford, CT. |
| Community Savings Bank | Bristol, CT. |
| Farmers and Mechanics Bank | Middletown, CT. |
| First City Bank | New Britain, CT. |
| Norwich Savings Society | Norwich, CT. |
| American Bank of Connecticut | Waterbury, CT. |
| Centerbank | Waterbury, CT. |
| North Middlesex Savings Bank | Ayer, MA. |
| Peoples Federal Savings Bank | Boston, MA. |
| The Boston Bank of Commerce | Boston, MA. |
| People's Savings Bank of Brockton | Brockton, MA. |
| North Cambridge Cooperative Bank | Cambridge, MA. |
| Easthampton Co-op Bank | Easthampton, MA. |
| Everett Savings Bank | Everett, MA. |
| Glendale Cooperative Bank | Everett, MA. |
| Fidelity Cooperative Bank | Fitchburg, MA. |
| Foxboro National Bank of Foxboro | Foxboro, MA. |
| Ipswich Savings Bank | Ipswich, MA. |
| First Essex Bank, FSB | Lawrence, MA. |
| Medford Cooperative Bank | Medford, MA. |
| Plymouth Savings Bank | Middleborough, MA. |
| Monson Savings Bank | Monson, MA. |
| Lawrence Savings Bank | North Andover, MA. |
| Warren Five Cents Savings Bank | Peabody, MA. |
| Saugus Cooperative Bank | Saugus, MA. |
| Spencer Savings Bank | Spencer, MA. |
| Bristol County Savings Bank | Taunton, MA. |
| Sterling Bank | Waltham, MA. |
| Winchester Cooperative Bank | Winchester, MA. |
| Franklin Savings Bank | Farmington, ME. |
| Kennebunk Savings Bank | Kennebunk, ME. |
| Katahdin Trust Company | Patten, ME. |
| Coastal Savings Bank | Portland, ME. |

| Member | City and state |
|---|-----------------------|
| Peoples Heritage Savings Bank | Portland, ME. |
| Southeast Bank for Savings | Dover, NH. |
| Franklin Savings Bank | Franklin, NH |
| CFX Bank | Keene, NH. |
| Mascoma Savings Bank | Lebanon, NH. |
| First NH Bank | Manchester, NH. |
| Meredith Village Savings Bank | Meredith, NH. |
| Peterborough Savings Bank | Peterborough, NH. |
| Bank of Newport | Newport, RI. |
| Northfield Savings Bank | Northfield, VT. |
| Marble Bank | Rutland, VT |
| Federal Home Loan Bank of New York—District 2 | |
| One World Trade Center—103rd Floor, New York, New York 10048 | |
| Pamrapo Savings Bank, SLA | Bayonne, NJ. |
| Ocean Federal Savings Bank | Brick Township, NJ. |
| Farmers & Mechanics Savings Bank, SLA | Burlington, NJ. |
| Freehold Savings & Loan Association | Freehold, NJ. |
| Oritani Savings and Loan Association | Hackensack, NJ. |
| Investors Savings Bank | Millburn, NJ. |
| Millington Savings Bank, SLA | Millington, NJ. |
| Gibraltar Savings Bank, SLA | Newark, NJ. |
| Ocean City Home Savings & Loan Association | Ocean City, NJ. |
| Lakeview Savings Bank | Paterson, NJ. |
| Ridgewood Savings and Loan Association | Ridgewood, NJ. |
| Shadow Lawn Savings Bank, SLA | West Long Branch, NJ. |
| Glen Falls National Bank & Trust Company | Glen Falls, NY. |
| Provident Savings Bank, F.A. | Haverstraw, NY. |
| Maple City Savings and Loan Association | Hornell, NY. |
| Sunnyside Federal Savings & Loan Association | Irvington, NY. |
| Maspeth Federal Savings & Loan Association | Maspeth, NY. |
| Massena Savings and Loan Association | Massena, NY. |
| Medina Savings and Loan Association | Medina, NY. |
| Carver Federal Savings Bank | New York, NY. |
| The Lincoln Savings Bank, FSB | New York, NY. |
| Ogdensburg Federal Savings & Loan Association | Ogdensburg, NY. |
| Schenectady Federal Savings & Loan Assoc | Schenectady, NY. |
| Bank of Westbury | Westbury, NY. |
| Yonkers Savings and Loan Association | Yonkers, NY. |
| Doral Federal Savings Bank | Catana, PR |
| Federal Home Loan Bank of Pittsburgh—District 3 | |
| 625 West Ridge Pike, Suite B—107, Conshohocken, Pennsylvania 19428 | |
| Investment Savings and Loan Association | Altoona, PA. |
| Reliance Savings Association | Altoona, PA. |
| Bridgeville Savings Bank | Bridgeville, PA. |
| Charleroi Federal Savings Bank | Charleroi, PA. |
| Citizens National Bank of Evans City | Evans City, PA. |
| Greenville Savings Bank | Greenville, PA. |
| Mauch Chunk Trust Company | Jim Thorpe, PA. |
| Grange National Bank of Wyoming County | Laceyville, PA. |
| Westmoreland Federal Savings & Loan Assoc | Latrobe, PA. |
| Keystone Savings Bank | Lehigh Valley, PA. |
| Lock Haven Savings and Loan Association | Lock Haven, PA. |
| First Citizens National Bank | Mansfield, PA. |
| First National Bank of McConnellsburg | McConnellsburg, PA. |
| The Muncy Bank & Trust Company | Muncy, PA. |
| Prudential Savings Bank, PaSA | Philadelphia, PA. |
| Iron and Glass Bank | Pittsburgh, PA. |
| Workingmens Savings Bank, FSB | Pittsburgh, PA. |
| Greater Pottsville FS&LA | Pottsville, PA. |
| Peoples Savings Bank, PaSA | Ridgway, PA. |
| Central Pennsylvania Savings Association | Shamokin, PA. |
| Keystone Federal Savings & Loan Association | Sharpsburg, PA. |
| First National Bank of Spring Mills | Spring Mills, PA. |
| East Stroudsburg Savings Association | Stroudsburg, PA. |
| Main Line Federal Savings Bank | Villanova, PA. |
| Washington Federal Savings Bank | Washington, PA. |
| Citizens & Northern Bank | Wellsboro, PA. |
| First National Bank of Bluefield | Bluefield, WV. |
| First Empire Federal Savings & Loan Assoc | Charleston, WV. |
| First Federal S&LA of Ravenswood | Ravenswood, WV. |

| Member | City and state |
|---|-----------------------|
| Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348 | |
| Central State Bank | Calera, AL. |
| Southland Bank | Dothan, AL. |
| First Federal Bank, FSB | Enterprise, AL. |
| First Bank and Trust | Grove Hill, AL. |
| First Federal of Alabama, FSB | Jasper, AL. |
| First Liberty National Bank | Washington, DC. |
| Independence Federal Savings Bank | Washington, DC. |
| AmTrust Bank, FSB | Boca Raton, FL. |
| Key Florida Bank, FSB | Bradenton, FL. |
| Crown Savings Association | Casselberry, FL. |
| FirstSouth Bank, FSB | Holiday, FL. |
| Community First Bank | Jacksonville, FL. |
| Key Biscayne Bank & Trust Company | Key Biscayne, FL. |
| Union Bank of Florida | Lauderhill, FL. |
| First Federal S&L Association of Lake County | Leesburg, FL. |
| The American Bank of the South | Merritt Island, FL. |
| Pacific National Bank | Miami, FL. |
| Mercantile Bank of Naples | Naples, FL. |
| First Federal Savings Bank of New Smyrna | New Smyrna Beach, FL. |
| Preferred Bank, A FSB | Palmetto, FL. |
| AmSouth Bank of Florida | Pensacola, FL. |
| First Federal Savings Bank of Charlotte Cty | Punta Gorda, FL. |
| City Bank of Tampa | Tampa, FL. |
| Fidelity Federal Savings Bank of Florida | West Palm Beach, FL. |
| First FS&LA of the Palm Beaches | West Palm Beach, FL. |
| Federal Trust Bank, a FSB | Winter Park, FL. |
| The Summit National Bank | Atlanta, GA. |
| First Federal Bank of Northwest Georgia, FSB | Cedartown, GA. |
| Habersham Bank | Clarksville, GA. |
| Newton Federal Savings & Loan Association | Covington, GA. |
| Mount Vernon FSB | Dunwoody, GA. |
| Griffin Federal Savings Bank | Griffin, GA. |
| United Bank of Griffin | Griffin, GA. |
| Crescent Bank & Trust Co | Jasper, GA. |
| Home Federal Savings Bank | Rome, GA. |
| Farmers & Merchants Bank | Statesboro, GA. |
| Thomaston Federal Savings Bank | Thomaston, GA. |
| Thomas County Federal Savings & Loan Association | Thomasville, GA. |
| Stephens Federal Savings & Loan Association | Toccoa, GA. |
| Tucker Federal Savings & Loan Association | Tucker, GA. |
| First Federal Savings & Loan Association | Valdosta, GA. |
| American National Savings Association, F.A | Baltimore, MD. |
| Baltimore American Savings Bank, FSB | Baltimore, MD. |
| Chase Bank of Maryland | Baltimore, MD. |
| Farmers Bank, a Federal Savings Bank | Baltimore, MD. |
| First Federal Savings Bank of Western Maryland | Baltimore, MD. |
| Eastern Savings Bank, FSB | Cumberland, MD. |
| Maryland Federal Savings & Loan Association | Hunt Valley, MD. |
| Citizens Savings Bank, F.S.B. | Hyattsville, MD. |
| Sykesville Federal Savings Association | Silver Spring, MD. |
| Equitable Federal Savings Bank | Sykesville, MD. |
| First Southern Savings Bank | Wheaton, MD. |
| Blue Ridge Savings Bank, Inc | Asheboro, NC. |
| Citizens Savings Bank | Asheville, NC. |
| The Community Bank | Newton, NC. |
| Raleigh Federal Savings Bank | Pilot Mountain, NC. |
| Centura Bank | Raleigh, NC. |
| Citizens Federal Savings and Loan Association | Rocky Mount, NC. |
| Cleveland Federal Bank, a Savings Bank | Salisbury, NC. |
| The Bank of Iredale | Shelby, NC. |
| Ashe Federal Savings & Loan Association | Statesville, NC. |
| Piedmont Federal Savings & Loan Association | West Jefferson, NC. |
| First Palmetto Savings Bank, FSB | Winston-Salem, NC. |
| Carolina First Savings Bank, FSB | Camden, SC. |
| Greenville National Bank | Georgetown, SC. |
| United Savings Bank, FSB | Greenville, SC. |
| Spartanburg National Bank | Greenwood, SC. |
| Community Federal S&L of Winnsboro | Spartanburg, SC. |
| Woodruff Federal Savings & Loan Association | Winnsboro, SC. |
| Columbia First Bank, A FSB | Woodruff, SC. |
| Fredericksburg Savings & Loan Association, FA | Arlington, VA. |
| Eastern American Bank, FSB | Fredericksburg, VA. |
| | Herndon, VA. |

| Member | City and state |
|---|-----------------------|
| Cenit Bank for Savings, FSB | Norfolk, VA. |
| Life Savings Bank, FSB | Norfolk, VA. |
| Fidelity Federal Savings Bank | Richmond, VA. |
| Southside Bank | Tappahannock, VA |
| Federal Home Loan Bank of Cincinnati—District 5 Post Office Box 598, Cincinnati, Ohio 45201 | |
| Bank of Edmonson County | Brownsville, KY. |
| Citizens Bank & Trust Company | Campbellsville, KY. |
| Farmers & Traders Bank of Campton | Campton, KY. |
| First Federal Bank for Savings | Covington, KY. |
| Bank of Danville and Trust Company | Danville, KY. |
| Central Kentucky Federal S&L Association | Danville, KY. |
| Columbia Federal Savings & Loan Association | Fort Mitchell, KY. |
| Harlan National Bank | Harlan KY. |
| Harrodsburg First FS&LA | Harrodsburg, KY. |
| First Federal Savings & Loan Association | Hazard, KY. |
| First Federal Savings Bank | Hopkinsville, KY. |
| Republic Savings Bank, FSB | Louisville, KY. |
| Home Federal Savings & Loan Association | Ludlow, KY. |
| First Federal Savings Bank of Kentucky | Madisonville, KY. |
| Home Federal Bank, FSB | Middlesboro, KY. |
| Middlesboro Federal Bank, F.S.B. | Middlesboro, KY. |
| The Bank of Mt. Vernon | Mount Vernon, KY. |
| Peoples Bank of Mt. Washington | Mount Washington, KY. |
| United Citizens Bank & Trust Company | New Castle, KY. |
| First State Bank of Pineville | Pineville, KY. |
| The Central Bank of North Pleasureville | Pleasureville, KY. |
| The Citizens National Bank of Bluffton | Bluffton, OH. |
| First National Bank of Southeastern Ohio | Caldwell, OH. |
| First City Bank | Christiansburg, OH. |
| Brentwood Savings Association | Cincinnati, OH. |
| Columbia Savings & Loan Company | Cincinnati, OH. |
| The Clifton Heights Loan & Building Company | Cincinnati OH. |
| First Federal Savings and Loan | Defiance, OH. |
| Fidelity FS&LA | Delaware OH. |
| Home Building and Loan Company | Greenfield, OH. |
| Mayflower Savings & Loan Company | Groebeck, OH. |
| Home Federal, FSB | Hamilton, OH. |
| Liberty Federal Savings & Loan Association | Ironton, OH. |
| The Citizens Bank of Logan | Logan, OH. |
| Security Savings Association | Milford OH. |
| The Nelsonville Home & Savings Association | Nelsonville, OH. |
| Valley Central Savings Bank | Reading, OH. |
| Mutual Federal Savings Bank, a Stock Corp | Zanesville, OH. |
| Dollar Bank, FSB | Pittsburgh, PA. |
| Farmers and Merchants Bank | Clarksville, TN. |
| Farmers and Merchants Bank | Dyer, TN. |
| Elizabethton Federal Savings Bank | Elizabethton, TN. |
| Marion Trust & Banking Company | Jasper, TN. |
| First Bank of East Tennessee, N.A. | La Follette, TN. |
| Lexington First Federal Savings Bank | Lexington, TN. |
| Volunteer Federal Savings & Loan Association | Madisonville, TN. |
| The First National Bank | McMinnville, TN. |
| Leader Federal Bank for Savings | Memphis, TN. |
| Franklin Federal Savings Bank | Morristown, TN. |
| Jefferson Federal Savings & Loan Association | Morristown, TN. |
| Liberty Federal Savings Bank | Paris, TN. |
| Citizens Bank & Trust Company | Wartburg, TN. |
| Federal Home Loan Bank of Indianapolis—District 6 P.O. Box 60, Indianapolis, IN 46205-0060 | |
| First Federal Savings Bank of Angola | Angola, IN. |
| Peoples Federal Savings Bank | Auburn, IN. |
| Fayette Federal Savings Bank | Connersville, IN. |
| Home Loan Savings Bank, SB | Fort Wayne, IN. |
| Newton County Loan & Savings Association | Goodland, IN. |
| HFS Bank, FSB | Hobart, IN. |
| First Federal Savings Bank of Kokomo | Kokomo, IN. |
| Union Federal Community Bank, FSB | Lebanon, IN. |
| Security Federal Savings Bank | Logansport, IN. |
| American Savings, FSB | Munster, IN. |
| First National Bank of Odon | Odon, IN. |
| First Federal S&LA of Richmond | Richmond, IN. |
| Peoples Building and Loan Association | Tell City, IN. |

| Member | City and state |
|--|-----------------------|
| Valley Bank, A FSB | Terre Haute, IN. |
| First Federal Bank, a FSB | Vincennes, IN. |
| First Federal Savings Bank of Wabash | Wabash, IN. |
| Home Building Savings Bank, FSB | Washington, IN. |
| Peoples National Bank and Trust Company | Washington, IN. |
| First Federal S&LA of Alpena | Alpena, MI. |
| First Security Savings Bank, FSB | Bloomfield Hills, MI. |
| Eaton Federal Savings Bank | Charlotte, MI. |
| Security Savings Bank, FSB | Jackson, MI. |
| Franklin Bank, N.A. | Southfield, MI. |
| Federal Home Loan Bank of Chicago—District 7 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601 | |
| Aurora Federal Savings Bank | Aurora, IL. |
| First Federal Savings and Loan of Belvidere | Belvidere, IL. |
| Champaign National Bank | Champaign, IL. |
| First FS&LA of Champaign-Urbana | Champaign, IL. |
| Charleston Federal Savings & Loan Association | Charleston, IL. |
| Central Federal S&L Association of Chicago | Chicago, IL. |
| Columbus Savings Bank | Chicago, IL. |
| Damen Federal Bank for Savings | Chicago, IL. |
| Fidelity Federal Savings Bank | Chicago, IL. |
| First Security Federal Savings Bank | Chicago, IL. |
| Mutual Federal Savings & Loan Association | Chicago, IL. |
| Universal Federal Savings Bank | Chicago, IL. |
| Collinsville Building and Loan Association | Collinsville, IL. |
| Deerfield Federal Savings & Loan Association | Deerfield, IL. |
| Calumet Federal S&LA of Chicago | Dolton, IL. |
| First Federal Savings and Loan Association | Edwardsville, IL. |
| Guardian Savings Bank | Granite City, IL. |
| Wabash Savings Bank | Mt. Carmel, IL. |
| Nashville Savings Bank | Nashville, IL. |
| Citizens Savings Bank, FSB | Normal, IL. |
| Peoples Bank and Trust of Pana | Pana, IL. |
| Peru Federal Savings and Loan Association | Peru, IL. |
| Home Guaranty Savings Association | Piper City, IL. |
| First Robinson Savings & Loan, F.A. | Robinson, IL. |
| NorthLand Bank of Wisconsin, SSB | Ashland, WI. |
| Fox Valley Savings and Loan Association | Fond du Lac, WI. |
| First Federal Savings Bank La Crosse-Madison | La Crosse, WI. |
| Ladysmith Federal Savings & Loan Association | Ladysmith, WI. |
| Merrill Federal Savings and Loan Association | Merrill, WI. |
| Continental Savings Bank, SA | Milwaukee, WI. |
| Guaranty Bank, S.S.B. | Milwaukee, WI. |
| Lincoln Savings Bank, SA | Milwaukee, WI. |
| M & I Bank, S.S.B. | Sheboygan, WI. |
| American Equity Bank, S.S.B. | Stevens Point, WI. |
| First Financial Bank, FSB | Stevens Point, WI. |
| Superior Savings Bank | Superior, WI. |
| Federal Home Loan Bank of Des Moines—District 8 907 Walnut Street, Des Moines, Iowa 50309 | |
| Brenton Savings Bank, FSB | Ames, IA. |
| Midwest Federal S&LA of Eastern Iowa | Burlington, IA. |
| First Federal Savings Bank of Creston, FSB | Creston, IA. |
| Community Savings Bank | Edgewood, IA. |
| Grinnell Federal Savings Bank | Grinnell, IA. |
| Independence Federal Bank for Savings | Independence, IA. |
| Liberty Savings Bank | Johnston, IA. |
| Security Bank Jasper-Poweshiek | Kellogg, IA. |
| State Central Bank | Keokuk, IA. |
| Iowa State Savings Bank | Knoxville, IA. |
| Interstate Federal Savings and Loan Assoc. of McGregor | McGregor, IA. |
| Story County Bank & Trust Company | Story City, IA. |
| Oakley National Bank of Buffalo | Buffalo MN. |
| State Bank of Kimball | Kimball, MN. |
| Goodhue County National Bank of Red Wing | Red Wing, MN. |
| First National Bank of St. Peter | St. Peter, MN. |
| Investors Savings Bank, FSB | Wayzata, MN. |
| Roosevelt Bank, A Federal Savings Bank | Chesterfield, MO. |
| MCM Savings Bank, F.S.B. | Hannibal, MO. |
| United Savings Bank | Lebanon, MO. |
| Clay County Savings & Loan Association | Liberty, MO. |
| Liberty Savings Bank | Liberty, MO. |
| First Home Savings Bank | Mountain Grove, MO. |

| Member | City and state |
|---|-----------------------|
| Southern Missouri Savings Bank | Poplar Bluff, MO. |
| First National Bank of the Midsouth | Sikeston, MO. |
| Provident Savings Bank, FSB | St. Joseph, MO. |
| First National Bank North Dakota | Grand Forks, ND. |
| First S & LA of South Dakota, Inc | Aberdeen, SD. |
| Brookings Federal Bank a FSB | Brookings, SD. |
| American Federal Bank, a FSB | Madison, SD. |
| Cor Trust Bank | Mitchell, SD. |
| First Western Federal Savings Bank | Rapid City, SD. |
| Federal Home Loan Bank of Dallas—District 9 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038 | |
| Charter State Bank | Beebe, AR. |
| Coming Savings and Loan Association | Corning, AR. |
| Calhoun County Bank | Hampton, AR. |
| Malvern National Bank | Malvern, AR. |
| Heritage Bank, FSB | Monticello, AR. |
| First National Bank of Paragould | Paragould, AR. |
| WynBanc Savings, FSB | Wynne, AR. |
| Citizens Savings and Loan Association | Baton Rouge, LA. |
| First National Bank of St. Charles Parish | Boutte, LA. |
| Capital Bank | Delhi, LA. |
| Home Savings Bank | Lafayette, LA. |
| Calcasieu-Marine National Bank | Lake Charles, LA. |
| Greater New Orleans Homestead Association | Metairie, LA. |
| Meri-Trust | Morgan City, LA. |
| Algiers Homestead Association | New Orleans, LA. |
| Rayne Building and Loan Association | Rayne, LA. |
| North Central Bank For Savings | Winona, MS. |
| Alamogordo Federal Savings & Loan Association | Alamogordo, NM. |
| Union Savings Bank | Albuquerque, NM. |
| First Federal Savings Bank of New Mexico | Roswell, NM. |
| Charter Bank For Savings, F.S.B | Santa Fe, NM. |
| Tucumcari Federal Savings & Loan Association | Tucumcari, NM. |
| First Savings Bank, FSB | Arlington, TX. |
| Mercantile Bank, N.A | Brownsville, TX. |
| First Madison Bank, FSB | Dallas, TX. |
| Mercantile Banc & Trust, PASA | Dallas, TX. |
| Bank of South Texas | Floresville, TX. |
| Colonial Savings & Loan | Fort Worth, TX. |
| Guaranty National Bank | Gainessville, TX. |
| National Bank | Gatesville, TX. |
| Gilmer Savings Bank, FSB | Gilmer, TX. |
| Riverway Bank | Houston, TX. |
| FirstBanc Saving Association of Texas | Missouri City, TX. |
| First Federal Savings & Loan Association of Paris | Paris, TX. |
| Balcones Banc Savings Association | San Marcos, TX. |
| First State Bank | Temple, TX. |
| Federal Home Loan Bank of Topeka—District 10 Post Office Box 176, Topeka, Kansas 66601 | |
| FNB in Alamosa | Alamosa, CO. |
| Alpine Bank Carbondale | Carbondale, CO. |
| Alpine Bank | Clifton, CO. |
| Pikes Peak National Bank of Colorado Springs | Colorado Springs, CO. |
| First Interstate Bank of Fort Collins | Fort Collins, CO. |
| The First National Bank of Ordway | Ordway, CO. |
| Rocky Ford FS&LA of Colorado | Rocky Ford, CO. |
| Century Savings and Loan Association | Trinidad, CO. |
| Park State Bank | Woodland Park, CO. |
| Prairie State Bank | Augusta, KS. |
| Mid-Continent Fed. S&LA | El Dorado, KS. |
| Citizens National Bank of Fort Scott | Fort Scott, KS. |
| University National Bank of Lawrence | Lawrence, KS. |
| Mutual Savings and Loan Association | Leavenworth, KS. |
| Manhattan National Bank | Manhattan, KS. |
| Peoples Bank | Pratt, KS. |
| First National Bank of Syracuse | Syracuse, KS. |
| Capitol Federal Savings & Loan Association | Topeka, KS. |
| Silver Lake Bank | Topeka, KS. |
| Bank IV Kansas, N.A | Wichita, KS. |
| Railroad Savings Bank, FSB | Wichita, KS. |
| The First National Bank of Stromsburg | Stromsburg, NE. |
| Lancaster County Bank | Waverly, NE. |
| Guthrie Savings and Loan Association | Guthrie, OK. |

| Member | City and state |
|---|---------------------------|
| First National Bank in Okeene | Okeene, OK. |
| City Bank & Trust | Oklahoma City, OK. |
| Local Federal Bank, F.S.B. | Oklahoma City, OK. |
| Federal Home Loan Bank of San Francisco—District 11 307 East Chapman Avenue, Orange, California 92666 | |
| Heart Federal Savings & Loan Association | Auburn, CA. |
| Secure Savings Bank, FSB | Fontana, CA. |
| Fullerton Savings & Loan Association | Fullerton, CA. |
| Hemet Federal Savings & Loan Association | Hemet, CA. |
| ITT Federal Bank, FSB | Irvine, CA. |
| Pioneer Savings and Loan Association, FSLA | Irvine, CA. |
| Western Financial Savings Bank | Irvine, CA. |
| Home Savings of America, FSB | Irwindale, CA. |
| First Public Savings Bank, F.S.B. | Los Angeles, CA. |
| Standard Savings Bank, FSB | Los Angeles, CA. |
| U.S. Trust Company of California, N.A. | Los Angeles, CA. |
| Westcoast Savings and Loan Association | Marina Del Rey, CA. |
| Western Federal Savings & Loan Association | Marina Del Rey, CA. |
| Independence One Bank of California, FSB | Mission Viejo, CA. |
| Trust Savings Bank, FSB | Monterey Park, CA. |
| Household Bank, F.S.B. | Newport Beach, CA. |
| Novato National Bank | Novato, CA. |
| United Labor Bank, F.S.B. | Oakland, CA. |
| World Savings and Loan Association | Oakland, CA. |
| Malaga Bank, SSB | Palos Verdes Estates, CA. |
| Northbay Savings Bank | Petaluma, CA. |
| Pomona First Federal S&L Association | Pomona, CA. |
| Life Savings Bank, F.S.B. | San Bernardino, CA. |
| Home Federal S&L Association of San Francisco | San Francisco, CA. |
| San Francisco Federal Savings & Loan Association | San Francisco, CA. |
| Sincere Federal Savings Bank | San Francisco, CA. |
| United California Savings Bank | Santa Ana, CA. |
| Saratoga National Bank | Saratoga, CA. |
| American Savings Bank, F.A. | Stockton, CA. |
| Stockton Savings Bank, F.S.B. | Stockton, CA. |
| Torrance Bank, S.S.B. | Torrance, CA. |
| PriMerit Bank, FSB | Las Vegas, NV. |
| Federal Home Loan Bank of Seattle—District 12 1501 4th Avenue, Seattle, Washington 98101-1693 | |
| Mt. McKinley Bank | Fairbanks, AK. |
| First FS&LA of America | Honolulu, HI. |
| Security Bank, FSB | Billings, MT. |
| Glacier Bank, FSB | Kalispell, MT. |
| First Security Bank & Trust | Miles City, MT. |
| Valley Community Bank | McMinnville, OR. |
| West One Bank Oregon, Savings Bank | Portland, OR. |
| The Prineville Bank | Prineville, OR. |
| Summit Savings Bank | Bellevue, WA. |
| Cascade Savings Bank, FSB | Everett, WA. |
| InterWest Savings Bank | Oak Harbor, WA. |
| Centennial Bank | Olympia, WA. |
| Kitsap Bank | Port Orchard, WA. |
| Raymond Federal Savings and Loan Association | Raymond, WA. |
| University Savings Bank | Seattle, WA. |
| Washington Federal Savings | Seattle, WA. |
| Sterling Savings Association | Spokane, WA. |
| Big Horn Federal Savings Bank | Greybull, WY. |

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than August 31, 1994.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than August 31, 1994.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the *Federal Register*, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions

and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will

also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: July 8, 1994.

Nicolas P. Retsinas,

HUD Secretary's Designee to the Board.

[FR Doc. 94-17060 Filed 7-14-94; 8:45 am]

BILLING CODE 6725-01-P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 17, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 17, 1994.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has expanded substantially on balance thus far in 1994. Nonfarm payroll employment increased sharply in March and April, in part reflecting a rebound in sectors affected by severe winter weather; the civilian unemployment rate fell slightly further in April, to 6.4 percent. Industrial production was up appreciably in April after a strong rise over the previous two quarters. Advance data on retail sales indicate a decline in April, after very large increases in February and March. Housing starts fell slightly in April but remained well above the depressed winter pace. Orders for nondefense capital goods point to a continued strong upturn in spending on business equipment, while nonresidential building has shown some recovery after severe weather disrupted construction during January and February. The nominal deficit on U.S. trade in goods and services widened on

average in January and February from the fourth-quarter rate. Increases in broad indexes of consumer and producer prices remained moderate through April, though prices of industrial materials continued to rise.

Market interest rates have posted large additional increases since the Committee meeting on March 22, 1994. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined somewhat further on balance over the intermeeting period.

Growth of M2 and M3 picked up on average in March and April; for the year through April, M2 expanded at a rate somewhat below the middle of its range for 1994 and M3 at a pace somewhat above the bottom of its range. Total domestic nonfinancial debt has expanded at a moderate rate in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was set at 4 to 8 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase somewhat the existing degree of pressure on reserve positions, taking account of a possible increase in the discount rate. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 11, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94-17179 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

Hometown Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 8, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Hometown Bancorp, Inc.*, Milan, Tennessee, to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Milan, Milan, Tennessee.

Board of Governors of the Federal Reserve System, July 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17162 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

George L. Mylander; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank

¹ Copies of the Minutes of the Federal Open Market Committee meeting of May 17, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1994.

A. Federal Reserve Bank of Cleveland
(John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *George L. Mylander*, Sandusky, Ohio, to acquire an additional .52 percent, for a total of 10.8 percent of the voting shares of First Citizens Banc Corp., Sandusky, Ohio, and thereby indirectly acquire Citizens Banking Company, Sandusky, Ohio.

Board of Governors of the Federal Reserve System, July 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17163 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy and Research

Public Meeting on the Update of Acute Pain Management: Operative or Medical Procedures and Trauma Clinical Practice Guideline

The Agency for Health Care Policy and Research (AHCPR) announces a public meeting to receive comments and information pertaining to the update of the clinical practice guideline on Acute Pain Management: Operative or Medical Procedures and Trauma (AHCPR Publication No. 92-0032). The AHCPR-supported guideline was developed by a private sector panel of health care experts and consumers, and released in March 1992.

A meeting will be held to solicit information and comments from the public regarding the availability of new scientific evidence or new technologies that may warrant the updating of the Acute Pain Management: Operative or Medical Procedures and Trauma guideline. This information will assist

AHCPR in determining the need for and timing of the guideline update.

Meeting: Update of Acute Pain Management: Operative or Medical Procedures and Trauma Clinical Practice Guideline

Date: September 7, 1994

From: 9:00 a.m.-12:00 p.m.

Place: The Parklawn Building,

Conference Room E, 5600 Fishers

Lane, Rockville, Maryland 20852

Phone: 301-443-2585

Copies of the clinical practice guideline may be requested from: The AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907, Toll-Free: 1-800-358-9295.

Background

The Agency for Health Care Policy and Research (AHCPR) is charged, under Title IX of the Public Health Service Act, with enhancing the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR accomplishes its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. (42 U.S.C. 299-299c-6 and 1320b-12.)

In keeping with its legislative mandates, AHCPR arranges for the periodic review and update of clinically relevant guidelines that may be used by physicians, nurses, other health care providers, educators, and consumers to assist in determining how diseases, disorders, and other health care conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Medical review criteria, standards of quality, and performance measures are then developed based on the guidelines produced.

Section 912 of the Act (42 U.S.C. 299b-1(b)) requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, nurses, other health care providers, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines and guideline updates.

The AHCPR Process for Determining the Need for Guideline Updates

In the Federal Register of April 25, 1994 (59 Vol. 19723), AHCPR published its process for determining the need for updates of clinical practice guidelines. The process includes, among other activities:

- A survey of subsequently published scientific literature in the topic areas addressed by the guidelines, approximately 24 months after the release of the guideline, to determine the volume of new scientific evidence, its quality, and the likelihood of such information causing change in the guideline's recommendations;
- A review of other relevant information obtained from evaluation studies conducted to examine the implementation or effects of the guidelines (i.e., development and use of guideline derived medical review criteria, performance measures, and standards of quality); and
- A public meeting to address the need for and timing of an update when sufficient data are obtained that indicate a guideline update may be needed.

Arrangements for the September 7, 1994 Public Meeting on Update of Acute Pain Management: Operative or Medical Procedures and Trauma

Representatives of organizations and other individuals are invited to provide written comments on new scientific evidence or other related information pertaining to the need to update the guideline, and make a brief (5 minutes or less) oral statement. Individuals and representatives who would like to attend must register with Kelly Fennington, Program Analyst, Office of the Forum for Quality and Effectiveness in Health Care (Forum), at the address set out below by August 12, 1994, and indicate whether they plan to make an oral statement. A written copy of the oral statement should be submitted to the Forum by August 12, 1994. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on

September 7, 1994, time will be allocated in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when making a decision regarding the update for this guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Forum by August 12, 1994, at the address below.

Registration should be made with, and written materials submitted to: Kelly Fennington, Program Analyst, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, Maryland, 20852, Phone: (301) 594-4015, Fax: (301) 594-4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1-800-358-9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, MD 20852, Phone 301-594-4015, Fax: 301-594-4027.

Dated: July 7, 1994.

Linda K. Demlo,

Acting Administrator.

[FR Doc. 94-17151 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-50-P

Centers for Disease Control and Prevention

[CDC-420]

RIN 0905-ZA-35

Announcement of Cooperative Agreement to The United Nations Children's Fund

Summary

The Centers for Disease Control and Prevention (CDC), announces the

availability of funds for fiscal year (FY) 1994 for a sole source cooperative agreement with the United Nations Children's Fund (UNICEF) to provide support for poliomyelitis eradication activities. UNICEF may use these funds for activities which may include programmatic assistance and oral polio vaccine (OPV) for supplemental immunization activities in polio-endemic countries in accordance with the World Health Organization (WHO) Plan of Action (Revised 1992) for the global eradication of polio by the year 2000. UNICEF is in partnership with WHO in supporting global immunization activities, and has assumed primary responsibility for providing countries access to high quality, affordable vaccines through UNICEF's procurement system. Approximately \$3-4 million will be available in FY 1994 to fund this project for a 12-month budget period within a 3-year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to provide support for poliomyelitis eradication activities. UNICEF may use these funds for activities which may include programmatic assistance and oral polio vaccine for polio-endemic countries to implement national immunization days and other supplemental immunization strategies for the eradication of polio.

The CDC will collaborate by providing technical assistance and consultation to UNICEF during the planning and implementation of these immunization activities. The CDC will also provide other technical assistance in support of this project, as needed.

Polio eradication is of great importance to the United States. Because of the constant threat of the importation of polio from other countries, more than \$225 million is spent each year in the United States to protect American children from this threat. We can expect to save all of this money after global polio eradication is achieved and vaccinations against polio are stopped in the United States.

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 improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People

2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under Sections 301(a) and 307 of the Public Health Service Act, as amended, 42 U.S.C. 241(a) and 242l, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b.

Smoke-Free Workplace

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 of promoting the protection and advancement of an individual's physical and mental health.

Eligible Applicant

Assistance will be provided only to UNICEF for this project. No other applications are solicited. The Program Announcement and application kit have been sent to UNICEF.

UNICEF is the most appropriate and qualified agency to conduct the activities under this cooperative agreement for the following reasons:

A. UNICEF is the only organization with a worldwide vaccine procurement and distribution network. WHO relies upon this for the continued success of its Expanded Programme on Immunization. UNICEF has demonstrated their ability to use this network. Currently, UNICEF provides vaccine to nearly all developing countries. UNICEF-procured vaccine meets the requirements of the countries in which the project will be conducted and is shipped in compliance with standards of refrigeration for each vaccine. UNICEF access to member governments and their immunization programs is unique in the world.

B. The proposed program is strongly supportive of, and directly related to, the achievement of UNICEF and CDC/National Immunization Program objectives for the control and elimination of vaccine preventable diseases.

C. UNICEF, together with WHO, the Pan American Health Organization, Rotary International, and CDC, is a member of the Polio Eradication Network, an organization formed to increase support and visibility for the polio eradication initiative.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Program Announcement Number 420 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-09, Atlanta, Georgia 30305, telephone (404) 842-6880.

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 "SUMMARY" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: July 11, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-17188 Filed 7-14-94; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 94F-0223]

A. E. Staley Manufacturing Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that A. E. Staley Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a modified polydextrose produced by using phosphoric acid in place of citric acid.

DATES: Written comments on the petitioner's environmental assessment by August 15, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS-207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))), notice is given that a food additive petition (FAP 4A4422) has been filed by A. E. Staley Manufacturing Co., c/o P.O. Box 151, Decatur, IL 62525. The petition proposes that the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) be amended to provide for the safe use of a modified polydextrose produced by using phosphoric acid in place of citric acid.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-17290 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Medicare Common Claims Form; *Form No.:* HCFA-1500; *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. Use of these forms will reduce the cost and administrative burdens associated with claims; *Frequency:* On occasion; *Respondents:* Businesses, individuals or households, state or local governments, small businesses or organizations; *Estimated Number of Responses:* 546,115,406; *Average Hours Per Response:* .13; *Total Estimated Burden Hours:* 73,325,195.

2. *Type of Request:* Extension; *Title of Information Collection:* HMO Qualification Applications; *Form No.:* HCFA-901-1,901-2,901-3; *Use:* The forms are used as instruments through which organizations will make application for Federal HMO qualification status and/or to become eligible to negotiate a Medicare contract with the Health Care Financing Administration; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, small businesses or organizations, State and local governments; *Estimated Number of Responses:* 65; *Average Hours Per Response:* 100; *Total Estimated Burden Hours:* 6,500. Additional Information or Comments: Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing

Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: July 7, 1994.

Kathleen Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94-17304 Filed 7-14-94; 8:45 am]

BILLING CODE 4120-03-P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Cancellation of Meeting.

Notice is hereby given of the cancellation of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, July 12, 1994, 6120 Executive Blvd., Rockville, MD, which was published in the *Federal Register* on June 27, 1994, 59 FR 33001.

The meeting is cancelled due to the withdrawal of the application to be reviewed.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: July 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-17144 Filed 7-14-94; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 8, 1994.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of request).

1. Pretesting of Office of Cancer Communications Messages—0925-0046 (Reinstatement)—To help ensure that health messages, strategies, and information services developed by the Office of Cancer Communications (OCC) have the potential of being received, understood, and accepted by their target audiences, OCC will pretest messages and strategies while they are in

developmental stages. Respondents: Individuals or households; Number of Respondents: 13,780; Number of Responses per Respondent: 1; Average Burden per Response: .146 hours; Estimated Annual Burden: 2,010 hours.

2. Importer's Entry Notice, Form 700 Set—0910-0046 (Extension, no change)—The Food and Drug Administration (FDA) has the responsibility of assuring the admissibility of foods, drugs, medical devices, and cosmetics offered for import into the United States. Each sample taken requires certain documents which notify FDA of arrival of each shipment. FDA staff select representative items for sampling and analysis. Respondents: Businesses or other for-profit; Number of Respondents: 63,000; Number of Responses per Respondent: 25; Average Burden per Response: 0.05 hours; Estimated Annual Burden: 78,750 hours.

3. Health Education Assistance Loan (HEAL) Program—Forms HRSA 502-1&2, HRSA 500-1&2, and HRSA 512-0915-0043 (Revision)—The information obtained from lenders on these forms is essential for sound and responsible program management. The Repayment Schedule establishes the amounts, number and due dates of payments. The Promissory Note provides legal documentation of the loan. The Lender's Call Report enables DHHS to monitor outstanding HEAL loans. Respondents: Non-profit institutions.

| Title | Number of respondents | Number of responses per respondent | Average burden per response |
|---|-----------------------|------------------------------------|-----------------------------|
| Disclosure—Repayment Schedule, Promissory Note. | 23 | 2,100 | .5 hours. |
| Reporting—Lender's Call Report. | 58 | 4 | .75 hours. |

Estimated Total Annual Burden—25,424 hours

4. 1995 National Household Survey on Drug Abuse (NHSDA)—0930-0110—This National probability survey sample of the household population of the United States is necessary to determine the prevalence of cigarette, alcohol, and licit and illicit drug use. The results will be used by SAMHSA, ONDCP, government agencies, pertinent organizations and individuals to establish policy, direct their activities,

and better allocate resources. Respondents: Individuals or households; Number of Respondents: 18,000; Number of responses per Respondent: 1; Average Burden per Response: 1.23 hours; Estimated Annual Burden: 22,111 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235 Washington, DC 20503.

Dated: July 11, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94-17146 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-1917; FR-3350-N-92]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding

unused and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other

purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; U.S. Air Force: Bob Menke, Area-MI, Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332-5113; (202) 767-6235; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366-4246; U.S. Army: Elaine Sims, CECPW-FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310-3862; (703) 355-3475; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208-0619; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM-20, Forrestal Bldg., Room 6H-058, Washington, DC 20585; (202) 586-1191; (These are not toll-free numbers).

Dated: July 8, 1994.

Jacque M. Lawing,
Deputy Assistant Secretary for Economic
Development.

Title V, Federal Surplus Property Program
Federal Register Report for 7/15/94

Suitable/Available Properties
Buildings (by State)

Kansas

U.S. Post Office & Courthouse
812 North 7th Street
Kansas City Co: Wyandotte KS 66101-
Landholding Agency: GSA
Property Number: 549420003
Status: Excess
Comment: 52257 sq. ft., 4-story plus
basement, presence of asbestos and lead
based paint, most recent use—offices.
GSA Number: 7-G-KS-0514

Montana

Bldg.—Conrad Training Site
15 miles east of the City of Conrad
Co: Pondera MT 59425-
Landholding Agency: Air Force
Property Number: 189420025
Status: Unutilized
Comment: 7000 sq. ft., 1-story brick, most
recent use—technical training site.

Texas

Bldg. 121
Laughlin Air Force Base
Co: Val Verde TX 78843-5000
Landholding Agency: Air Force
Property Number: 189420026
Status: Unutilized
Comment: 11202 sq. ft., 1-story, needs rehab,
presence of asbestos, secured area with
alternate access.

Bldg. 348

Laughlin Air Force Base
Co: Val Verde TX 78843-5000
Landholding Agency: Air Force
Property Number: 189420027
Status: Unutilized
Comment: 1799 sq. ft., 1-story, needs rehab,
presence of asbestos, secured area with
alternate access.

Bldg. 475

Laughlin Air Force Base
Co: Val Verde TX 78843-5000
Landholding Agency: Air Force
Property Number: 189420028
Status: Unutilized
Comment: 1083 sq. ft., 1-story, needs rehab,
secured area with alternate access.

Land (by State)

Montana

Makoshika Radio Site
Glendive Co: Dawson MT 59330-
Landholding Agency: GSA
Property Number: 549420004
Status: Excess
Comment: 4.13 acres, limited utilities, most
recent use—communication site.
GSA Number: 7-B-MT-599

Suitable/Unavailable Properties

Land (by State)

Washington

Land
Off Interstate 5/Taylor Way & East-West Rd.
Tacoma Co: Pierce WA 98421-
Landholding Agency: Energy
Property Number: 419420003
Status: Underutilized
Comment: 2.99 acres, transmission line right
of way, easement restrictions, includes 2
steel transmission towers, super-fund
cleanup site.

Unsuitable Properties

Buildings (by State)

Alaska

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901-
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration.

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106—
Landholding Agency: GSA

Property Number: 549430001

Status: Excess

Reason: Extensive deterioration.

GSA Number: 9-N-CA-1304A

Bldg. 15951

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430006

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31100

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430007

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31160

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430008

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31524

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430009

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31525

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430010

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31526

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430011

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31527

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430012

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31528

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430013

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Bldg. 31581

Naval Air Weapons Stations

China Lake Co: San Bernardino CA 93555—
6001

Landholding Agency: Navy

Property Number: 779430014

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Within 2000 ft. of flammable or explosive
material.

Maine

Garage—Boothbay Harbor Stat.

Boothbay Harbor Co: Lincoln ME 04538—

Landholding Agency: DOT

Property Number: 879430001

Status: Unutilized

Reason:

Secured Area.

New Jersey

Bldg. 130

Military Ocean Terminal

Bayonne Co: Hudson NJ 07002—

Landholding Agency: Army

Property Number: 219430001

Status: Unutilized

Reason:

Secured Area

Extensive deterioration

Floodway.

North Carolina

Bldg. 9017

Piney Island

Marine Corps Air Stations

Cherry Point Co: Carteret NC

Landholding Agency: Navy

Property Number: 779430001

Status: Unutilized

Reason:

Secured Area

Extensive deterioration.

Bldg. 9019

Piney Island

Marine Corps Air Stations

Cherry Point Co: Carteret NC

Landholding Agency: Navy

Property Number: 779430002

Status: Unutilized

Reason:

Secured Area

Extensive deterioration.

Bldg. 9021

Piney Island

Marine Corps Air Stations

Cherry Point Co: Carteret NC

Landholding Agency: Navy

Property Number: 779430003

Status: Unutilized

Reason:

Secured Area

Extensive deterioration.

Bldg. 9023

Piney Island

Marine Corps Air Stations

Cherry Point Co: Carteret NC

Landholding Agency: Navy

Property Number: 779430004

Status: Unutilized

Reason:

Secured Area

Extensive deterioration.

Bldg. 9035

Piney Island

Marine Corps Air Stations

Cherry Point Co: Carteret NC

Landholding Agency: Navy

Property Number: 779430005

Status: Unutilized

Reason: Extensive deterioration.

Structure #AS582

New River Air Station

Camp Lejeune Co: Onslow NC 28542-0004

Landholding Agency: Navy

Property Number: 779430015

Status: Unutilized

Reason:

Secured Area

Extensive deterioration.

Washington

Bldg. 875

Portion, Ft. Vancouver Barracks

E. 10th & Cabell Road, I-95 North

Vancouver WA

Landholding Agency: GSA

Property Number: 549430002

Status: Excess

Reason: Extensive deterioration.

GSA Number: 9-D-WA-500L

Boilder Building

Port Angeles Air Station

Port Angeles Co: Clallam WA 98362-0519

Landholding Agency: DOT

Property Number: 879430002

Status: Excess

Reason:

Secured Area

Extensive deterioration.

[FR Doc. 94-17026 Filed 7-14-94; 8:45 am]

BILLING CODE 4210-29-M

**Office of Assistant Secretary for
Public and Indian Housing**

[Docket No. N-94-3763; FR-3676-N-02]

**Funding Availability for FY 1994;
Invitation for Applications; Public
Housing Development: Extension of
Application Deadline for Certain
Applicants**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of application deadline for certain applicants.

SUMMARY: HUD is extending the application deadline for public housing development applications for those applicants who were adversely affected in their application preparation because of flooding in the State of Georgia due to Tropical Storm Alberto.

DATES: For qualified applicants, the application deadline is being extended from July 8, 1994 to July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Marie D. Head, Chief of the Housing Programs Branch, Atlanta State Office, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303. Telephone (404) 331-6876. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 24, 1994 (59 FR 26902), HUD published a Notice of Funding Availability (NOFA) announcing the availability of FY 1994 funds for public housing development (Public Housing Development NOFA).

This notice announces an extension of the application deadline set forth in the May 24, 1994 Public Housing Development NOFA for eligible Public Housing Authorities (PHA) that were adversely affected in the preparation or submission of applications because of flooding in the State of Georgia due to Tropical Storm Alberto. For those applicants who qualify, the application deadline is extended from July 8, 1994 to July 22, 1994.

An applicant may qualify for an extension of the application deadline for public housing development if:

(A) The applicant submits a certification with its application that it was unable to meet the July 8, 1994 deadline and describes the reasons that justify a delayed submission pursuant to this notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to prepare or submit the public housing development application was substantially impaired as a result of the flooding described in this notice.

If HUD approves the certification, the application will be accepted for review.

An eligible PHA may submit such an application, or may revise and resubmit a previously submitted application, as long as the application is received by the Atlanta State Office by 4:00 PM on July 22, 1994. All submission requirements other than the date by which such applications must be received remain unaffected by this notice.

Dated: July 8, 1994.

Janice D. Rattley,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-17153 Filed 7-14-94; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-963-4230-05]

**Notice for Publication F-14831-A;
Alaska Native Claims Selection; Alaska**

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Kuskokwim Corporation, for the village of Aniak, for approximately 10,654 acres. The lands involved are in the vicinity of Aniak, Alaska, and are located within Tps. 16 N., Rs. 58 and 59 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in *The Tundra Times*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government, or regional corporation, shall have until August 15, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Bernice P. Leskosky,

Land Law Examiner, Branch of Southwest Adjudication.

[FR Doc. 94-17193 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-JA-P

[NM-060-4760-01 (606)]

**Southeast New Mexico Playa Lakes
Coordinating Committee; Meetings**

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee Meeting.

DATES: Wednesday, August 24, 1994, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627-0272.

SUPPLEMENTARY INFORMATION: The agenda will include presentation of a Research Proposal by the National Biological Survey (NBS) to the Southeast New Mexico Playa Lakes Coordinating Committee, for approval. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.-4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: July 7, 1994.

Leslie M. Cone,

District Manager.

[FR Doc. 94-17229 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-04-4730-12]

**Notice of Filing of Plats of Surveys;
New Mexico**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 9, 1994.

New Mexico Principal Meridian, New Mexico:

T. 27 N., R. 14 W., Accepted June 15, 1994, for Group 870 NM.

If a protest against a survey, as shown on any of the above plats is received

prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of \$2.50 per sheet.

Dated: July 6, 1994.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 94-17186 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-FB-M

[NM-920-4210-06; NMNM 42921]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 320-acre withdrawal for the Fort Cummings spring continue for an additional 20 years. The land will remain closed to surface entry and non-metalliferous mining, and has been and will remain open to mineral leasing and metalliferous mining.

DATE: Comments should be received by October 13, 1994.

ADDRESS: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87115, 505-438-7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by the Secretarial Order of November 22, 1894, be continued for a period of

20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 8 W.,

sec. 22, SE¼;

sec. 23, SW¼.

The area contains 320 acres in Luna County.

The purpose of the withdrawal is to protect the Fort Cummings Spring. The withdrawal segregates the land from settlement, sale, location, and entry, but not the mineral leasing laws. The land will also be segregated from non-metalliferous mining, but not from metalliferous mining.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 7, 1994.

Frank Splendoria,

Acting Associate, State Director.

[FR Doc. 94-17182 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Agency Draft Recovery Plan for *Solidago houghtonii* (Houghton's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the Service's agency draft recovery plan for *Solidago houghtonii* (Houghton's goldenrod) is reopened for 60 days to allow comments

on the draft plan to be submitted by all interested parties.

DATES: The comment period is reopened on July 15, 1994 and will close on September 13, 1994.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056 (telephone: 612/725-3276; fax: 612/725-3526). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development.

The threatened *Solidago houghtonii* (Houghton's goldenrod) occurs on Federal, State, municipal, and private lands only in nine Michigan counties on or near Lakes Huron and Michigan and at one site in Genesee County, New York. As described in the draft recovery plan for this plant, recovery efforts are expected focus on actions necessary to conserve known occurrences, maintain ecosystem processes, and enable each occurrence to be naturally self-sustaining.

The **Federal Register** notice announcing the availability for public review and comment of the agency draft recovery plan for *S. houghtonii* was published on September 17, 1993. The original comment period ended on October 18, 1993. Since publication of this original notice, some parties have requested an extension or reopening of the comment period to allow sufficient

time for public input. The Service believes that a number of parties interested in reviewing the draft plan may not have received the notice in sufficient time to review it and submit comments during the original comment period. The Service, therefore, finds that reopening the public comment period will benefit the recovery planning process and, hence, issues this notice. All comments on the draft recovery plan received on or before September 13, 1994 will receive consideration by the Service prior to approval of the plan.

Author

The primary author of this notice is Zella E. Ellshoff, at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 8, 1994.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94-17190 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Technical/Agency Draft Recovery Plan for *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the Service's technical/agency draft recovery plan for *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) is reopened. The comment period is being reopened for 60 days to allow comments on the draft plan to be submitted by all interested parties.

DATES: The comment period is reopened on July 15, 1994 and will close on September 13, 1994.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056 (telephone: 612/725-3276; fax 612/725-3526). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by

appointment, during normal hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development.

The threatened *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) is endemic to southeastern Minnesota and western New York and occurs in six known populations, two on State-owned property and four on privately owned land. As described in the draft recovery plan for this plant, recovery efforts are expected to focus on actions necessary to conserve three privately owned Minnesota populations and a comparably sized and self-sustaining portion of the main New York population.

The Federal Register notice announcing the availability for public review and comment of the technical/agency draft recovery plan for *S. integrifolium* ssp. *leedyi* was published on September 17, 1993. The original comment period ended on October 18, 1993. Since publication of this original notice, some parties have requested an extension or reopening of the comment period to allow sufficient time for public input. The Service believes that a number of parties interested in reviewing the draft plan may not have received notice in sufficient time to review it and submit comments during the original comment period. The Service, therefore, finds that reopening the public comment period will benefit the recovery planning process and, hence, issues this notice. All comments on the draft recovery plan received on or before September 13, 1994 will receive consideration by the Service prior to approval of the plan.

Author

The primary author of this notice is Zella E. Ellshoff, at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 8, 1994.

Marvin E. Moriarty,

Regional Director.

[FR Doc. 94-17191 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Pea Ridge National Military Park Advisory Team; Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Pea Ridge National Military Park Advisory Team.

The purpose of the Advisory Team is to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The Secretary of the Interior will appoint 19 members to the Advisory Team to represent a cross-section of those who are interested in and directly affected by park management activities. Nominations for appointment by the Secretary will be sought from: Park neighbors (2 appointees); print media (2); educators (4); environmental organizations (2); the legal profession (1); community planners (1); the general community (1); the financial community (2); Chambers of Commerce (2); and local government (2).

Certification

I hereby certify that the administrative establishment of the Pea Ridge National Military Park Advisory Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916 (16 U.S.C. 1, *et seq.*), as amended and supplemented, and other statutes relating to the administration of the National Park System.

Dated: May 5, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94-17210 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-P

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463). Meeting Date and Time: August 2-3, 1994; 8:00 a.m.

ADDRESS: Radisson Northern Hotel, Broadway and 1st Avenue, Billings, MT.

The purpose of this meeting will be to discuss the legislation establishing the Indian Memorial Advisory Committee (Public Law 102-201), the activation memorandum issued by the Director of the National Park Service, the charter of the Committee, the roles and responsibilities of the Committee, the required annual report to the President, and the election of a Chairman.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022. The telephone number is (406) 638-2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and " * * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225-0287, (303) 969-2828.

Dated: July 8, 1994.

Peggy A. Lipson,

Chief, Office of Ecosystem and Strategic Management, Rocky Mountain Region.

[FR Doc. 94-17207 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-P

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

MEETING DATE AND TIME: Tuesday, October 25, 1994; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historic Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913-0471. The agenda for the meeting consists of reviewing the progress of the general management plan program; discussions relating to procedures for awarding preservation assistance grants; and any other statutory requirements.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102-543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913-0471, (906)-337-3168.

Dated: July 7, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94-17208 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-P

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

MEETING DATE AND TIME: Tuesday, July 26, 1994; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Keweenaw National Historic Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913-0471. The agenda for the meeting consists of reviewing the progress of the general management plan program; discussions relating to

procedures for awarding preservation assistance grants; and any other statutory requirements.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102-543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913-0471, (906) 337-3168.

Dated: July 7, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94-17209 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-P

National Park Service Advisory Board; Meeting

AGENCY: National Park Service.

ACTION: Notice of Meeting of History Areas Committee of National Park System Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATE: August 12, 1994.

LOCATION: Department of the Interior, Conference Room 7000, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, History Division, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013-7127. Telephone (202) 343-8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on August 15, 1994, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are: Dr. Holly Anglin Robinson, Chair; Mr. F.C. Duke Zeller, Vice Chair; Mr. Paul F. Cole; Ms. Carrel Cowan-Ricks; Dr. James Horton; Mr. Karl A. Komatsu; Mr. Roger L. Williams, *ex officio*.

The meeting will include presentations and discussions on the

national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. These nominations are:

Two properties in the field of architecture:

The Breakers, Newport, Newport County, Rhode Island
Christ Church Cathedral, St. Louis, Missouri

Three properties in the field of geology:

Rock Magnetism Laboratory, Menlo Park, San Mateo County, California
Hadrosaurus Foulkii Leidy Site, Haddonfield, Camden County, New Jersey

I. Peter Lesley House, Philadelphia, Pennsylvania

One property in the field of labor:
Pocahontas Exhibition Coal Mine, Pocahontas, Tazewell County, Virginia

Three properties in maritime history:
Maple Leaf, Jacksonville, Duval County, Florida

Emma C. Berry, Mystic, Connecticut
Skjtsborg (Blackbeard's Castle), Charlotte Amalie, St. Thomas, U.S. Virgin Islands

One property relating to Ethnic History:

Little Tokyo Historic District, Los Angeles, California

One property in the field of politics:
Joseph Taylor Robinson House, Little Rock, Arkansas

One property relating to African-American History:

Fort Mose (Second) Site, St. Johns County, Florida

One archeological property:

Kijik Archeological District, Lake Clark National Park & Preserve, Alaska

And one boundary reduction:
Coker Experimental Farms, Hartsville, Darlington County, South Carolina

Also, should the necessary waivers be received, the committee will also be considering two additional properties:

Twelfth Street YMCA Building, Washington, District of Columbia
Indiana World War Memorial Plaza Historic District, Indianapolis, Indiana

The committee will also be given an introduction and overview to an upcoming Paleo-Indian theme study.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning matters to be

discussed. Written statements may be submitted to Benjamin Levy, Acting Chief Historian, History Division (418), National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013-7127.

Dated: July 8, 1994.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, Washington Office.

[FR Doc. 94-17211 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-671-674 (Final)]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-671-674 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the People's Republic of China (China), Ukraine, and Venezuela of silicomanganese,¹ provided for in subheadings 7202.30.00 and 7202.99.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office

¹ Silicomanganese (sometimes called ferrosilicon manganese), is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese normally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorus. All compositions, forms, and sizes are included within the scope of these investigations, including silicomanganese slag, fines, and briquettes.

of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of silicomanganese from Brazil, China, Ukraine, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). These investigations were requested in a petition filed on November 12, 1993, by Elkem Metals Co., Pittsburgh, PA, and the Oil, Chemical, and Atomic Workers, Local 3-639, Belpre, OH.

Participation in the investigations and public service list.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on August 19, 1994, and a public version will be issued thereafter, pursuant to

section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on September 1, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 30, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in these investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 26, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 12, 1994, although parties may submit a supplemental statement within ten days after the Department of Commerce's final determinations regarding sales at less than fair value; this supplemental statement must be limited to a discussion of the Department of Commerce's final determinations and may not exceed five pages in length.

Witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 12, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 11, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-17225 Filed 7-14-94; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property, and Motor Carriers of Passengers

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property, and motor carriers of passengers for classification purposes. This indexing method will ensure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indices are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1991, 1993, and 1988 respectively. The inflation index factors are as follows:

| | Railroads | |
|------------|-----------|---------------------|
| | Index | Deflator percent |
| 1991 | 409.5 | ¹ 100.00 |
| 1992 | 411.8 | 99.45 |
| 1993 | 415.5 | 98.55 |

| | Railroads | |
|------------|-----------|---------------------|
| | Index | Deflator percent |
| 1993 | 118.9 | ² 100.00 |
| 1988 | 106.9 | |
| 1991 | 116.5 | 91.76 |
| 1992 | 117.2 | 91.21 |
| 1993 | 118.9 | 89.90 |

¹ *Montana Rail Link, Inc., and Wisconsin Central Ltd., 8 I.C.C. 2d 625 (1992)*, raised the revenue classification level for class I railroads from \$50 million to \$250 million (1991 dollars), effective for the reporting year beginning January 1, 1992.

² *Rev. to Accounting & Reporting Requirs. for Motor, 9 I.C.C. 2d 1268 (1994)*, raised the revenue classification level for class I motor carriers of property from \$5 million to \$10 million (1993 dollars), effective for the reporting year beginning January 1, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 927-5730.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-17269 Filed 7-14-94; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-1 (Sub No. 252X)]

Chicago and North Western Transportation Company Abandonment and Discontinuance of Service Exemption in Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, 10904, and 10906 the Chicago and North Western Transportation Company's abandonment of a 3.65-mile segment of the Cedar Lake line from milepost 16.20 to milepost 19.85 in Hopkin, MN, in Hennepin County, MN, and the discontinuance of service over the remaining 2.5-mile segment of Cedar Lake line, between milepost 13.70 at Cedar Lake in western Minneapolis, MN, and milepost 16.20 at Hopkins, MN, in Hennepin County, MN.¹

¹ Originally CNW sought to abandon the entire Cedar Lake line. By letter filed April 7, 1994, CNW amended its petition for exemption to state that only a discontinuance of service is sought over the 2.5 miles of the Cedar Lake line, between milepost 13.70 and milepost 16.20, as described above, because the Soo Line Railroad Company and the

Continued

DATES: The exemption will be effective on August 14, 1994, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 25, 1994; petitions to stay must be filed by August 1, 1994; and petitions to reopen must be filed by August 9, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 252X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representative: Thomas F. Flanagan, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606. **FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: July 6, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-17270 Filed 7-14-94; 8:45 am]
BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gerald Petty d/b/a Tri-R-Disposal, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been lodged with the United States District Court for the Central District of Illinois in *United States of America v. Gerald Petty d/b/a Tri-R-Disposal, et al.*, Civil Action No. 94-3142. The

Twin Cities and Western Railroad Company would retain their overhead trackage rights over that line segment.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

Complaint in this case alleged that the defendants exchanged rate information among themselves and jointly advertised rates to facilitate price increases for waste services in the Christian County, Illinois area in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendants from directly or indirectly disclosing to any other defendant or any other person engaged in the waste services business any rate prior to its having been disclosed to the general public and from advertising, publishing, announcing or disseminating any rate for waste services jointly or in concert or connection with any other defendant or any other person engaged in providing waste services. Each defendant is required to establish an antitrust compliance program.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court, should be directed to Marvin Price, Acting Chief, Chicago Office, 209 South LaSalle Street, Antitrust Division, U.S. Department of Justice, Chicago, Illinois 60604 (telephone: (312) 353-7530).

Constance K. Robinson,
Director of Operations.

In the United States District Court for the Central District of Illinois, Springfield Division: United States of America, Plaintiff, v. Gerald Petty d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants. Civil No. 94-3142.

Complaint

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This Complaint is filed under section 4 of the Sherman Act (15 U.S.C. 4), as amended, in order to prevent and restrain violations by the defendants of section 1 of the Sherman Act (15 U.S.C. 1).

2. Each defendant resides in the Central District of Illinois within the meaning of 28 U.S.C. 1391(b).

II.

Definitions

3. "Waste Services" means any collection, pick-up, hauling, transportation, dumping, recycling, sale

or disposal of garbage, trash, rubbish, scrap, by-products or other waste materials.

III.

Defendants

4. Defendant Gerald Petty operates a waste services business as a sole proprietor under the name Tri-R-Disposal in and around Christian County, Illinois (hereinafter the "Christian County area").

5. Defendants Leo Carey and Grace Carey operate a waste services business as sole proprietors under the name Carey's Disposal Service in and around the Christian County area.

IV.

Trade and Commerce

6. During the period covered by this complaint, each of the defendants engaged in the business of providing waste services to residential and commercial customers in and around the Christian County area.

7. The defendants' business activities are within the flow of and substantially affect interstate commerce.

V.

Violation Alleged

8. Beginning at least as early as September 26, 1993, and continuing until on or about November 7, 1993, the defendants engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants to use joint advertising to facilitate a coordinated increase in the rates charged for waste services in the Christian County area.

10. For the purpose of forming and carrying out the aforesaid combination and conspiracy, the defendants did the following things, among others:

(a) disseminated information among themselves relating to possible rate increases; and

(b) jointly advertised rates for their waste services.

VI.

Effects

11. The combination and conspiracy had an effect on interstate commerce in that competition among the defendant waste services businesses was unreasonably restrained and consumers of waste services were deprived of the benefits of free and open competition in the sale of waste services.

VII.

Claim for Equitable Relief

12. The illegal agreement, combination and conspiracy alleged in this complaint is likely to recur unless the injunctive relief prayed for herein is granted.

VIII.

Prayer for Relief

Wherefore, plaintiff prays:

(a) that the Court adjudge and decree that defendants have engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(b) that for a period of ten years the Court enjoin each defendant, its agents, employees, successors and assigns, and all other persons acting or claiming to act under, through or for any defendant, from:

(i) advertising, publishing, announcing or disseminating any rate or rate increase for any waste service jointly or in concert or in connection with any other defendant or any person engaged in providing waste services; and

(ii) directly or indirectly disclosing to any other defendant or any other person engaged in providing waste services any rate prior to its having been disclosed to the general public;

(c) That each defendant be required to institute a compliance program;

(d) That for ten years after the entry of the Final Judgment, on or before its anniversary date, each defendant shall file with plaintiff an annual declaration reporting that such defendant has complied with the terms of the Final Judgment and has engaged in no activities of the type prohibited by the Final Judgment; and

(e) That this Court order such other and further relief as the nature of the case may require and that the Court deems just and proper.

Dated:

Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Deputy Assistant Attorney General.
Mark Schechter,
Marvin Price,
Attorneys, U.S. Department of Justice,
Antitrust Division.
Frances C. Hulin,
By: James A. Lewis, United States Attorney,
Central District of Illinois, Springfield
Division.
Susan H. Booker,
Attorney, Midwest Office, U.S. Department
of Justice, Antitrust Division, 209 S. LaSalle,
Room 600, Chicago, Illinois 60604, (312) 353-
7530.

In the United States District Court for the Central District of Illinois Springfield Division: United States of America, Plaintiff, v. Gerald Petty, d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants. Civil No. 94-3142.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Central District of Illinois;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. The parties shall abide by and comply with the provisions of the Final Judgment pending its entry, and shall, from the date of the filing of this Stipulation, comply with all terms and provisions thereof as though the same were in full force and effect as an order of the Court; and

4. In the event plaintiff withdraws its consent of if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For plaintiff United States of America:
Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Deputy Assistant Attorney General.
Mark Schechter,
Marvin Price,
Attorneys, U.S. Department of Justice,
Antitrust Division.
Frances C. Hulin,

By: James A. Lewis, United States Attorney,
Central District of Illinois, Springfield
Division.
Susan H. Booker,
Attorney, Midwest Office, U.S. Department
of Justice, Antitrust Division, 209 S. LaSalle,
Room 600, Chicago, Illinois 60604, (312) 353-
7530.

For defendant Gerald Petty
Dan Austin, Esq.,
Meyer, Austin, Romano & Lacey P.C., P.O.
Box 140, Taylorville, IL 62568.

For defendants Leo and Grace Carey
David Fines, Esq.,
Hershey, Beavers, Periad, Graham, and Fines,
P.O. Box 320, Taylorville, IL 62568.

In the United States District Court for the Central District of Illinois Springfield Division: United States of America, Plaintiff, v. Gerald Petty, d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants Civil No. 94-3142. Filed: May 31, 1994.

Final Judgment

Plaintiff, United States of America, filed its Complaint on May 31, 1994. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

Definitions

As used in this Final Judgment:
(A) "Defendant" or "defendants" means each of the named defendants in this action; each affiliate or partnership

of any of them; and each officer, employee, agent, and other person acting for or on behalf of any of them or any of their affiliates or partnerships;

(B) "Intracompany communication" means any communication relating solely to the operations of a company that is solely between individuals who are officers or employees of that company;

(C) "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity. In the case of an individual, the term also means any employee, agent or other person acting for or on behalf of the individual. In the case of any business or legal entity, the term also means each subsidiary, affiliate, division or partnership of the business or legal entity and each officer, director, employee, agent or other person acting for or on behalf of any of them;

(D) "Rate" means any actual, proposed or list price, bid or quote, and any information relating to any price, bid or quote, including but not limited to any profit margin; premium; markup; commission; discount; labor, unit, material, equipment, fees, or other costs; formulas or other methods used to determine any price or cost; and credit or payment terms;

(E) "Waste Services" means any collection, pick-up, hauling, transportation, dumping, recycling, sale or disposal of garbage, trash, rubbish, scrap, by-products or other waste materials.

III.

Defendants

(A) Defendant Gerald Petty operates a waste services business under the name Tri-R-Disposal in Christian County, Illinois.

(B) Defendants Leo and Grace Carey operate a waste services business under the name Carey's Disposal Service in Christian County, Illinois.

IV.

Applicability

(A) The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

(C) Defendants shall each require, as a condition of the sale or other disposition of all or substantially all of their assets used in providing waste services that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

V.

Prohibited Conduct

(A) Each defendant is enjoined and restrained from directly and indirectly disclosing to any other defendant or any other person engaged in providing waste services any rate prior to its having been disclosed to the general public.

(B) Each defendant is enjoined and restrained from advertising, publishing, announcing, or disseminating any rate for any waste services jointly or in concert or in connection with any other defendant or any other person engaged in providing waste services.

(C) Nothing in Section V of this Final Judgment shall prohibit any:

- (1) intracompany communication;
- (2) defendant from engaging in any good faith communication relating to any actual or possible contract to provide waste services or to purchase waste services from any other person engaged in providing waste services as long as both (i) the purpose or effect of any such communication or contract is not to eliminate or suppress competition in the supply or sale of waste services; and (ii) the information disclosed during any such communication and the scope of any such contract are no broader than is necessary to provide or purchase the specific waste services in question.

VI.

Compliance Program

(A) Defendants are ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her company to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

- (1) Distributing, within 60 days from entry of this Final Judgment, a copy of this Final Judgment to all owners, officers, and employees who have responsibility for approving,

disapproving, monitoring, recommending or implementing any prices;

(2) Distributing in a timely manner a copy of this Final Judgment to any owner, officer, or employee who succeeds to a position described in Section VI(A)(1);

(3) Briefing annually those persons designated in Sections VI(A)(1) and (2) on the meaning and requirements of this Final Judgment and the antitrust laws;

(4) Obtaining from each owner, officer or employee designated in Section VI(A)(1) and (B)(2) a written certification that he or she (a) has read, understands, and agrees to abide by the terms of this Final Judgment;

(b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and

(5) Maintaining a record of recipients from whom the certification in Section VI(A)(4) has been obtained.

VII.

Certification

(A) Within 75 days of the entry of this Final Judgment, defendants shall each certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI(A)(1) above.

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff an annual statement as to the fact of its compliance with the provisions of Sections V and VI(A).

(C) If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII.

Plaintiff Access

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted, subject to any legally recognized privilege:

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or under its control, relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees or agents, who may have counsel present, regarding any such matters. The interviews shall be subject to that defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, any defendant, shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. 1311-1314 or a Federal grand jury, to determine if the defendant has complied with this Final Judgment.

IX. Further Elements of Final Judgment

(A) This Final Judgment shall expire ten (10) years from the date of its entry.

(B) Jurisdiction is retained by this Court to enable any of the parties to the Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify, or terminate any of its provisions, to enforce compliance and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

The United States District Court, for the Central District of Illinois, Springfield Division: *United States of America*, Plaintiff, v. *Gerald Petty, d/b/a/ Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service*, Defendants, Civil No. 94-3142.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of all defendants in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On May 31, 1994, the United States filed a civil antitrust complaint under Section 1 of the Sherman Act, 15 U.S.C. § 1, seeking to enjoin the defendants from engaging in an alleged combination and conspiracy to suppress competition in the supply of residential and commercial waste services in and around Christian County, Illinois, through the joint advertisement of rates because the combination and conspiracy is an unreasonable restraint of interstate commerce in violation of Section 1 of the Sherman Act (15 U.S.C. 1).

The Complaint alleges that the defendants:

(1) Disseminated information among themselves relating to possible rate increases; and

(2) Jointly advertised rates for their waste services. The complaint requests that the defendants be enjoined from directly or indirectly disclosing any rate to any defendant or person prior to it having been announced to the general public and from publishing, announcing or disseminating any rate for waste services jointly or in connection with any defendant or person engaged in providing waste services. The complaint further requests that the defendants be required to institute an antitrust compliance program and file an annual certification of compliance with the terms of the Final Judgment as entered.

The United States and the defendants have stipulated and agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. Entry of the proposed Final Judgment will terminate this action as to each of the defendants, except the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

At all times relevant to the allegations contained in the complaint, each of the defendants operated a waste services business in Christian County, Illinois. The defendants held dominant positions

in the market for such services. The United States' complaint in this case alleges that the defendants engaged in a conspiracy that unreasonably restrained competition in the sale of waste services through the use of joint advertising to facilitate a coordinated increase in the rates charged for waste services in the Christian County area. The complaint alleges that the defendants disseminated among themselves information about rate increases and jointly advertised rates for their waste services.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

Section V(A) prohibits the defendants from directly or indirectly disclosing to any other defendant or any other person engaged in the waste services business any rate prior to its having been disclosed to the general public. Section V(B) of the Final Judgment prohibits the defendants from advertising, publishing, announcing or disseminating any rate for waste services jointly or in concert or in connection with any other defendant or any other person engaged in providing waste services.

B. Compliance Program and Certification

In addition to the prohibitions contained in Section V of the proposed Final Judgment, the defendants are required to implement an antitrust compliance program as set forth in Section VI.

As part of the compliance program, each defendant is required to distribute copies of the Final Judgment to all owners, officers and employees responsible in any way for prices and to any person who succeeds to the position as an owner, officer or employee responsible for prices. Additionally, such individuals must execute a certification of compliance as set forth more fully in section VI(A)(4). Each defendant must also submit an annual statement to the United States as to its compliance with the Final Judgment as required under section VII(B).

C. Applicability to Successors and Assigns

Section IV of the Proposed Final Judgment makes the Final Judgment applicable to the successors and assigns of each defendant. Each defendant must require, as a condition of the sale of its business or assets used in its waste services business, that the buyer agree to be bound by the provisions of the Final Judgment.

IV. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided the United States has not withdrawn its consent. The Act conditions the entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Marvin Price, Acting Chief, Midwest Office, Antitrust Division, United States Department of Justice, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604.

Under section IX of the proposed judgment the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Final Judgment, or for the punishment of any violations of the Final Judgment.

V. Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all the relief as to the defendants necessary to cure the violations alleged in the complaint. The judgment will enjoin the defendants from resuming operation of the alleged conspiracy. Because the judgment provides all of the relief against the defendants that the United States would have sought through a trial, the United States did not seriously consider any alternatives to the judgment.

VI. Determinative Documents

No documents were determinative in formulating the proposed judgment, and the United States therefore has not

attached any such documents to the judgment.

Dated:

Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Mark Schechter,
Marvin Price,
Attorneys, U.S. Department of Justice,
Antitrust Division.

Frances C. Hulin,
By: James A. Lewis, United States Attorney,
Central District of Illinois, Springfield
Division.

Respectfully submitted.

Susan H. Booker,
Attorney, Midwest Office, U.S. Department
of Justice, Antitrust Division, 209 S. LaSalle,
Room 600, Chicago, Illinois 60604, (312) 353-
7530.

[FR Doc. 94-17114 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MEMC Electronic Materials, Inc. and International Business Machines Corporation

Notice is hereby given that, on April 29, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), MEMC Electronic Materials, Inc. ("MEMC") and International Business Machines Corporation ("IBM") have filed written notifications on behalf of SiBond, L.L.C., an entity formed by them, simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are MEMC, St. Peters, MO; and IBM, Yorktown Heights, NY. On February 12, 1994, MEMC and IBM entered into a written agreement to form a limited liability company called SiBond, L.L.C. ("SiBond"), which was subsequently formed in Delaware on February 15, 1994. SiBond's purpose is primarily to engage in research, development, and prototype manufacture of silicon on insulator wafers using novel processes which will enhance the performance of the wafers. The wafers would be used by makers of

semiconductors for the fabrication of chips.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 94-17184 Filed 7-14-94; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant To The National Cooperative Research and Production Act of 1993—National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, on June 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following members of NCMS, specifically, Setco Sales Company, Cincinnati, OH; Aesop, Inc., Concord, NH; Ford Motor Company, Dearborn, MI; Giddings & Lewis, Inc., Fond du Lac, WI; ORSCO, Inc., Madison Heights, MI; General Motors Corporation, Detroit, MI; the Torrington Company, Torrington, CT; Manufacturing Laboratories, Inc., Gainesville, FL; and NCMS, Ann Arbor, MI, have executed a Project Agreement dated May 31, 1994, along with project participant, Olofsson Machine Tools, Inc., Lansing, MI, to undertake research development activities focusing on the development of advanced light weight machining spindles.

Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 13, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32462).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 94-17183 Filed 7-14-94; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 94-29]

Community Methadone Health Services Revocation of Registration

On February 10, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Community Methadone Health Services (Respondent), of Rockville, Maryland, proposing to revoke its DEA Certificate of Registration, RC0173271, and to deny any pending applications for registration as a narcotic treatment program. 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(g) and 824(a)(4), in that on September 23, 1992, an investigation of the Community Methadone Health Services narcotic treatment program (program) by the Maryland Alcohol and Drug Abuse Administration indicated lax accountability controls and shortages of 17,000 mg. of methadone, a Schedule II controlled substance; that on March 6, 1993, an investigation of the narcotic treatment program by the DEA indicated shortages of 44,339 mg. of methadone, and in addition, the program failed to maintain complete and accurate records in violation of 21 CFR 1304.21(a), permitted the unauthorized handling of methadone by an employee in violation of 21 CFR 1301.74(h), failed to comply with a U.S. Health and Human Services (HHS) regulation regarding take-home doses in violation of 21 CFR 1301.74(k), failed to document the alleged theft or loss of a controlled substance in violation of 21 CFR 1301.76(b), and failed to execute a power of attorney for the execution of DEA order forms required under 21 CFR 1305.07; that on March 6, 1993, an investigation of the narcotic treatment program by the Maryland Department of Health and Mental Hygiene agencies indicated numerous violations of State and Federal law, and in lieu of issuing a cease and desist order, the state entered an agreement in which the program ceased operations until the completion of the state investigation, and subsequently, a consent agreement allowed the program to reopen on April 30, 1993, under specified conditions and guidelines, including a prohibition of its owner from participating in day to day program operations; that the Community Methadone Health Services narcotic treatment program was initially registered with the DEA on May 4, 1992 and its owner and executive director is

Mr. Daniel Flint; that on December 2, 1987, Mr. Daniel Flint was convicted of attempting to obtain a controlled dangerous substance and was sentenced to one year probation in Montgomery County, Maryland; that in March 1993, Mr. Daniel Flint allegedly acquired methadone for his own use from a private physician in Washington, DC, and as a result, on June 25, 1993, he was arrested in Montgomery County, Maryland for obtaining methadone by fraud, and subsequently, on July 8, 1993, was indicted for this offense in the Superior Court of Washington, DC; and that on August 6, 1993, the Maryland Department of Health and Mental Hygiene, Division of Drug Control ordered the suspension of Community Methadone Health Services' controlled dangerous substances (CDS) registration, and therefore, Community Methadone Health Services is not authorized to handle controlled substances in the state in which it operates.

The Respondent, by its Director, Daniel Flint, responded to the Order to Show Cause and requested a hearing. Counsel for the Government filed a motion for summary disposition on April 15, 1994, alleging that the Respondent no longer held state authorization to handle controlled substances for reason that the Maryland Department of Health and Mental Hygiene, Division of Drug Control, ordered the suspension of Respondent's controlled dangerous substances (CDS) registration on August 6, 1993. The Respondent did not file any response to the Government motion.

On May 17, 1994, the administrative law judge entered an order granting the Government's motion for summary disposition and recommended that the Respondent's registration be revoked. No exceptions were filed by either party. The administrative law judge transmitted the record to the Deputy Administrator on June 17, 1994.

The Deputy Administrator has considered the record in its entirety and, under the provision of 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

No evidentiary hearing was held in this case as there were no factual issues involved, only a question of law. Judge Tenney found that the Respondent lacked state authorization to handle controlled substances in the State of Maryland, the jurisdiction in which the Respondent is registered with the DEA. Judge Tenney concluded that DEA has no authority to maintain a DEA registration, where the registrant is

without state authority to handle controlled substances.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to dispense controlled substances. The Administrator has consistently held that termination of a registrant's state authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. See *Bobby Watts, M.D.*, 53 FR 11919 (1987); *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992).

The Deputy Administrator adopts the findings and recommendation of the administrative law judge. Based on the foregoing, the Deputy Administrator concludes that the Respondent's registration must be revoked. 21 U.S.C. 824(a)(3). In light of Respondent's lack of state authorization to handle controlled substances in the State of Maryland, the Deputy Administrator concludes that it is not necessary to address whether Respondent's continued registration is inconsistent with the public interest.

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 (59 FR 23637), hereby orders that DEA Certificate of Registration, RC0173271, previously issued to Community Methadone Health Services, be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective July 15, 1994.

Dated: July 8, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-17273 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1621-94; AG Order No. 1898-94]

RIN 1115-AC30

Extension of Designation of Bosnia-Herzegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 10, 1995, the Attorney General's designation of Bosnia-Herzegovina under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as

amended (Act). Accordingly, eligible aliens who are nationals of Bosnia-Herzegovina, or who have no nationality and who last habitually resided in Bosnia-Herzegovina, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on August 10, 1993. In addition, during the extension period, some aliens may be eligible for later initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on August 11, 1994, and will remain in effect until August 10, 1995. Re-registration procedures become effective on July 15, 1994, and will remain in effect until August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101-649 and section 304(b) of Public Law 102-232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on August 10, 1992, the Attorney General designated Bosnia-Herzegovina for Temporary Protected Status for a period of one year, 57 FR 35604-35605. The Attorney General extended the designation of Bosnia-Herzegovina under the Temporary Protected Status program for an additional year until August 10, 1994, 58 FR 40676-40677.

This notice extends the designation of Bosnia-Herzegovina under the Temporary Protected Status program for an additional year, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Bosnia-Herzegovina, or who have no nationality and who last habitually resided in Bosnia-Herzegovina, must comply in

applying for continuation of Temporary Protected Status.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Bosnia-Herzegovina's Temporary Protected Status designation, late initial registrations are possible for some Bosnia-Herzegovinans under 8 CFR 240.2(f)(2). Such late initial registrants must still meet the initial presence requirement for all Bosnia-Herzegovinans and the status requirements contained in 8 CFR 240.2(f)(2). A fee of fifty dollars (\$50) is charged for each Application for Temporary Protected Status, Form I-821, filed for late initial registration. An Application for Employment Authorization, Form I-765, must be filed together with Form I-821 in all cases. However, the fee prescribed in 8 CFR 103.7(b)(1) for Form I-765 is only charged if the alien requests employment authorization.

The general fee for filing an Application for Employment Authorization, Form I-765, will increase to seventy dollars (\$70) on July 14, 1994. (See 59 FR 30516-30520, June 14, 1994.) The new fee is required when Form I-765 is filed as part of either a re-registration or as part of a late initial registration for Temporary Protected Status. This filing fee must accompany Form I-765 unless a properly document fee waiver request is approved by the Service or the applicant does not request employment authorization.

Notice of Extension of Designation of Bosnia-Herzegovina Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have determined that, as a result of the ongoing civil unrest in that country, there still exist extraordinary and temporary conditions in Bosnia-Herzegovina that prevent aliens who are nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, from returning to Bosnia-Herzegovina in safety. I have further determined that permitting nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Bosnia-Herzegovina under section 244A(b) of the Act is extended for an additional

one-year period from August 11, 1994, to August 10, 1995.

(2) I estimate that there are approximately 400 nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Bosnia-Herzegovina, or an alien having no nationality who last habitually resided in Bosnia-Herzegovina, who received a grant of Temporary Protected Status during the initial period of designation from August 10, 1992, to August 10, 1993, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Herzegovina, or an alien having no nationality who last habitually resided in Bosnia-Herzegovina, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I-821, together with an Application for Employment Authorization, Form I-765, within the 30-day period beginning on July 15, 1994, and ending on August 15, 1994, in order to be eligible for Temporary Protected Status during the period from August 11, 1994, until August 10, 1995. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no filing fee for the Form I-821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I-765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I-821 together with Form I-765 for information purposes, but in such cases both Form I-821 and Form I-765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1995, the designation of Bosnia-Herzegovina under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Bosnia-Herzegovina, and aliens having no nationality who last habitually resided in Bosnia-Herzegovina, will be available at local

Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 11, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-17212 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Stocking Change of Standard Form 308

AGENCY: Department of Labor, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Labor is changing the stocking requirement of SF 308, Request for Wage Determination and Response to Request. This form is now authorized for local reproduction. You can request camera copy of SF 308 from the Employment Standards Administration (ESA), Attention: George Blyther, (202) 219-8441.

FOR FURTHER INFORMATION CONTACT:

Mrs. Cheryl Robinson, DOL Departmental Forms Officer, (202) 219-9161.

EFFECTIVE DATE: July 15, 1994.

Signed at Washington, DC this 6th day of July, 1994.

Kenneth A. Mills,

Director, Office of IRM Policy.

[FR Doc. 94-17271 Filed 7-14-94; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Wagner-Peyser Act: One-Stop Career Center System Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA) is announcing available grants for the planning/development and implementation of One-Stop Career Center Systems. The One-Stop Career Center System is the organizing vehicle for transforming the current fragmented array of employment and training programs into a coordinated information and service delivery system for individuals seeking first, new or better

jobs and for employers seeking to hire new workers.

In advancing this purpose, DOL/ETA seeks to provide a framework within which States, in conjunction with local entities, have the flexibility to design a One-Stop Career Center System which is customized to the particular needs of the local labor market and the State, but is also part of a larger State and national system. As envisioned, this system is characterized by its emphasis on serving its customers. It should meet the needs of all customers by providing a common core of information and services which are standard and universal at any access point which calls itself a "one-stop." It should be easy to locate and use, be information-rich and offer customers choice in where and how to get services. This system must be focused on constant improvement by gauging customer satisfaction with services and using the information to improve the system.

With this solicitation, the Department is focusing on creating a system, not merely a collection of networked individual programs. Federal, State and local entities need to agree on how to work in a way that builds on the strengths of each, recognizes the necessary role of each and explores the creation of new approaches and collaboratives to serve the customer. This system should be flexible, comprised of entities that are learning organizations with staff capable of leading and changing. This flexible system is also "high-tech"—where technology is used to give and expand high-quality services to customers in a variety of manners and media.

In the Department's fiscal year 1994 budget, Congress appropriated \$50 million for One-Stop Career Centers under current Wagner-Peyser Act authority. These funds became available for obligation and expenditure effective July 1, 1994. Of the funds, \$26 million will be used for funding the planning, development and implementation of One-Stop Career Center systems. Of the remaining amount, \$20.5 million has been targeted for first year funding of a comprehensive national Labor Market Information System. The balance, \$3.5 million, will be awarded to local communities under a separate SGA for local site system development and to serve as "learning laboratories" for other communities.

Grants will be awarded on a competitive basis approximately 15 to 20 States for planning and development and approximately 4 to 6 States for implementation of One-Stop Career Center systems. Planning and development grants are for a one-year

period. Implementation grants are for a three-year period. Grant funds for the second and third years are contingent upon satisfactory performance in the previous year and availability of funds. **DATES:** The closing date for receipt of proposals at the Department of Labor will be 2 p.m., Eastern Time, September 15, 1994. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

ADDRESSES: Proposals shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Charlotte A. Adams, Reference: SGA/DAA 94-20, 200 Constitution Avenue, NW., Room S-4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Charlotte A. Adams, Division of Acquisition and Assistance, Telephone (202) 219-8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds to support the planning/development and implementation of One-Stop Career Center Systems. This announcement consists of five parts: Part I—Background/Description, Part II—Application Process, Part III—Evaluation Criteria for Award, Part IV—Meetings and Part V—Reporting Requirements.

Part I—Background/Description

American workers confront an economy in continuous transition. Young people and other first time job seekers must try to find their place in a shifting labor market. Job holders find they must constantly learn new skills. Fewer workers can expect to be with a single firm throughout their work life. Employers find it harder to find new workers with up-to-date skills.

There is a confusing patchwork of job training, retraining and benefit programs which do not efficiently address workforce security and career requirements. There is a clear need for a streamlined One-Stop Career Center system which puts customers first by providing them with the information and access to services they need to make sound career decisions.

The Department is committed to improving the quality and delivery of services to its ultimate customers—American workers and their employers. The One-Stop Career Center system is the vehicle for transforming this fragmented training and employment system into a coordinated information

and service delivery system for all Americans seeking new jobs, better jobs, or first jobs. An essential component within the One-Stop system is an enhanced labor market information system.

In fiscal year 1994, the Employment and Training Administration (ETA) is using the \$50 million Congress appropriated under the Wagner-Peyser Act to bring implementation of a voluntary, national One-Stop Career Center system and for first year funding of the American Labor Market Information System.

ETA plans to use \$26 million of the funds to award grants to develop and implement One-Stop Career Center systems in conjunction with local communities. Grants will be awarded on a competitive basis to approximately 15 to 20 States for planning/development and to approximately 4 to 6 States for implementation of One-Stop Career Center systems.

ETA will also issue a separate solicitation (for approximately \$3.5 million) to award grants to local communities for local One-Stop Career Center systems. These competitively awarded grants will be available to local communities that have already developed a local system and which would like to serve as "learning laboratories" for other States and local communities in developing One-Stop Career Center systems. It is anticipated that these local communities will be able to make enhancements to their systems and undertake a broad range of dissemination and technical assistance activities.

An additional \$8 million (approximately) of the remaining \$20.5 million will also be distributed to the States that receive One-Stop implementation grants to support labor market information needs. Those States selected for implementation grants will be provided with this additional funding for technology upgrades to support the State's LMI data collection—analysis and information distribution system.

The remaining \$12.5 million (approximately) in LMI funds will be spent to begin the building of America's Labor Market Information System in every State. Some funds will be available to every State regardless of whether the State pursues One-Stop grant funding. States will use these funds to meet specific LMI needs as designated by the States. Funds will also be provided to individual States for demonstration projects, to support evaluation of existing LMI products and the development of new ones, and to underwrite the expansion of job and

talent banks. More detailed plans for use of these funds will be issued separately.

The One-Stop Career Center System Framework

As envisioned, the One-Stop Career Center System will provide universal access to basic high-quality services for at least DOL funded programs. A guiding principle behind the One-Stop concept is that individuals should have access, through a One-Stop, to a broad range of employment, training and education services. This implies at least one physical location that provides comprehensive services to any individual seeking such services.

Beyond this, there is a great deal of flexibility afforded at State and local levels to design the One-Stop system that best serves the community, and there are many stages of development. For example, the One-Stop Career Center system may be physically located in one comprehensive site, in many sites, through electronic and technological access points, or through a combination of these approaches.

Designs may include on-site services for only selected programs in the One-Stop Career Center while linking to other programs. Under this scenario, any individual can receive information on possible eligibility for services which may be accessed through another service center—the so-called "no wrong door." A design may provide full access to every employment and training and education program in a single One-Stop Career Center in the community which is linked with other specialized centers and electronic and technological access points.

The goal of this solicitation is to accelerate the creation of a comprehensive, streamlined system of One-Stop Career Centers that will, at a minimum, provide a standard set of high quality services universally by investing in innovations already underway in the States and communities. The federal design leaves the conduct of One-Stop Career Center system operations as flexible as possible under the direction of State and local partners, while maintaining accountability and keeping it part of a nationwide system which is characterized by a high standard of quality. States, working in conjunction with localities, will specify the flow of funds in their proposals, allowing them to adapt the best systems to fit their needs.

In awarding grants for development and implementation of One-Stop Career Center systems, ETA's intent is to support promising State and local efforts toward program integration,

improved access and enhanced quality of services to workers and employers consistent with broadly defined outcomes. It is expected that statewide systemic change may be achieved by building on the enriching current programs.

The Administration's proposed Reemployment Act of 1994 (REA) contains provisions establishing a framework for the development and implementation of statewide One-Stop Career Center systems. However, since the REA is pending in Congress, the grant solicitation criteria are *not* based on the REA, but rather on existing legislative authority. This solicitation is based on broad outcome objectives to be achieved through the One-Stop system. These broad outcome objectives that ETA will use in making investment decisions for One-Stop systems are:

1. Universality

The One-Stop Center system must be one that integrates delivery of services under existing unemployment, employment and job training programs. The system must provide all populations with an array of job finding and employment development assistance.

2. Customer Choice

Consistent with the principles in the Vice President's National Performance Review for reinventing government, these systems should provide customers with options and choice of where to get the services that best meet their needs.

3. Integrated System

In order to provide a career center system that is comprehensive and accessible in "One-Stop," programs, services, and governance structures must be as fully integrated as possible. At a minimum, the One-Stop system must include the DOL-funded employment and training programs. The highest degree of program integration and/or accessibility will be viewed the most favorably in the competition for implementation grants.

4. Performance-Driven/Outcomes-Based

The One-Stop system must be clear in the outcomes it seeks to achieve and the consequences for failing to meet these outcomes. There must be a system to measure whether the One-Stop system performance actually achieved the outcomes. This should have a strong connection to whether the customer is satisfied with the services received.

America's Labor Market Information System (ALMIS)

The One-Stop system will be augmented by an expanded and improved LMI system to benefit all Americans. Increased Federal investments—leveraged by State and local resources—will be made in five major categories with key objectives:

(1) Customer Products and Services

- Improve the basic labor exchange function (including talent banks and electronic access to job banks).
- Improve the ability to assess skills and skill needs.
- Create common program administration tools.
- Create, upgrade, disseminate tools for easy access.

(2) Data Sets

- Create a standardized wage program.
- Collect expanded information to permit State/Federal industry and occupation projections.
- Improve reliability of State and local labor force estimates.
- Create or acquire a database of employers.
- Enhance State Training Inventory with additional data.
- Develop consistent reports on education, training, and employment service programs.
- Continue process of improvement to basic Bureau of Labor Statistics programs.
- Improve Mass Layoff Statistics.

(3) Delivery Systems

- Develop user-friendly delivery shell with plug-in modules.
- Create a national LMI computer network to permit easy data transfer.

(4) LMI Organizational Structure

- Establish a high performance LMI organizational structure.
- Create LMI training infrastructure.
- Build a NOICC/SOICC training structure to provide support for counselors.

(5) Common Language/Technical Standards

- Develop common language of skills and occupational knowledge.
- Develop a common occupational classification scheme.
- Adopt national technical standards for LMI electronic portion.

Part II—Application Process All Information Required to Submit a Proposal is Contained in This Announcement

A. Eligible Applicants

Competition for these awards is limited to States which have developed proposals in conjunction with appropriate local entities. Only the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands are eligible to apply. *The Governor must transmit the proposal. In transmitting the proposal, (only one per State), the State must include evidence of commitment among those State and local agencies that will participate in the activities described in the State's proposal.*

B. Applicant Options

States may apply for:

- A planning/developmental grant;
- or,
- An implementation grant; or,
- Both a planning/development and an implementation grant. States which are applying for an implementation grant may request consideration for a planning/development grant should the State not be selected for an implementation grant. States which would like to be considered for both should complete both the planning/development and implementation grant sections, including corresponding budgets.

C. Grant Awards

The Department has allocated about \$4.5 million for planning/development grants. Approximately 15 to 20 grants will be awarded. The Department anticipates making awards of \$200,000 to \$400,000 based upon size. Size of State will be determined based on the size of the State's civilian labor force. While the Department does not anticipate increasing the total amount available for planning/development grants, adjustments will be considered for individual States depending upon the requirements of the plan and the number and quality of grant proposals received. The Department has allocated about \$21.5 million for implementation grants. Implementation grants will be awarded to approximately 4 to 6 States. The Department anticipates funding the implementation grants incrementally, using the \$21.5 million allocated for this purpose to fund the first year. Funding for the second and third years is contingent upon the continued availability of funds and upon satisfactory performance in the prior year. However, the Department will not make a final decision on funding until

the implementation proposals are reviewed and evaluated.

D. Use of Funds

Funds received under this grant may be used for activities outlined in the State's plan. The only exception is that funds *may not* be used for construction of new buildings.

E. Closing Date

The closing date for receipt of proposals at the Department of Labor is 2:00 p.m. Eastern time, September 15, 1994. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

F. Application Procedures

1. Submission of Proposal

The proposal shall consist of two (2) separate parts:

Part I shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and "Budget Information." All copies of the 424 shall have original signatures. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information form.

Part II shall contain technical data that demonstrates the State's plan and capabilities in accordance with the Contents of the Application detailed below. This part should address the review questions in sequential order.

An original and six (6) copies of the proposal shall be submitted in hard copy. One diskette, 5¼" or 3½", in WordPerfect, AMI Pro, MS Word, WordStar, or ASCII text format should also be submitted for Part II. All material should be submitted to: Charlotte Adams, Grants Management Specialist, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Room S-4203, Washington, DC 20210.

2. Hand Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time, September 15, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

3. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and was either:

(1) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of proposal (e.g., an offer submitted in response to a solicitation requiring receipt of proposals by the 20th of the month must have been mailed by the 15th); or

(2) Sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service Registered or Certified Mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

4. Period of Performance

For planning and development grants, the period of performance will be 12 months from the date of execution of the grant. For implementation grants, the period of performance will be 36 months from the date of execution of the grant. It is expected the awards will be

made in November 1994. It is anticipated that a total of \$26 million for planning and development grants and for implementation grants will be disbursed. Grant funds for the second and third years are contingent upon satisfactory performance in the prior years and continued availability of funds.

G. Statement of Work/Grant Application

1. Description Section

All States, regardless of whether the State is applying for a planning/developmental or implementation grant, must fully complete this section. No proposal will be considered unless each item below is fully addressed.

Supplemental information may be provided to complete this section, for example, planning documents; workplans; videos; marketing materials; or other explanatory information.

- *Work Force Development.* The proposal must describe the actions that the State and/or local communities have already completed to assess current and future work force development needs and to prepare a strategic plan for addressing these needs. Proposal should reference (or include) copies of studies conducted, including participating State and local agencies and interest groups, and actions taken to implement the plan. Copies of relevant, enacted State legislation should also be included.

- *One-Stop Career Center System Vision.* The proposal must provide a description of the basic features of a One-Stop system in their State. This description should include the underlying assumptions, principles and objectives in developing and implementing a One-Stop system.

- *Status of One-Stop Efforts.* The proposal must describe the status of One-Stop efforts in local communities within the State. This should include the level of resources the State has already committed to One-Stop efforts.

- *Collaboration.* The proposal must include a description of how the Governor, local elected officials, community and business leaders, representatives of voluntary organizations, State and local agency officials responsible for job training and employment, service providers, and other interested organizations and individuals will collaborate in the development and implementation of the statewide One-Stop system. Proposals should contain specific examples of collaboration such as a description of the worker profiling and reemployment services system, memoranda of understanding, agreements among State and local officials, composition and

responsibilities of State and local work force development entities, etc.

- *Labor Market Information.* Proposal must describe the State's present capacity to deliver high quality labor market information to the customers of the One-Stop system.

- *Agency Contact.* The Proposal must identify the program official(s) who will have lead responsibility for administering this grant. In designating such individual(s), the State should also outline the duties and responsibilities of this individual(s). Also, the proposal must address how this program official(s) will insure the full participation of all participating State and local agencies that have been identified as partners in this planning and developing process.

- *Financial Management.* The proposal must designate a fiscal agent to receive and be accountable for grant funds and must describe how the funds will be awarded and managed at the State and local levels.

2. Planning/Development Grants

States which have not developed a plan for implementation of a One-Stop Career Center system statewide may apply for planning/development grants. These funds may be used for a wide-range of planning and developmental activities. It should be noted that planning/development grants may be used in a situation where the State is not ready to move forward with statewide implementation of a One-Stop system, but a local community is poised to implement a One-Stop career center system locally. This community may, in collaboration with the State, apply for a planning/development grant that may be used exclusively for local site implementation. Some States may find that this approach of beginning with one or more local sites is appropriate as a first step towards developing a statewide system. States seeking planning/development grants must provide the following additional information.

- *Strategic Plan.* The proposal should describe the activities that the State proposes to undertake during the 12-month grant period in the planning and development of the One-Stop Career Center system. This plan should include activities that are being funded from this grant as well as from other sources. Examples of activities that a State may elect to undertake include:

- Initiating a planning process aimed at building a One-Stop system;
- Identifying or establishing an appropriate State-local structure to administer the One-Stop Career Center system;

- Identifying and designating substate areas for the One-Stop Career Center system;

- Identifying or establishing broad-based partnerships among employers, labor, education, State and local government and community organizations to participate in the design, development and administration of the One-Stop Career Center system;

- Building consensus among local stakeholders and supporting local One-Stop Career Center planning and development activities to provide guidance in the development of a One-Stop system;

- Initiating local site pilot programs for testing key components of program design, such as designing and testing common intake systems (including forms and records) for participating programs and determining methods to integrate program data bases;

- Analyzing current statutory, regulatory and administrative impediments to the establishment of a One-Stop system;

- Conducting an assessment of staff training and development needs at the State and local levels;

- Preparing the plan required for submission of a proposal for an implementation grant.

- *Outcome of Process.* The proposal should describe the progress expected to be achieved in the planning and development process at the end of the 12-month grant period. It should include expected "next steps." Local participation in the design and operation of One-Stop is critical, therefore some description of how this will be advanced by the planning/development phase should also be provided.

- *Resources.* The amount and source of any additional resources that will be devoted to this planning and development process should also be included in the proposal.

3. Implementation Grants

States, in conjunction with local communities, seeking implementation grants must provide the following additional information.

- *Design of One-Stop Career Center System.* The proposal must specifically address how its design of a One-Stop Career Center system will achieve the following four broad outcome objectives. Since this system is delivered at the local level, the State plan must describe the role of local officials in designing the system. Letters of support from local officials and copies of any negotiated agreements or other pertinent materials must be included.

- *Universal.* All population groups must have access to a broad array of services from a comprehensive assortment of employment and training programs. Basic services that one-stop centers would be expected to provide to all customers include, as a minimum: Customer-oriented information on careers, labor markets, jobs and the availability and quality of education and training programs; testing and assessment; job openings; hiring requirements and referrals; assistance with job search skills; and, initial eligibility information on programs available within the community. Proposals must describe:

- The specific, basic services which will be widely available through the one-stop centers;

- The approach to insuring that these services are available to all individuals;

- Any other customized services available through the one-stop career center system.

- *Customer Choice.* Customers, both individuals and employers, should have a choice in how to get information, basic services, and education/training. The Department recognizes that there are two aspects to customer choice which should be considered in designing a one-stop system. The first aspect is whether customers have more than one choice as to how they get basic information and services in the community. The second aspect is whether the customer receives enough quality information on education and training options s/he may pursue to make an informed choice. Proposals must describe how customer choice will be afforded within the one-stop system, and must describe:

- The geographic area within which choice will be provided;

- Any areas of the State in which choice in location of one-stop services is not available or practical and whether other alternatives, such as kiosks and toll-free lines, will be used to provide some degree of customer choice for these areas;

- How the State and its local communities will provide information on the quality of education and training services, particularly in consideration of the current paucity of qualitative data and how it will expand and evaluate the extent of the data.

- Any proposed financial/budgetary system to reward the operator(s) or vendor(s) that provide the services that are more attractive to customers.

- *Integrated.* The underlying notion of "one-stop" is that there is an integration of programs, services, and governance structures. At a minimum, the following DOL-funded programs

must be included in the one-stop system: dislocated worker programs, Employment Service programs, Veterans Employment Service programs, Title II of JTPA, Senior Community Service Employment Program under title V of the Older Worker Act, and Unemployment Insurance programs. Proposals must describe how these programs will be available through the One-Stop system. Additional DOL-funded programs are also encouraged to be included, e.g., Migrant Seasonal Farm Workers, Homeless Training, Native American programs, School-to-Work Opportunity programs, Job Corps and Bureau of Apprenticeship and Training programs. For both DOL and non-DOL funded programs, extra points will be awarded to those applications that include the most education, employment and training programs, such as Food Stamp Employment and Training, JOBS, Adult Education, Vocational Rehabilitation, Carl Perkins Act post-secondary programs, student financial assistance programs under Title IV of the Higher Education Act and State and local non-Federal programs. It is also expected that services will be integrated for the programs selected and will be available at all One-Stops. Finally, there should be some integration of governance to ensure coordination cooperation and high-quality planning and oversight. Proposal must describe:

- The programs which will be integrated through the One-Stop system;

- How these programs will be integrated e.g., exclusively delivered through One-Stop; delivered through One-Stop and also elsewhere; not delivered through One-Stop but accessible; information provided only—including a description of these services;

- How flexibility will be afforded in designing and determining integration of programs and services under such programs on a local area basis;

- State and local bodies that will coordinate these programs and services, including the membership of these bodies, their functions and responsibilities for the One-Stop system and any other functions and the extent to which existing entities will accommodate this purpose;

- How this approach specifically represents an enhancement to the existing structure for delivery of employment and training services.

- *Performance-Driven Outcome-Based Measures.* Proposal must describe:

- The specific outcomes for customers to be achieved by the One-Stop system;

- The proposed measures to assess the performance of the One-Stop career Centers and to determine whether the outcomes were achieved and the consequences for failing to meet them;

- Other measures to ensure accountability, integrity, and high-performance—e.g., financial accountability and program performance.

Note: These performance measures do not replace those currently in effect for the Department's grant-in-aid programs. These measures are specifically intended for the One-Stop Career Center system.

- **Implementation Plan.** The proposal must contain a detailed plan for statewide implementation over the three-year period, including a time line of major activities and anticipated milestones. The statewide plan may consist of the strategy for building a statewide system under joint State-local agreement together with a description of specific communities which are prepared to implement immediately. This plan must address:

- **Local Implementation.** The proposal must contain the approach for phasing in local implementation and must address the following questions and subjects:

- What are the geographic areas that will be designed as One-Stop system service areas?

- What is the projected timetable for implementation, by geographic area?

- What process will be used to determine One-Stop operators?

- How much flexibility will service areas have in developing One-Stop systems and in determining appropriate governance structures?

- How will State-local operating agreements be developed?

- **Local Agreement.** Written agreements between the State and the local area must be executed prior to implementation of the One-Stop Career Center system in a local area. Local elected officials and the chief executive of the local Private Industry Council or Councils, where applicable, must be among the signatories to the agreement. A State plan must include copies of such agreements for any local areas the State proposes to begin implementation in the first year of the three-year implementation period.

- **Capacity Building.** What are the specific staff development and training needs at the State and local levels and how will these needs be met? Will any technical assistance be needed from ETA? If so, please describe.

- **Obstacles/Barriers.** What are the obstacles to successful implementation of a statewide One-Stop career system?

How does the State propose to address these obstacles? What, if any, administrative actions will be sought from ETA? In what areas would waivers of Federal law or regulations be helpful?

- **Costs/Resources.** The proposal must provide a complete budget for implementation of the One-Stop system, including both Federal and non-Federal sources. The sources of funds should be clearly identified. Proposal must specifically identify the resources requested under this grant and the activities these resources will fund. Costs should be identified on an annual basis and broken down into broad cost categories. The cost plan must also address:

- The amount of resources the State and local communities have already committed to building the One-Stop system.

- The percentage or amount of funds that will be reserved for expenditure at the State level.

- The method of allocating funds to the local level and for insuring accountability for fund management at the local level.

- The method by which shared or joint costs will be allocated back to the contributing sources.

4. Labor Market Information Funds

Additional funds are available to support upgrading the State's labor market information system in those States which receive *implementation* grants. Those States which are applying for implementation grants and are seeking additional resources to meet their LMI needs must supply the following information.

- Provide an organizational chart depicting the major lines of LMI authority, responsibility and production-analysis-dissemination relationships within the State. The accompanying narrative should also describe the working relationship between the State agency and the State Occupational Information Coordinating Committee (SOICC).

- Provide approximate State agency staffing levels for:

| Activity | Approximate staffing levels (in full time equivalents) |
|--|--|
| LMI services to customers | |
| Labor market analysis and publications | |
| Production of administrative reports | |
| Production of Labor statistics reports (CES, LAUS, ES 202, etc.) ... | |
| Reports validation | |

| Activity | Approximate staffing levels (in full time equivalents) |
|------------------------------------|--|
| Special LMI projects | |
| ADP Support | |
| Other LMI-related activities | |

- Discuss the principal Federal, State, local and private funding sources for the LMI program.

- Summarize the major LMI databases and their beneficiaries in the State.

- The description of products and services should reference substate or local coverage, and indicate whether or not these products and services are provided on a cost-reimbursable basis to generate revenue for program costs.

- "Major Customers" can include references to individuals, employers, counselors, planners, local governments, Employment Service (including Alien Certification and Test Development customers), JTPA grantees, education institutions, State legislature, economic development agency, other State agencies, etc.).

- "Method of Conveyance and Access" should include references to mainframe, minicomputer and local area network terminal access; CD-ROM, kiosks and other emerging technology, etc.

| Title and description of LMI databases, products and services | Major customers | Method of conveyance and access |
|---|-----------------|---------------------------------|
| | | |

- Describe the strengths of your LMI program in relation to the five major categories (customer products and services, data sets, delivery systems, LMI organizational structure, and common language and technical standards) noting both Federal/State programs, special projects funded by the Federal Government or State legislatures, and any local innovative projects.

- Identify which programs could be replicated or adapted in other States. Has the State participated with other States in cooperative LMI programs in the past?

- Describe the current problem areas and current funding issues which affect your LMI program. What are the State's major priorities in addressing these identified problems?

- From various source documents (e.g., existing State strategic plans for information technology, State Agency Labor Market Information unit operational plans), briefly describe the

current and contemplated role of automation and technology in providing labor market information and services to the citizens of the State.

- Provide a complete budget of proposed investments to the LMI system, broken down by major cost categories, and identify the proposed resources by fund source, including the specific funds being requested in this proposal.

Part III—Evaluation Criteria For Award

Offerors are advised that there will be a two-stage review process used to evaluate proposals. Prior to the formal review, proposals will be reviewed to insure that *all* the information requested in this proposal is provided and complete. For offerors seeking planning and development grants only, the proposal must include completed part II, G, Sections 1 and 2 above. For offerors seeking an implementation grant only, the proposal must include completed Part II, G, Sections, 1, 3, and 4 above. Offerors requesting consideration for both type grants must fully complete Part II. Offerors should insure that implementation proposals are detailed and specific in addressing how the design for the One-Stop system will achieve the four outcomes identified in Section C. Completed proposals will be reviewed by a panel of experts. Each panelist will review the proposals according to the rating criteria listed below. The panels' recommendations are advisory in nature to help establish the competitive range. The Grant Officer will make final awards based on overall quality, geographic location and what is in the best interests of the government.

A. Criteria For Planning and Development Grants

1. The status of current efforts to improve the State/Local employment and training system, including the vision for the One-Stop system. Points 20

In applying this criterion, consideration will be given to such factors as:

- The status of State and local efforts to assess how well current workforce development programs (both employment and training) are meeting the needs for developing a skilled workforce;
- Whether the State has adopted a strategic plan for investing in workforce development that was jointly developed with local communities and other interested parties, and, if so, the steps which have been taken to implement the plan;

- How well the version of an integrated delivery system for delivery of education, employment, unemployment and job training services incorporates the four broad outcomes identified in Part I.

2. The State's approach to planning and development. Point 30

In applying this criterion, consideration will be given to such factors as:

- Whether the planned activities will likely prepare the State and local communities to implement a One-Stop system;
- Whether the State's plan is likely to lead to a broad consensus across local areas as to the design and implementation of a One-Stop system;
- Whether the planned activities will fully utilize and expand the existing LMI system to support the One-Stop system;
- Whether the planning process is likely to lead to the identification of barriers to implementation and recommended actions to overcome these barriers;
- Whether the timetable of activities is realistic to the tasks.

3. The State's ability to integrate diverse programs, agencies, organizations and individuals at the State and local levels. Points 30

In applying this criterion, consideration will be given to such factors as:

- The extent to which a broad array of State and local agencies participated in the development of this application;
- Other related actions by State and local education and employment and training agencies to coordinate and integrate program activities in order to reduce duplication of effort and to provide better service to the customer;
- The numbers and purposes of local agreements that already exist among education, employment and training providers.

4. The commitment to the planning and development effort. Points 20

In applying this criterion, consideration will be given to:

- The level of resources the State and local communities have already committed to improving the delivery of program service through the One-Stop concept;
- The level and source of resources they intend to commit to the planning and development process, and whether the level of resources is adequate to support the activities proposed.

B. Criteria for Implementation Grants

1. The quality of the design of the One-Stop system. Points 30

In applying this criterion, consideration will be given to the

following factors that relate to the four broad outcomes to be achieved:

- Whether the proposal clearly identifies the One-Stop system's customers and ensures services available to customers are comprehensive and accessible;
 - The basis for designation of service delivery areas and how the service area relates to the local labor market;
 - The extent to which customers will have choice in the location and method of access of information;
 - Whether the State has a labor market information system which will provide the quality and accessibility of information needed to support the One-Stop system; and,
 - What planned improvements will be made to the labor market information system to further support the One-Stop system being proposed;
 - Whether the State governing body includes agencies that represent a comprehensive array of State and Federal education, employment, unemployment and job training programs and this entity's role in strategic planning and oversight of programs and the One-Stop system;
 - The extent to which local officials participated in the design of the One-Stop system;
 - Whether the local governing body represents the community, includes appropriate business representatives and represents a broad array of education, employment and training programs;
 - Whether the members of the local boards are among the community leaders;
 - Whether the plan proposes clear outcome measures;
 - Whether the system proposed to measure performance is customer-focused and insures accountability for program performance;
 - Whether the system design will likely result in the provision of quality services to *all* customers—i.e., individuals and employers.
2. The size and number of programs included, the level and type of services provided, and how the services are delivered. Points 30
- In evaluating this criterion, factors under consideration include:
- The number of Federal, State and local education, unemployment, employment, training and other programs included in the One-Stop system;
 - The specific services provided by all One-Stops;
 - The extent to which services are delivered directly to customers; and,
 - The extent to which these services will enable customers to make an

informed choice about employment and job training opportunities.

3. The feasibility and soundness of the implementation plan. Points 30

In evaluating this criterion, factors under consideration include:

- Whether the time line is appropriate to the tasks to the undertaken;
- The progress the State and locals have already made in implementation;
- Whether staff development and training needs are fully considered;
- The extent to which the proposal takes advantage of technology;
- The number of sites (and representative population) which are ready to implement in the first year;
- The degree of participation in the development and implementation of the system by local officials;
- Whether the agreement between the State and the local areas supports successful implementation and operation of the system;
- The approach to identifying and overcoming barriers to implementation.

4. The value added to the Federal resource investment. Points 10

In evaluating this criterion, factors under consideration include:

- The amount and sources of resources the State/Locals have already invested in a One-Stop system;
- The amount and sources of resources the State and/or Locals

propose to invest over the three-year implementation period;

- The specific uses of the Federal funds and how these funds enables the State to expand or enhance its current efforts or to test new approaches;
- Estimates regarding cost savings from administrative savings and other efficiencies together with the estimate of increases in quantity/quality of direct services to customers projected by the savings realized;
- Plans on how this investment will leverage other resources to build a system which will accommodate future program integration.

Part IV—Meetings

ETA plans to hold one meeting with the States which receive planning and development grants during the 12-month grant period. For implementation States, ETA plans to hold meetings approximately every six months throughout the duration of the implementation period. These meetings will be used to assess progress, identify issues, share information among States and provide technical assistance to the State and its local entities.

Part V—Reporting Requirements

- Quarterly financial reports as required by the grant award documents.
- Quarterly narrative progress reports;

- A narrative progress report at the conclusion of the grant period for both implementation and developmental grants; and for developmental grants, a plan for the comprehensive statewide One-Stop Career Center system at the end of the development period.

- Implementation States will be expected to provide such additional information as is needed so that these States an local communities' efforts, successes and problems will help inform implementation efforts in other States. In this connection, ETA expects to conduct an independent evaluation of all One-Stop implementation States and States will be expected to cooperate fully with the evaluator. ETA also expects to provide technical assistance to assist States with their implementation efforts.

Dated: July 11, 1994.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF-424, Application for Federal Assistance

B. Budget Information

BILLING CODE 4510-30-M

BUDGET INFORMATION

SECTION A - Budget Summary by Categories

| | (A) | (B) | (C) |
|---|-----|-----|-----|
| 1. Personnel | | | |
| 2. Fringe Benefits (Rate %) | | | |
| 3. Travel | | | |
| 4. Equipment | | | |
| 5. Supplies | | | |
| 6. Contractual | | | |
| 7. Other | | | |
| 8. Total, Direct Cost (Lines 1 through 7) | | | |
| 9. Indirect Cost (Rate %) | | | |
| 10. Training Cost/Stipends | | | |
| 11. TOTAL Funds Requested (Lines 8 through 10) | | | |

SECTION B - Cost Sharing/ Match Summary (if appropriate)

| | (A) | (B) | (C) |
|---|-----|-----|-----|
| 1. Cash Contribution | | | |
| 2. In-Kind Contribution | | | |
| 3. TOTAL Cost Sharing / Match (Rate %) | | | |

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

Instructions for Budget Information**Section A—Budget Summary by Categories**

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered bylines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training/Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

Section B—Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

Note: Please include a detailed cost analysis of each line item.

[FR Doc. 94-17272 Filed 7-14-94; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration**Wage and Hour Division****Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and

fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanator forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, room S-3014, Washington, DC. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Iowa

IA940075 (Jul. 15, 1994)

Iowa

IA940076 (Jul. 15, 1994)

Oklahoma

OK940027 (Jul. 15, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey

NJ940002 (Feb. 11, 1994)

NJ940003 (Feb. 11, 1994)

Volume II

Pennsylvania

PA940005 (Feb. 11, 1994)

PA9400012 (Feb. 11, 1994)

PA9400017 (Feb. 11, 1994)

PA9400018 (Feb. 11, 1994)

PA9400019 (Feb. 11, 1994)

PA9400023 (Feb. 11, 1994)

PA9400042 (Feb. 11, 1994)

Volume III

Tennessee

TN940040 (Feb. 11, 1994)

Volume IV

Wisconsin

WI940001 (Feb. 11, 1994)

WI940007 (Feb. 11, 1994)

Volume V

Iowa

IA940006 (Feb. 11, 1994)

IA940042 (Feb. 11, 1994)

Texas

TX940009 (Feb. 11, 1994)
 TX940010 (Feb. 11, 1994)
 TX940054 (Feb. 11, 1994)
 TX940081 (Feb. 11, 1994)

Volume VI

California

CA940004 (Feb. 11, 1994)

Colorado

CO940001 (Feb. 11, 1994)
 CO940005 (Feb. 11, 1994)
 CO940006 (Feb. 11, 1994)
 CO940007 (Feb. 11, 1994)
 CO940008 (Feb. 11, 1994)
 CO940009 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 8th Day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94-16993 Filed 7-14-94; 8:45 am]

BILLING CODE 4510-27-M

LEGAL SERVICES CORPORATION

Grant Award for Legal Services State Support in the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time,

nonrecurring grant to the Micronesian Legal Services Corporation for the purpose of planning for state support activities in its service area. The Corporation plans to award a grant in the amount of \$20,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before August 15, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT:

Phyllis Doriot, Office of Program Services, (202) 336-8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. The program is a recipient of LSC funding for providing direct legal services to their service area. The amount of the 1994 state support planning grant is consistent with the 1994 LSC Appropriations Act.

Dated: July 12, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94-17266 Filed 7-14-94; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Museum Challenge Section), the National Council on the Arts will be held on August 1-2, 1994. This meeting will be held from 9 a.m. to 5:30 p.m., in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. on

August 1, 1994 for opening remarks and welcome.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on August 1, 1994 and from 9 a.m. to 5:30 p.m. on August 2, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-17199 Filed 7-14-94; 8:45 am]

BILLING CODE 7537-01-M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Folk and Traditional Arts Challenge Section) to the National Council on the Arts will meet on August 9, 1994. The panel will meet from 10:00 a.m. to 4:00 p.m. This meeting will be held in Room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the

Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94-17200 Filed 7-14-94; 8:45 am]

BILLING CODE 7537-01-M

Presenting and Commissioning Advisory Panel (Music Presenters A Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters A Section) to the National Council on the Arts will be held on July 26-29, 1994. The panel will meet from 9 a.m. to 6 p.m. on July 26, from 8:30 a.m. to 6 p.m. on July 27 and 28, from 8:30 a.m. to 5:30 p.m. on July 29, in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on July 27-29 for a guidelines discussion and from 3:30 p.m. to 5:30 p.m. on July 29 for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on July 26-29 and from 9 a.m. to 3:30 p.m. on July 29 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of

the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-17198 Filed 7-14-94; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Conference

The National Science Foundation's (NSF) Directorate for Education and Human Resources (EHR) will host its Third Annual Conference, "Diversity in the Scientific and Technological Workforce" on September 29-October 1, 1994, at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The hours of the Conference are: September 29, from 6 p.m. until 8:30 p.m.; September 30, from 8 a.m. until 9 p.m., and October 1, from 8:30 a.m. until 7 p.m.

This event represents a continuation of last year's conference which focused on major issues related to minority education, along with an update on efforts implemented in the last year and results to date. Planned activities include presentation of the updated NSF Action Plan for the increased participation of minorities in science, engineering and mathematics (SEM) fields, presentations by national leaders in SEM education, student presentations of research findings in poster and panel settings, and workshops on NSF research and education programs.

The conference will not operate as an advisory committee. It will be open to the public. Participants will include persons representing the heads of national associations, education, science, mathematics and engineering practitioners, and Federal and state government officials.

For additional information, contact Dr. Elmira C. Johnson, Staff Associate, Office of the Assistant Director for Education & Human Resources, Room

805, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1604.

Dated: July 7, 1994.

Dr. Roosevelt Calbert,

Division Director, Human Resource Development.

[FR Doc. 94-17143 Filed 7-14-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Engineering Education and Centers; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: August 2-4 1994; 9:00 AM-5:00 PM.

Place: Rooms 360, 390, NSF, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Frederick Betz, Division of Engineering Education & Centers, (703) 306-1381, and Dr. Michael Crowley, Division of Design, Manufacture, and Industrial Innovation, (703) 306-1391, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Management of Technological Innovation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-17142 Filed 7-14-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management

and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

- DOE/NRC Form 742—Material Balance Report, and NUREG/BR-0007, instructions for completing Forms 742 and 742C.

- DOE/NRC Form 742C—Physical Inventory Listing.

3. The form number if applicable: Same as item 2 above.

4. How often the collection is required: Semiannually for affected special nuclear material licensees. Annually for affected source material licensees. As specified in Facility Attachments for licensees reporting under 10 CFR Part 75.

5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material.

6. An estimate of the number of responses:

- DOE/NRC Form 742: 600.
- DOE/NRC Form 742C: 240.

7. An estimate of the total number of hours needed annually to complete the requirement or request:

- DOE/NRC Form 742: Forty-five minutes per response, for a total of 450 hours annually.
- DOE/NRC Form 742C: Six hours per response, for a total of 1,440 hours annually.

8. An indication of whether Section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: Each licensee authorized to possess special nuclear material totalling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material, is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in the US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs (3150-0004, 3150-0058), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415-7232.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are required as occasioned by the occurrence of specified events, such as the receipt or transfer of licensed radioactive material, or actual or attempted theft of licensed material. An annual statement of source material inventory is required of certain licensees.

5. Who will be required or asked to report: Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. An estimate of the number of responses: 63.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 2.38 hours per response, for a total of 150 hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150-0032), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415-7232.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94-17205 Filed 7-14-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Practices; Request For Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on practices that should be considered with respect to identification of priority foreign country practices under Executive Order 12901 of March 3, 1994 (59 FR 10727).

SUMMARY: Executive Order 12901 requires the United States Trade Representative (USTR) to review United States trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. USTR is requesting written submissions from the public concerning foreign countries' practices that should be

considered by the USTR for this purpose.

DATES: Submissions must be received on or before 12:00 noon on Friday, August 5, 1994.

ADDRESS: 600 17th Street, NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 1 of E.O. 12901 requires the USTR, no later than September 30, 1994, to review United States trade expansion priorities and identify foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the **Federal Register**. Section 2 of E.O. 12091 requires the Trade Representative to initiate investigations under section 302(b)(1) of the Trade Act of 1974 as amended (19 U.S.C. 2412(b)(1)), no later than October 21, 1994, with respect to all of the foreign country practices so identified.

Requirements for Submissions

USTR invites submissions on foreign country practices that should be considered for identification under E.O. 12901. Submissions should indicate whether the foreign practice at issue was identified in the 1994 National Trade Estimate (NTE) Report published in April 1994 by USTR (GPO 1994-366-989/10218), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. If the foreign practice was not identified in the 1994 NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by it; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party and its compliance with those agreements; the medium- and long-term implications of foreign government procurement plans; and the international competitive position and export potential of affected United States products and service. Because submissions will be placed in a public file, open to public inspection at USTR,

business-confidential information should not be submitted.

Interested persons must provide twenty copies of any submission to Dorothy Balaban, staff assistant to the Section 301 Committee, Room 222, 600 17th Street, NW, Washington, D.C. 20506, no later than 12:00 noon on Friday, August 5, 1994.

Public Inspection of Submissions

Within the business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94-17365 Filed 7-14-94; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Student Beneficiary Monitoring.
- (2) *Form(s) submitted:* G-315, G-315a, G-315a.1.
- (3) *OMB Number:* 3220-0123.
- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Frequency of response:* On occasion.
- (7) *Respondents:* Individuals or households, Non-profit institutions.
- (8) *Estimated annual number of respondents:* 565.
- (9) *Total annual responses:* 1,230.
- (10) *Average time per response:* 0.09830 hours.
- (11) *Total annual reporting hours:* 121.
- (12) *Collection description:* Under the Railroad Retirement Act (RRA), a student benefit is not payable if the student ceases full-time school

attendance, marries, works in the railroad industry, has excessive earnings or attains the upper age limit under the RRA. The report obtains information to be used in determining if benefits should cease or be reduced.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94-17230 Filed 7-14-94; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34356; International Series Release No. 681; File No. SR-Amex-94-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 2 and 3 by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on the Mexico Index

July 12, 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 June 3, 1994, the American Stock Exchange, Inc. ("Amex" 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. On June 27, 1994, the Exchange filed Amendment No. 1 to the proposed rule change, the subject matter of which was superseded with the filing of Amendment No. 2 ("Amendment No. 2"), which was filed on July 7, 1994.¹ Amendment No. 1 was formally

¹ See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Michael Walinkas, Derivative Products Regulation, SEC, dated July 7, 1994. In the original proposal, the Amex sought approval for the listing of options based upon a Mexico Index that was capitalization-weighted and based upon shares of twenty Mexican stocks or American Depository Receipts ("ADRs") traded on the New York Stock Exchange, Amex or that were National Market securities. The Amex proposed that the Index be classified as a broad-based index. Amendment No. 2 supersedes the original proposal and Amendment No. 1.

withdrawn in Amendment No. 2. On July 11, 1994, the Exchange filed Amendment No. 3 ("Amendment No. 3") to the proposed rule change to provide for certain standards to be used in conjunction with the maintenance of the Index, as described below.² The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 2 and 3 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade options on the Mexico Index ("Mexico Index" or "Index"), a new stock index developed by the Amex, based on Mexican stocks (or ADRs thereon) traded on the Amex, the New York Stock Exchange ("NYSE"), or that are National Market ("NM") securities traded through the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The text of the proposed rule change is available at the Office of the Secretary, Amex 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 Amex 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 Amex 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 Amex has developed a new index called the Mexico Index, based entirely on shares of widely held Mexican stocks and ADRs traded on the NYSE, Amex, or that are NM securities. The Index contains securities of highly-capitalized companies with major business interests in Mexico. These companies have been drawn from a variety of industries, including construction, telecommunications, banking, shipping, tobacco, media, and food and beverage,

to reflect the diversity of the Mexican market.

Index Calculation and Maintenance

The Index is calculated using a "modified" equal dollar weighting methodology. Two of the ten component securities have been given a higher weighting in the Index in order to more closely approximate the weight the industry represented by that component has in the Mexican stock market. The Amex believes that this will allow the Index's value to correlate more closely with the Bolsa Mexicana de Valores y Cotizaciones, which is commonly known as the "Bolsa Index." For example, Telefonos de Mexico, which is the largest capitalized component in the Index, will have a higher weight in the Index, but not as high as if the Index were capitalization weighted. The Amex believes that this "modified" equal dollar weighting methodology allows the Index to be a more accurate reflection of the Mexican market since it provides a higher weighting for the larger capitalized components, yet does not permit those stocks to dominate the Index. The Exchange believes that this method of calculation is important given the great disparity in market value of a few of the Index's component stocks. It has been the Exchange's experience that options on market value weighted indexes dominated by one or two component stocks are less useful to investors, since the index will tend to represent the one or two components and not the group as a whole.

The following is a description of how the "modified" equal dollar weighting calculation method works. As of the market close on June 17, 1994, a portfolio of ten Mexican stocks was established representing an investment (rounded to the nearest whole share) of \$24,000 in the largest capitalized stock in the Index, \$12,000 in the second largest, and \$8,000 in each of the remaining companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 231.00 at the close of trading on June 17, 1994. Each quarter thereafter, following the close of trading on the third Friday of March, June, September and December, the Index components will be ranked in descending market capitalization order and the Index portfolio adjusted by changing the number of whole shares of each component stock so that the largest

capitalized stock in the Index represents 24% of the Index value, the second largest represents 12%, and each of the remaining companies represent 8%. If the number of components in the Index increases to greater than ten securities, the Amex will continue to weight the two components with the highest market capitalizations 24% and 12%, respectively. The remaining components will then be weighted equally.³ For example, if two new components are added to the Index, the two securities with the highest market capitalizations will be assigned a 24% and 12% weighting, respectively, while the remaining ten securities in the Index would be weighted 6.4%.

If it becomes necessary to remove a stock from the Index, the Exchange will either add a Mexican stock having characteristics that will permit the Index to remain within the maintenance criteria specified in its rules and the Generic Narrow-Based Index Approval Order,⁴ or will permit the Index to remain at nine stocks until the next quarterly rebalancing, at which time the Exchange will replace the component so that the Index will continue to have at least ten components.⁵ The Exchange has chosen to rebalance following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the "modified" equal dollar weighting feature of the Index. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Amex states that it has had experience making regular quarterly adjustments to a number of its indexes and has not encountered investor confusion regarding the adjustments, since they are done on a regular basis and timely, proper and adequate notice is given. An information circular is distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent by facsimile to the Exchange's contacts at the major options firms mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options New Network. In addition, the Exchange will include in its promotional and

³ See Amendment No. 3.

⁴ See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) ("Generic Narrow Based Index Approval Order").

⁵ See Amendment No. 3.

² See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 11, 1994.

marketing materials for the Index description of the "modified" equal dollar weighting methodology. As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock splits, reverse stock splits, rights offering distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the component, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in Mexico. However, the Exchange will not decrease the number of Index component stocks to less than nine or increase the number of component stocks to greater than thirteen without prior Commission approval.⁶

The value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The Exchange proposes to trade cash-settled, European-style Index options (*i.e.*, exercises are permitted at expiration only). The Exchange also proposes that Mexico Index options will have trading hours from 9:30 a.m. to 4:15 p.m. EST. As with other index options traded on the Amex, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options

will cease at the close of trading on the last trading day.

The Index value for purposes of settling a specific Mexico Index option will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of NM securities, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all of the component stocks have opened, the value of the Index is determined and that value is used as the settlement value of the option. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full-value Index level, the Exchange may instead list long-term, reduced-value put and call options based on one-tenth (1/10th) the Index's full-value. In either event, the interval between expiration months for either a full-value or reduced-value long-term option will not be less than six months.

Eligibility Standards for Index Components

The Index's component securities all have major business interests in Mexico, and have been selected on the basis of their market capitalization, trading liquidity, and representation of Mexican business industries. The components represent the largest and most liquid of all Mexican securities trading in the U.S. and the Index tracks closely the performance of the Bolsa Index, a benchmark for the Mexican stock market.

The Exchange has represented that it will ensure that the Index initially and thereafter satisfies the listing and maintenance criteria set forth in the Generic Narrow-Based Index Approval Order. In choosing among Mexican stocks that meet the initial minimum criteria set forth in the Generic Narrow-Based Index Approval Order (as well as Exchange Rule 901C), the Exchange will select stocks that: (1) Have a minimum market value in U.S. dollars of at least \$75 million,⁷ except that for each of the

lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the market value may be at least \$50 million; (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than one million shares (or ADRs) except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the trading volume shall be at least 500,000 shares in each of the last six months; (3) have at least 90% of the numerical Index value and at least 80% of the total number of component securities meeting the current criteria for standardized option trading set forth in Exchange Rule 915; and (4) are reported securities that trade on either the NYSE, Amex (subject to the limitations of Rule 901C), or are NM securities. In addition, no individual stock in the Index may represent more than 25% of the Index weight (at the time of rebalancing) and the five highest weighted stocks may not constitute more than 60% of the Index weight (at the time of rebalancing).

The Amex will ensure that not more than 20% of the weight of the Index is represented by ADRs overlying foreign securities that are not subject to comprehensive surveillance sharing agreements.⁸ Currently, one component ADR, accounting for 8% of the Index value, has the majority of its trading volume occurring on the Bolsa Mexicana de Valores, an exchange with which the Amex does not currently have in place an effective market information sharing agreement.

If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Narrow-Based Index Approval Order and Exchange Rule 901C, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Mexico Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.⁹

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of regular and long-term contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and

⁷ In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

⁸ See Amendment No. 3.

⁹ See Amendment No. 3.

⁶ See Amendment No. 3.

position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a Stock Index option under Rule 901C(a) and a Stock Index Group under rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) options series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange proposes to establish, pursuant to Rule 904C(c), a position limit of 7,500 contracts on the same side of the market.¹⁰

In anticipation of substantial customer activity in the options on this Index (including institutional activity), the Exchange seeks to have the ability to utilize its Auto-Ex system for orders in the Index options of up to 50 contracts. Auto-Ex is the Exchange's automated execution system which provides for the automatic execution of market and marketable limit orders at the best bid or offer at the time the order is entered. The ability to use Auto-Ex for orders of up to 50 contracts will provide customers with deep, liquid markets as well as expeditious executions. The Amex represents that it has the necessary systems capacity to support new series that would result from the introduction of Mexico Index Options.¹¹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

¹⁰ Telephone conversation between Howard Baker, Senior Vice President, Derivative Securities, Amex, and Howard Kramer, Associate Director, Division of Market Regulation, SEC, on July 12, 1994. In Amendment No. 2, the Amex proposed position limits of 10,500 contracts. That portion of Amendment No. 2 which refers to position limits has been withdrawn.

¹¹ See Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 8, 1994.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person 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 Amex. All submissions should refer to File No. SR-Amex-94-20 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

¹² 17 CFR 200.30-3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17348 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34347; File No. SR-Amex-94-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Increasing the Share Parameters for Orders Entered Through PER

July 11, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 23, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the share parameters, from 5,099 to 30,099 shares, for orders entered through the Exchange's Post Execution Reporting (PER) system.

The Exchange requests the Commission to find good cause, pursuant to section 19(b)(2) of the Act, for approving the portion of the proposed rule change that would increase PER eligibility from 5,099 to 30,099 on those securities listed on the Exchange which are part of the S&P 500 Index, prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that such an increase in PER eligibility is responsive to the operational needs of member firms and will enhance efficiency by quickly expanding automated order delivery for those securities which, as a group, are among the most actively traded on the Exchange.

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

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PER system provides member firms with the means to electronically transmit equity orders up to volume limits specified by the Exchange directly to the specialist's post on the Exchange Floor. Market and marketable limit orders and pre-opening market orders are placed on the specialist's electronic book. Once the PER order is executed, the system transmits the execution report directly back to the member firm.

Since its implementation in the late 1970s, the Exchange has gradually increased the order parameters for PER in response to the operational needs of member firms, in recognition of the cost efficiencies gained through expanded use of automation, and to remain competitive with other exchanges' automated systems. Currently, the PER system accepts eligible market and limit orders of up to 5,099 shares.

The last increase, approved by the Commission on July 7, 1993,³ permitted an expansion of PER eligibility for Unit Investment Trust securities (such as Standard & Poor's Depository Receipts) from 5,099 to 25,000 shares for eligible market and limit orders.

In order to improve the competitiveness of PER as an order-routing facility, and to facilitate access to PER by larger size orders, the Exchange is now proposing to increase PER eligibility from 5,099 to 30,099 shares for both market and limit round lot orders. The Exchange initially proposes to implement the increased PER eligibility on a select number of securities, namely those securities included in the S&P 500 Index. Currently, Exchange securities in the S&P 500 Index are:

Amdahl Corporation
Echo Bay Mines Ltd.
Giant Food Inc.
Hasbro, Inc.; and
The New York Times Company

After three months of expansion of the share parameters for PER with respect to securities included in the S&P 500 Index, and upon approval of the Exchange's Floor Governors and Senior Staff, the Exchange is proposing to extend increased PER eligibility for up to 30,099 shares to all other Exchange-listed securities.

The Exchange represents that the current capacity of the PER system is well in excess of what is required to accommodate the increase in parameters from 5,099 to 30,099 shares for both market and limit round lot orders.

The automated system utilized by PER is designed to process up to 13.5 messages per second. The historic peak utilization of this system was 7.7 messages per second (on October 16, 1989), only 57% of capacity. Additionally, what is relevant to system capacity is the number of orders, not the number of shares represented by each order. Under the current PER parameters the Exchange already processes 60 percent of its total volume through the PER system, which clearly suggests that the impact of the contemplated increase on the number of orders coming through the system will be small, given that each 30,099 share order represents a much larger portion of volume than a 5,099 share order.

Finally, whatever additional system capacity is consumed by the increase in the PER parameters on an overall basis, only a portion of that increase will occur during the first three months, when the increase will apply only to the Amex stocks included in the S&P 500 Index. While those stocks do tend to be among our most active in share volume, so that they comprise an appropriate initial group, in the aggregate they represent only a small portion of overall Exchange share volume. Accordingly, the increased burden on system capacity during the first three months should be truly negligible and the Exchange will have the opportunity to observe the level of increased utilization and factor that into its assessment of how best to implement the parameter increase over the remainder of the Exchange's list.⁴

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act

⁴ As noted, the current system capacity is far in excess of what is required to accommodate the proposed increase in the PER parameters. However, it is important to note that even in the very unlikely event the 13.5-messages-per-second capacity limit were to be reached, orders would be queued, not lost. In addition, the Exchange has the flexibility to control the queuing process by utilizing a mechanism which adjusts relative priority between incoming orders and executions and administrative messages.

in general and furthers the objectives of Section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Amex. All submissions should refer to File No. SR-Amex-94-25 and should be submitted by August 5, 1994.

IV. Commission's Findings and Order Granting Accelerated

The Commission finds that the Amex's proposal to increase the PER share parameters from 5,099 to 30,099, for orders of Exchange-listed securities which are a part of the S&P 500 Index, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed

³ See Securities Exchange Release No. 32544 (June 29, 1993), 58 FR 36485, July 7, 1993.

rule change is consistent with the requirements of section 6(b)(5) of the Act⁵ because it will facilitate transactions in securities by allowing for the timely transmission of a larger number of orders to the Amex floor. The proposal will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B) and will further the maintenance of fair and orderly markets and the efficient execution of securities transactions consistent with section 11A(a)(1)(C) of the Act.⁶

Finally, based upon representations from the Amex, the Commission is satisfied that the Exchange's PER system will have adequate computer processing capacity to accommodate the increased order size eligibility—at a minimum, for those Exchange-listed securities included in the S&P 500 Index.

The Commission finds good cause for partially approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. The Commission believes that the expansion of PER limit sizes to the Amex-listed S&P 500 stocks should provide substantial benefits to market participants and accordingly should be allowed to be implemented without delay at this time. Moreover, the Commission believes that accelerated approval of the proposal, in so far as it pertains to the Amex-listed securities included in the S&P 500 Index, is appropriate in order to allow the Amex to evaluate the impact of such an expansion to enable it to make an informed decision, after three months, whether or not it would be beneficial and feasible to expand the PER order size eligibility increase to all securities.

It is Therefore Ordered, pursuant to section 19(b)(2),⁷ that the portion of the proposed rule change applicable to Amex-listed securities included in the S&P 500 Index is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

[FR Doc. 94-17258 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34346; File No. SR-BSE-94-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Net Capital and Equity Rule

July 11, 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 April 11, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change¹ 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 Boston Stock Exchange proposes to amend its Capital and Equity Requirements to conform to the current requirements as set forth in SEC Rule 17a-11. The text of the proposed rule change is as follows: *new language* [deleted language].

Chapter XXII—Capital and Equity Requirements

Sec. 2. [a] All members and member organizations [using the facilities of the Boston Stock Exchange Clearing Corporation ("the facilities") doing business on the floor of the Exchange and; who clears transactions for another broker or dealer or; maintains accounts for another broker or dealer or; introduces accounts to another broker or dealer or; maintains customer accounts] shall at all times—

- (i) Maintain net capital not less than that prescribed by SEC Rule 15c3-1 (17 CFR 240.15c3-1); and
- (ii) [b] Be subject to Appendix D of SEC Rule 15c [] 3-1 in regard to Satisfactory Subordination Agreements[,] and
- (iii) Be subject to the reporting requirements set forth under SEC Rule 17a-

¹ On April 25, 1994, the BSE filed Amendment No. 1 which corrects several technical mistakes in the original rule filing in the text of the Rule. On June 20, 1994, the BSE filed Amendment No. 2 which removed the Early Warning Alert Notification provision from BSE's Rules because, as the Exchange members are bound by § 2.(a)(iii) of the Rules to be subject to the SEC's Early Warning Alert Notification, such provision was duplicative. See letters from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Amy Bilbija, Commission, dated April 20, 1994, and June 20, 1994, respectively.

11 and the SEC's Early Warning Rule contained therein.

[Early Warning Alert Notification

Sec. (c)(3) All specialists assigned to the Exchange as their Examining Authority shall be required to compute net capital and must immediately deliver written notice to the Exchange, identifying what action is being taken to alleviate the alert status, whenever one of the following occurs:

- (i) Net capital falls below required minimum levels;
- (ii) Net capital falls below 120% of its minimum requirement; or
- (iii) Specialist fails to comply with the following financial responsibility requirements:
 - (A) Fails to make and keep current books and records;
 - (B) Discovers or is notified by an independent accountant of the existence of any material inadequacy; or
 - (C) When the Exchange learns that the specialist has failed to file a notice under this section.

Note: Where a specialist is assigned to another Examining Authority, that specialist shall be required to comply with the provisions as set forth by its assigned Examining Authority or SEC Rule 15c3-1 and the reporting requirements set forth under SEC Rule 17a-11. Whenever the Exchange provides a specialist with an early warning alert notice, such specialist must respond by verifying the alert in writing. If a specialist fails to respond to the early warning alert sent by the Exchange, it shall be considered a valid alert and the specialist shall be notified by the Exchange that it must comply with the provisions of this rule as set forth above.]

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 governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain provisions of the net capital and equity rule to conform to the current requirements as set forth in SEC Rules 15c3-1 and 17a-11. The proposed changes to Section

⁵ 15 U.S.C. 78f(b)(5) (1988).

⁶ 15 U.S.C. 78f(b)(5) and § 78k-1 (1988).

⁷ 15 U.S.C. 78s(b)(2) (1988).

⁸ 17 CFR 200.30-3(a)(12) (1991).

2(a) will expand the scope of the rule to require that all members comply with SEC Rule 15c3-1 regarding net capital which became effective on April 1, 1994, and as such supersede the current Exchange rule. The proposed changes to Section 2(c)(3) eliminates the Exchange's Early Warning Alert Notification procedure and replaces it with the SEC's Early Warning provisions as set forth in SEC Rule 17a-11.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the Floor have adequate funds to cover losses that they might incur in the everyday transaction of business.

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.

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 written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference 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-94-05 and should be submitted August 5, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to amend its Capital and Equity Requirements Rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the Floor have adequate funds to cover losses that they might incur in the everyday transaction of business.²

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the BSE to amend the Exchange's current net capital and equity rule to conform to Rules 15c3-1 and 17a-11 of the Act. In addition, the Commission previously noticed for comment and approved similar filings of the PSE and the Phlx. No comments were received on those files.³

It Is Therefore Ordered, pursuant to Section 19(b)(2) ⁴ that the proposed rule change (SE-BSE-94-05) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-17256 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

² 15 U.S.C. 78f(b)(5) (1988). See generally Securities Exchange Act Release Nos. 34295 (July 1, 1994) and 33838 (March 30, 1994) approving similar changes with respect to conforming exchange rules to the revised SEC Net Capital Requirements for the Pacific Stock Exchange ("PSE") and Philadelphia Stock Exchange ("Phlx"), respectively. The Discussion in those approval orders are incorporated herein.

³ See note 2, *supra*.

⁴ 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34-34333; File Nos. SR-MCC-94-03 and SR-MSTC-94-03]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Order Approving Proposed Rule Changes Establishing More Definitive Standards for Retention of Participants Fund Deposits

July 8, 1994.

On January 31, 1994, and February 7, 1994, the Midwest Securities Trust Company ("MSTC") and the Midwest Clearing Corporation ("MCC") filed proposed rule changes (File Nos. SR-MSTC-94-03 and SR-MCC-94-03) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposals was published in the *Federal Register* on May 18, 1994.² No comments were received by the Commission. This order approves the proposals.

I. Description of the Proposals

The proposed rule changes establish more definitive standards for the retention of deposits to the MCC and MSTC participants funds when a participant ceases to be a participant. Specifically, the proposals modify Article IX (Property Held for Participants), Rule 2 (Participants' Fund), Section 11 (Ceasing To Be a Participant) of MCC Rules and Article VI (Property Held for Participants), Rule 2 (Participants' Fund), Section 12 (Ceasing To Be a Participant) of MSTC Rules.

The proposals are designed to enable MCC and MSTC to retain in their participants funds appropriate amounts of assets to protect themselves from losses that arise from obligations of former participants. For example, when the issuer of a security pays dividends, MCC participants that have long positions in the security are credited, and MCC participants that have short positions are debited. Occasionally, however, an issuer will fail to disseminate dividend information in a timely manner. When the dividend information is ultimately disseminated, participants that had short positions on the date the dividend amounts should have been debited are charged the appropriate debits. If a participant that had such a short position has ceased to be a participant, MCC has the right to collect the dividend from the ex-participant because the dividend

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 34041 (May 11, 1994), 59 FR 25977.

represents an amount chargeable against the ex-participant's contributions as a result of transactions conducted while it was an MCC participant. However, if MCC has refunded all of the ex-participant's participants fund deposit, MCC would have no direct access to funds of the ex-participant, and MCC will be at risk.

MSTC faces similar risks. For example, if a participant has on deposit with MSTC a nontransferable security (e.g., a security of an issuer in bankruptcy) that becomes transferable after the participant has ceased to be an MSTC participant, MSTC could become obliged to transfer the security to a third party transferee. If MSTC is not able to make good delivery of the certificates and if MSTC already has refunded all of the ex-participant's participants fund deposit, MSTC will be at risk.

Accordingly, if MCC and MSTC retain participants fund deposits, obtain an appropriate guarantee, or have approved the substitution of another participant to the ex-participant's obligations, MCC and MSTC will reduce the risk from such occurrences as the late receipt of dividend information or the conversion of a security from nontransferable to transferable. At this time, however, there are no specific provisions in MCC's or MSTC's rules relating to either the length of time that MCC or MSTC may retain participants fund deposits or the amount of participants fund deposits that MCC or MSTC may retain. Based on their experiences, MCC and MSTC believe that absent an acceptable guarantee or an approved substitution, it will be appropriate for them to retain the greater of (1) 25% of the participant's average participants fund requirement over the previous twelve months or (2) \$100,000 or the participant's entire deposit if the participant has a participants fund deposit of less than \$100,000. Under the proposal, MCC and MSTC will be permitted to retain participants fund deposits for up to four years.³

II. Discussion

The Commission believes that the proposals are consistent with the Act and particularly with Section 17A of the Act.⁴ Section 17A(b)(3)(F) of the Act requires that the rules of clearing agencies be designed, among other things, to assure the safeguarding of securities and funds which are in the

custody or control of the clearing agencies or for which they are responsible.⁵ The Commission believes that the proposed rule changes, which are modeled after the participants fund retention rule of NSCC and which are designed to protect participants fund deposits maintained by MCC and MSTC against losses related to exparticipants obligations, will better enable MCC and MSTC to manage such risks. Thus, the Commission believes that the rule changes are consistent with MCC's and MSTC's statutory responsibilities under Section 17A of the Act to safeguard securities and funds in their possession or control.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposals are consistent with the requirements of the Act, particularly with Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the above-mentioned proposed rule changes (File Nos. SR-MCC-94-03 and SR-MSTC-94-03) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-17160 Filed 7-14-94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-34348; File No. SR-NASD-93-75]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Referral of Matters by Arbitrators for Disciplinary Investigation

July 11, 1994.

On May 25, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder.³ The proposed rule change amends Section 5 of the

Code of Arbitration Procedure ("Code")⁴ to specify that arbitrators, at the conclusion of a proceeding, may refer matters arising or discovered during the course of an arbitration proceeding for disciplinary investigation.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34146, June 2, 1994) and by publication in the *Federal Register* (59 FR 29647, June 8, 1994). One comment letter was received.⁵ This order approves the proposed rule change.

In its filing, the NASD stated that potential violations uncovered during arbitration hearings should be investigated by the NASD as part of its comprehensive regulatory program. While customers who suffer a financial loss as a result of misconduct by their registered representative may bring arbitration actions, they often do not pursue formal complaints with a self-regulatory organization ("SRO") necessary to trigger an investigation of the potential violation. Further, while the filing of an arbitration complaint will alert an SRO to the existence of a potential violation,⁶ because customer complaints in arbitration often do not allege or disclose sufficient information to indicate obvious misconduct on the part of a respondent, they may not trigger a disciplinary investigation. Indeed, in such cases, violations of the securities laws or the NASD's rules may not be apparent until an arbitration hearing occurs and the parties testify and introduce evidence about the relevant events. The NASD stated in its filing that in some cases, it never is made aware of securities law violations or violations of the NASD's rules, notwithstanding the fact that the financial injury to the customer resulting from the violations is the subject of an arbitration proceeding.

The NASD also stated in its filing that it has observed that arbitrators seldom refer for disciplinary investigation matters which come to their attention during the course of an arbitration

⁴ NASD Manual, Code of Arbitration Procedure, Part I, Section 5, (CCH) ¶ 3705.

⁵ See letter from James F. Fotenos, Esq., Fotenos & Suttle, P.C. to Jonathan G. Katz, Secretary, SEC, dated July 1, 1994 ("Fotenos Letter").

⁶ The filing of a customer-initiated arbitration complaint against an associated person alleging damages of \$10,000 or more triggers a requirement of the member or associated person to amend the associated person's Form U-4 or U-5, as appropriate. Information supplied pursuant to such an amendment will be entered into the Central Registration Depository and will also be forwarded to the appropriate NASD District office for preliminary investigation.

³ The Commission has approved similar participants' fund retention standards for the National Securities Clearing Corporation ("NSCC"). Securities Exchange Act Release No. 32728 (August 10, 1993), 58 FR 43395 [File No. SR-NSCC-93-01] (order approving proposed rule change).

⁴ 15 U.S.C. 78q-1 (1988).

⁵ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁶ 15 U.S.C. 78s(b)(2) (1988).

⁷ 17 CFR 200.30-3(a)(12) (1993).

¹ The NASD initially submitted the proposed rule change on December 16, 1993. However, on May 25, 1994, the NASD filed Amendment No. 1, which amended and superseded the original rule filing.

² 15 U.S.C. 78s(b)(1) (1988).

³ 17 CFR 240.19b-4 (1993).

proceeding. Because the NASD believes that arbitration matters, and the evidentiary material related to or produced in such matters, constitute a valuable source of information concerning potential violations of the NASD's rules and the federal securities laws, it believes that bringing such information to the attention of the Association's regulatory staff should improve the efficacy of the NASD's regulatory function. The NASD stated in its filing that it believes that specifying a mechanism in the Code for arbitrators to bring such information to the attention of the NASD's regulatory staff for investigation will serve the public interest by ensuring that potential violations of the NASD's rules and the federal securities laws are not overlooked.

In addition, the NASD believes that it is important for arbitrators to understand that the arbitration process is for the resolution of disputes between the securities industry and others, and that there is also a regulatory apparatus separate from the arbitration process which is designed to address misconduct which affects the public interest and the integrity of the financial markets. Thus, to the extent arbitrators are aware that they may refer matters, in addition to or in lieu of awarding punitive damages as part of awards,⁷ the fairness of the arbitration process will be enhanced.

The proposed amendment to Section 5 specifies that if any matter comes to the attention of an arbitrator during the course of a proceeding the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation. The proposed amendment also specifies, however, that any such referral should be initiated by an arbitrator only after final disposition of the matter through settlement or award. Although the NASD is not setting forth a specific procedure for such referrals, the NASD stated in its filing that it contemplates that arbitrators will direct referrals to the Association through the Arbitration Department Staff and the Director of Arbitration.

One commenter objected to the proposed rule change on the grounds that it would cause arbitrators to believe that they must make disciplinary referrals in all instances in which they find for claimants alleging that a member firm or associated person has violated the NASD's rules or securities

laws.⁸ This commenter stated that the effect of the proposed rule change would be to compromise the independence of arbitrators. The Commission disagrees. The Commission notes that the amendment provides that referral of any matter by an arbitrator is permissive rather than mandatory. Further, the Commission believes that, because the disciplinary process is intended to address misconduct which affects the public interest and the integrity of the financial markets, the process is enhanced when the NASD receives notice of violations from an important and reliable source of information.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁹ because it will encourage arbitrators to bring information concerning potential violations of the Association's rules and the federal securities laws to the attention of the NASD's regulatory staff for investigation. This, in turn, will serve the public interest by enhancing the ability of the NASD's regulatory staff to take disciplinary action against perpetrators of conduct adversely affecting the public interest and the integrity of financial markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-93-75 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94-17257 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34343; File No. SR-NYSE-94-3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Adoption of New Rule 123A.46

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" 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 proposed rule change consists of a new Rule 123A.46 pertaining to members' representation of multiple orders. Rule 123A.46 would require members and member organizations (including "upstairs" trading personnel) to inform customers if they are representing orders for more than one customer at the same time, on the same side of the market, if the orders may not receive an execution in time priority of receipt, or may not receive an equal or proportional split.

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. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections (A), (B) and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing adoption of new Rule 123A.46 to ensure that customers are informed, in a timely manner, of the circumstances under which their orders are being represented. Under this rule, members and member organizations (including "upstairs" trading personnel) would be required to inform each customer if they are representing orders for more than one customer at the same time, on the same side of the market, if the orders may not receive an execution in time priority of receipt, or may not receive an equal or strictly proportional split based upon the size of the orders. For example, if a broker was representing three not held orders to buy stock, one for 100,000 shares, and two for 50,000 shares each, and the broker executed a trade for 12,000 shares, the broker would be permitted to (1) allocate all 12,000 shares to the customer who entered the order first (time priority), (2) split the trade equally by giving 4,000 shares to each customer, or (3) split the trade proportionally to the customer

⁷ The NASD, in connection with this rule filing, is not expressing any official position with respect to the ability of arbitrators to award punitive damages.

⁸ See Fotenos Letter, *supra* n. 5.

⁹ 15 U.S.C. 78o-3.

¹ 15 U.S.C. § 78s(b)(1).

orders, i.e., 6,000 shares, 3,000 shares and 3,000 shares. Under these circumstances, no disclosures would be required. However, if the execution would be split in any other manner, this information would have to be disclosed to customers prior to multiple orders being represented.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed adoption of Rule 123A.46 is consistent with these objectives in that it will ensure that customers are informed in a timely manner of the circumstances under which their orders are being represented.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or
- (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 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 NYSE. All submissions should refer to File No. SR-NYSE-94-3 and should be submitted by August 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-17253 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34342; File No SR-Phlx-91-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Equity Floor Procedure Advice E-A-1—Responsibility for Displaying Best Bid and Offer Prices

July 11, 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 July 15, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on June 23, 1994 filed Amendment No. 1 to 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.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Equity Floor Procedure Advice ("EFPA") E-A-1: *Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor*. The

Text of the proposed new advice is presented below:

E-A-1 Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor

(i) A Specialist shall use due diligence to ensure that the best available bid price and offer price on the floor in each "primary stock issue" assigned to him is properly and timely displayed for dissemination purposes throughout the trading day.

(ii) A Specialist shall also use due diligence to ensure proper and timely display of any bid or offer price of any order on the book in a "secondary issue" assigned to him for so long as such bid or offer is equal or superior to the consolidated best bid or offer of those disseminated by the national exchanges.

(iii) For the purposes of the above paragraphs, the fine schedule below will apply in any instance of any exchange review which identifies that five percent or more of such orders have not been properly displayed in a timely fashion for the review period.

FINE SCHEDULE

[Implemented on a three year running calendar basis]

| E-A-1 | |
|-------------------------|--|
| 1st Occurrence | \$100.00 |
| 2nd Occurrence | 250.00 |
| 3rd Occurrence | 500.00 |
| 4th and Thereafter | Sanction is discretionary with Business Conduct Committee. |

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 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

This new equity floor procedure advice codifies the due diligence requirement of equity specialists

imposed pursuant to SEC Rule 11Ac1-1 to display the best bid and offer available on the floor in their assigned issues. The specialists' responsibility will be different for primary stock issues and secondary market issues.

For stocks that are primary to this Exchange, a specialist's responsibility will be to ensure that the best bid and offer voiced on the floor of the Exchange in one of his assigned specialist issues is properly and timely displayed for dissemination purposes throughout the trading day. A primary stock issue is any issue dually listed with another exchange for which the Phlx has traded the majority of exchange volume over the previous six months or any issue listed on the Phlx which is not listed on any other national exchange.

For those stocks in which the Phlx specialist makes a secondary market, his responsibility is to ensure proper and timely display of the best bid (or offer) so long as such bid (or offer) is equal or superior to all other bids (or offers) reflected and disseminated at the time by the national exchanges.

The Exchange has provided a fine schedule to be applied when an Exchange review identifies five percent or more of such orders reviewed over a designated time period to have not been properly displayed in a timely manner. If at any time, however, an Exchange review reveals that the amount of orders not timely displayed exceeds five percent by an amount whereby it would be unreasonable to still consider the infraction as minor, the staff may bring the matter to the Business Conduct Committee to authorize a Statement of Charges and impose more severe sanctions pursuant to Exchange Rule 970.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the *Federal Register* or within such other 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 the proposed rule change, or

(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 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 Phlx. All submissions should refer to File No. SR-Phlx-91-20 and should be submitted by August 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-17254 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34345; File No. SR-Phlx-94-01]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to the Proposed Rule Change, by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Options on the Phone Index.

July 11, 1994

Introduction

On January 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for the listing and trading of options on the Phlx Phone Index ("Phone Index" or "Index"). On February 18, 1994, February 24, 1994, April 6, 1994, April 11, 1994, and July 5, 1994, the Exchange filed Amendment Nos. 1,³ 2,⁴ 3,⁵ 4,⁶ and 5,⁷ respectively, to this proposal.

¹ 15 U.S.C. § 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1993).

³ In Amendment No. 1, the Phlx amended the proposal: (1) to provide that the Index will be updated during the trading day at least once every 15 seconds, rather than once every minute; (2) to provide that the exercise prices will be set at five point Index intervals rather than 2½ point Index intervals as stated in the original filing; (3) to specify that the expiration cycle applicable to options on the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; (4) to clarify the Exchange's obligations with respect to delisting and replacing components of the Index; (5) to clarify that all of the proposed Index's component stocks are, and any future replacement or added component securities will be, listed and traded on either the New York Stock Exchange ("NYSE") or the American Stock Exchange (non-ECM) ("Amex"), or quoted on and traded through the Nasdaq National Market ("Nasdaq/NM"); and (6) to clarify that all of the current Index component stocks have overlying exchange-traded options on them. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated February 16, 1994.

⁴ In Amendment No. 2, the Phlx amended the proposal to change the name of the Index from the Phlx Baby Bell Index to the Phlx Phone Index. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, Commission, dated February 24, 1994.

⁵ In Amendment No. 3, the Phlx amended the proposal to represent that the Phlx will submit a Rule 19b-4 filing to the Commission prior to opening any new series of options on the Index for trading if at any time less than 90 percent of the

Continued

The proposed rule change and Amendment Nos. 1, 2, 3, and 4 thereto were published for comment in the **Federal Register** on June 6, 1994.⁸ No comments were received on the proposed rule change, nor the amendments. This order approves the proposal and its five amendments.

II. Description of Proposal

A. Composition of the Index

The Phlx proposes to list for trading options on the Phone Index, a stock index to be calculated and maintained by the Phlx. The Index will be composed of the common stocks of the eight companies created as a result of the divestiture of American Telephone & Telegraph Co. ("AT&T") in 1983, including the seven regional telephone companies spun off from AT&T as well as AT&T itself.⁹ AT&T and the spun-off regional telephone companies represent some of the largest and most widely-held U.S. common stocks. All eight of the common stocks are listed on the NYSE. The Phlx will use a capitalization-weighted methodology to calculate the Index.¹⁰

As of March 11, 1994, the market capitalizations of the individual stocks in the Index ranged from a high of \$68.7 billion (AT&T) to a low of \$15 billion (Nynex), with the mean and median being \$27.6 billion and \$22.8 billion, respectively. The market capitalization of all the stocks in the Index was \$220.6 billion. The total number of shares outstanding for the stocks in the Index

ranged from a high of 1.4 billion shares (AT&T) to a low of 412.7 million shares (Nynex). In addition, the average daily trading volume of the stocks in the Index, for the six months immediately preceding February 24, 1994, ranged from a high of 1,646,200 shares per day (AT&T) to a low of 425,100 shares per day (BellSouth Corp.), with a mean of approximately 773,638 shares. For the same period, the average monthly trading volume of the stocks in the Index ranged from a high of 40,916,000 shares per month (AT&T) to a low of 8,928,000 shares per month (BellSouth Corp.), with a mean of approximately 17.03 million shares. Finally, no one stock comprised more than 31.14 percent of the Index's total value as of March 11, 1994 (AT&T), and the percentage weighting of the four largest issues in the Index accounted for 64.77 percent of the Index's value. The percentage weighting of the lowest weighted stock was 6.78 percent of the Index (Nynex), and the percentage weighting of the five smallest issues in the Index accounted for 35.23 percent of the Index's value.

B. Maintenance

The Index will be maintained by the Phlx. The Phlx will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence. In accordance with Phlx Rule 1009A, if any change in

the nature of any stock in the Index that is caused by delisting, merger, acquisition, or otherwise occurs which would change the overall market character of the Index, the Exchange will take appropriate steps to delete this Index component stock from the Index. Such Index component stock would be replaced by another Index component stock which the Exchange in its discretion believes would be compatible with the intended market character of the Index.¹¹

If at any time less than 90 percent of the component stocks in the Index, by weight, are eligible for exchange options trading, or if the number of stocks in the Index ever increases to more than ten or decreases to less than eight, the Exchange would submit a filing to the Commission pursuant to Rule 19b-4 under the Act prior to opening any new series of options on the Index for trading.

C. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price multiplied by the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The value of the Index was set to equal 200 on December 1, 1993. As of June 24, 1994, the Index value was 196.73. The formula for calculating the Index value is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price × shares outstanding) for all component securities

Divisor = The number which, when divided from the total capitalization

when the Index was initially calculated (on December 1, 1993), yielded an Index value of 200.

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from

mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

component securities, by weight, are eligible for exchange options trading, or if at any time the number of stocks in the Index increases to more than ten or decreases to less than eight. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated March 3, 1994.

⁸ In Amendment No. 4, the Phlx amended the proposal: (1) to change the manner in which the current Index value would be calculated; (2) to represent that the surveillance procedures currently used to monitor trading in each of the Exchange's other index options, which include having complete access to trading activity in the underlying securities comprising the Index (all of which are traded on the NYSE), also will be used

to monitor trading in options on the Index; (3) to provide that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index; and (4) to confirm that the trading hours for the Index will be 9:30 a.m. to 4:10 p.m. (New York time). See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated April 7, 1994.

⁷ In Amendment No. 5, the Phlx amended its proposal to include (1) the listing, pursuant to Phlx Rule 1101A(b)(iv), of quarterly index options ("QIX options") on the Phone Index; and (2) the listing, pursuant to Phlx Rule 1101A(b)(iii), of series of long-term options ("LEAPS") on the Phone Index. See Letter from Michele R. Weisbaum, Associate

General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated July 1, 1994.

⁸ See Securities Exchange Act Release No. 34130 (May 27, 1994), 59 FR 29317 (June 6, 1994).

⁹ The components of the Index are: AT&T; Ameritech Corp.; Bell Atlantic Corp.; BellSouth Corp.; Nynex Corp.; Pacific Telesis Group; Southwestern Bell Corp.; and US West Inc.

¹⁰ See *infra* Section IIC., entitled "Calculation of the Index," for a description of this calculation method.

¹¹ The Exchange represents that any future replacement or added component securities will be listed and traded on either the NYSE or Amex, or quoted on and traded through the Nasdaq/NM. See *supra* note 3.

$$\text{Divisor} = \frac{\text{Total Capitalization (as result of adjustments)}}{\text{Index Value}}$$

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price \times shares outstanding) of the relevant issues.

The Index value will be updated dynamically and disseminated at least once every fifteen seconds during the trading day.¹² The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value, for purposes of settling outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index option contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.

D. Contract Specifications

The proposed options on the Index will be cash-settled. American-style options.¹³ Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. Strike prices will be set at five point intervals in terms of the current value of the index.¹⁴

The Exchange will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be

three expiration months from the March, June, September, December cycle, plus two additional near-term months so that the three nearest-term months always will be available. In addition, pursuant to and in accordance with Phlx Rule 1101A(b)(iii), the Exchange will list and trade series of LEAPS on the Index.

Index options will expire on the Saturday following the third Friday of the expiration month. Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will be the second to last business day before expiration (normally a Thursday). Alternatively, pursuant to Phlx Rule 1101A(b)(iv), the Exchange may provide for the listing of up to eight near-term quarterly expirations for the Index. These QIX options would expire on the first business day following the end of each calendar quarter, and all such QIX options would be P.M.-settled.¹⁵

E. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits and exercise limits for the Index options will be set at no more than 5,500 contracts.¹⁶ Index options will be traded pursuant to the current Phlx rules governing the trading of index options, particularly Phlx Rules 1000A through 1103A, and generally, Phlx Rules 1000 through 1070. For example, Exchange rules applicable to options on the Phone Index will be identical to the rules applicable to other narrow-based index options for purposes of trading rotations, halts, and suspensions,¹⁷ and margin treatment.¹⁸

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Phone Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance

Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the index.¹⁹

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).²⁰ Specifically, the Commission finds that the trading of Phone Index options will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with U.S. telephone industry stocks.²¹

A. Index Design and Structure

The Commission finds that the Phone Index is a narrow-based index. The Phone Index is composed of only eight securities, all of which are U.S. telephone industry stocks. Accordingly, the Commission believes that it is appropriate for the Phlx to apply its rules governing narrow-based index

¹⁹ The Exchange is a member of the ISG, which was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

²⁰ 15 U.S.C. 78f(b)(5) (1988).

²¹ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options on the Phone Index will provide investors with a hedging vehicle that should reflect the overall movement of telephone industry stocks in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in this sector of the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost-effective manner.

¹² See Securities Exchange Act Release No. 34234 (June 17, 1994), 59 FR 32729 (June 24, 1994), which approved the Exchange's proposal to amend Phlx Rule 1101A to permit the Exchange to list QIX options on all existing and future Exchange indexes (with each listing of QIX options on future indexes subject to Commission approval).

¹³ See Phlx Rules 1001A(b)(i) and 1002A, respectively.

¹⁴ See Phlx Rule 1047A.

¹⁵ See Phlx Rules 722 and 1000A.

¹² To the extent that a component stock does not open for trading on a particular trading day, or trading in that component stock is halted during the course of a particular trading day, the last reported sale price of such security will be used for purposes of calculating the current Index value.

¹³ An American-style option can be exercised at any time prior to its expiration.

¹⁴ Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

options to trading in the Index options.²²

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the index's component securities significantly minimize the potential for manipulation of the Index. First, the majority of the components that comprise the Index are actively-traded, with a mean and median average daily trading volume of 773,800 and 637,700 shares, respectively, over the six months immediately preceding February 24, 1994.²³ Second, the market capitalizations of the securities in the Index are very large, ranging from a high of \$68.7 billion to a low of \$15 billion, as of March 11, 1994, with the mean and median being \$27.6 billion and \$22.8 billion, respectively. Third, although the Index is only comprised of eight component securities, no one particular security or group of securities dominates the Index. Specifically, no individual stock comprises more than 31.15 percent of the Index's total value, and the percentage weighting of the four largest issues in the Index accounts for 64.77 percent of the Index's value.²⁴ Fourth, all of the securities in the Index are eligible for standardized options trading, and the proposed Phlx maintenance requirement requires that at least 90 percent of the weighting of the Index be comprised of securities that are eligible for exchange options trading. Fifth, if the Phlx increases the number of component securities to more than ten or decreases that number to less than eight, the Phlx will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price of expiration month series of Phone Index options. This will help protect against material changes in the composition and design of the Index that might adversely affect the Phlx's obligations to protect investors and to maintain fair and orderly markets in Index options. Finally, the Index is comprised, and in the future may only be comprised, of stocks listed and traded on the NYSE or Amex, or quoted on and traded through

the Nasdaq/NM. Accordingly, the Phlx will be required to ensure that each component of the Index is subject to last sale reporting requirements in the United States. This will further reduce the potential for manipulation of the value of the Index.

B. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.²⁵ In this regard, the NYSE, which currently is the primary market for all of the stocks comprising the Index, is a member of the ISG, which provides for the exchange of all necessary surveillance information.²⁶

C. Market Impact

The Commission believes that the listing and trading on the Phlx of options on the Phone Index will not adversely impact the underlying securities markets.²⁷ First, as described above, for the most part no one security or group of securities dominates the Index. Second, because at least 90 percent of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards, the component securities generally will be actively-traded, highly-capitalized securities. Third, the 5,500 contract position and exercise limits applicable to Index options will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Phone Index options based on the opening prices of

component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce the "Expiration Friday" effects on markets for securities underlying options on the Index.²⁸

D. Accelerated Approval of Amendment No. 5

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the *Federal Register*. The portion of Amendment No. 5 providing for the listing of QIX options on the Index is consistent with the Exchange proposal approved by the Commission on June 17, 1994 relating to the listing of QIX options on all stock indexes for which index options are listed for trading by the Exchange.²⁹ That proposal was published for the full 21-day comment period, and no comments were received. In addition, because Phlx Rule 1101A(b)(iii) generally permits the Exchange to list series of LEAPS on stock indexes, the Commission finds that the portion of Amendment No. 5 relating to the listing of series of LEAPS on the Index presents no new regulatory issues. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 5 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing 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 also will be available for inspection and copying at the principal office of the above-

²² See *supra* notes 13 through 15, and accompanying text.

²³ In addition, over this same period, no component of the Index had an average daily trading volume of less than 425,100 shares per day.

²⁴ The Commission's analysis is based on the eight securities in the Index. For an index with several more underlying securities, the Commission might come to a different conclusion if only a few securities accounted for a substantial portion of the index's weighting. In addition, although the Index is comprised of only eight stocks, the Commission is satisfied that, based on the large capitalizations, liquidity, and relative weightings of the component securities, the Index can be traded as an index product.

²⁵ See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

²⁶ See *supra* note 16. In addition, the Amex and the National Association of Securities Dealers, Inc. are members of the ISG.

²⁷ In addition, the Phlx has represented that the Phlx and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Phone Index. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated June 24, 1994; and Letter from Joseph P. Corrigan, Executive Director, OPRA, to Richard Cangelosi, Assistant Vice President, New Product Development, Phlx, dated April 18, 1994.

²⁸ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

²⁹ See *supra* note 15.

mentioned self-regulatory organization. All submissions should refer to File No. SR-Phlx-94-01 and should be submitted by August 5, 1994.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (File No. SR-Phlx-94-01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Jonathan G. Katz,
Secretary.

[FR Doc. 94-17255 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26082]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 8, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70-8435)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia

30346, and its subsidiaries, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama, 35291, Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501, Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401, Southern Company Services, Inc., 64 Perimeter Center East, Atlanta, Georgia 30346, Southern Electric International, Inc., 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35205 and Southern Electric Generating Company, 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of Alabama Power Company and Georgia Power Company (collectively, "Applicants"), have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 32 and 33 of the Act and Rules 53 and 54 thereunder.

Southern proposes to issue and sell: (1) up to 25 million additional shares of its authorized but unissued common stock, par value \$5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("DRIP Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan"); (2) up to 9 million additional shares of its authorized but unissued common stock, par value \$5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("ESP Stock"), pursuant to The Southern Company Employee Savings Plan ("Savings Plan"); and (3) up to 3 million additional shares of its authorized but unissued common stock, par value \$5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("ESOP Stock"), in order to provide common stock to fund The Employee Stock Ownership Plan of The Southern Company System ("ESOP Plan"). It is proposed that the DRIP Stock, the ESP Stock and the ESOP Stock will be issued and sold from time-to-time on or prior to December 31, 1997.

The DRIP Stock will be offered to all holders of Southern's common stock pursuant to the Dividend Plan whereby shareholders voluntarily may elect to: (1) have cash dividends on all of their shares of Southern common stock automatically reinvested and have the option of investing additional amounts by making cash payments; (2) have cash dividends on less than all of their shares

automatically reinvested and continue to receive cash dividends on their remaining shares and have the option of investing additional amounts by making cash payments; or (3) invest by making optional cash payments only of not less than \$25 per payment nor more than \$6,000 per quarter. Cash dividends on shares credited to a participant's account under the Dividend Plan will be reinvested in shares of Southern's common stock. No shares will be sold by Southern under the Dividend Plan at less than the par value of such shares.

Shares of common stock purchased on behalf of shareholders will be, at Southern's discretion, previously issued shares purchased on the open market, newly issued shares purchased directly from Southern, or a combination of both. The price to participants will be the weighted average price paid for the shares.

The price of shares purchased directly from Southern will be equal to the average of the high and low sale prices for Southern's common stock, as published in *The Wall Street Journal* in its report of NYSE-Composite Transactions, on the dividend payment date, or the average of the high and low sale prices on the trading dates immediately preceding and following the dividend payment date, if the common stock is not traded on the New York Stock Exchange on the dividend payment date.

Southern Company Services, Inc. administers the Dividend Plan. A registered broker-dealer will be designated to act as an independent agent for the purpose of purchasing shares for participants on the open market. No service charge or commission is paid by participants in connection with purchases under the Dividend Plan.

A participant retains all voting rights relating to shares purchased under the Dividend Plan and credited to his/her account, and such shares will be voted in accordance with his/her instructions. A participant may withdraw from the Dividend Plan at any time upon written notice. In addition, without withdrawing from the Dividend Plan, a participant is entitled to demand and receive a certificate representing any number of whole shares of common stock credited to his/her account.

The ESP Stock will be offered to employees of Southern's subsidiaries pursuant to the Savings Plan under which such employees voluntarily may contribute, through payroll deductions and/or compensation reductions, any whole percentage which together are not more than 16% of their compensation. Each Savings Plan member must direct

³⁰ 15 U.S.C. § 78s(b)(2) (1988).

³¹ 17 CFR 200.30-3(a)(12) (1993).

that his/her contributions be invested in one or more of four funds administered under the Savings Plan, except that employer matching contributions must be invested in the Company Stock Fund, consisting of Southern's common stock.

Wachovia Bank of Georgia, N.A. acts as Trustee for the trust which is part of the Savings Plan, and the Savings Plan is administered by the Savings Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc. Investment purchases by the Trustee for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or current independent bid price, whichever is higher, for such stock on the New York Stock Exchange, plus an amount equal to the commission payable in a stock exchange transaction if such private purchase is not made from Southern. The Trustee may purchase common stock of Southern directly from Southern under the Dividend Plan or under any other similar plan made available to all holders of record of shares of common stock of Southern, at the purchase price provided for in such plan.

The exact number of ESOP Shares to be issued by Southern will be determined by the aggregate amount of contributions to be invested by the trust established pursuant to the ESOP Plan ("ESOP Trust") and the purchase price per share of Southern's common stock determined as set forth below. As amended and restated, the ESOP Plan permits the Applicants to contribute cash or common stock in an amount or under such formula as the Board of Directors of Southern Company Services, Inc. shall determine in its sole and absolute discretion.

It is anticipated that the contributions by the Applicants to the ESOP Trust generally will be made in cash. However, if a contribution consists of ESOP Stock, the purchase price per share shall be the average of the closing prices of a share of Southern's common stock based on consolidated trading, as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, for the 20 consecutive trading days immediately preceding the date on which such shares are contributed to the ESOP Plan. The purchase price per share of ESOP Stock acquired from Southern by the ESOP Trust with cash contributions shall be the fair market value as of the date of acquisition.

Cash contributions to the ESOP Trust also may be invested in Southern's common stock through open market purchases or private purchases from parties other than Southern. The purchase price per share of common stock acquired by private purchases from a party other than Southern shall not be greater than the last sale price or highest current independent bid price, whichever is higher, for a share determined on the basis of consolidated trading, as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, plus an amount not greater than the commission payable in a stock exchange transaction.

Under the ESOP Plan, the ESOP Trust is required to reinvest cash dividends paid on shares of Southern's common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to have such cash dividends distributed to him/her currently or the Employing Company distributes cash dividends in order to qualify such distribution for a tax deduction under the 1986 Code. In reinvesting any cash dividends, the ESOP Trust may purchase common stock under the Dividend Plan, at the price provided for in such plan, on the open market or by private purchase, including purchases directly from Southern, at the stock's fair market value. All costs of administration of the ESOP Plan and the ESOP Trust, in excess of those costs allowed by the 1986 Code to be withheld from contributions or to be paid by the ESOP Trust, are paid by the Applicants.

Southern intends to use the net proceeds from the sale of the DRIP Stock, the ESP Stock and the ESOP Stock, together with other available funds, to make additional equity investments in subsidiaries, including cash capital contributions to its operating utility subsidiaries. Southern may also invest such proceeds, along with other authorized proceeds from related financings, up to an aggregate of \$500 million in "exempt wholesale generators" and "foreign utility companies," as defined in Sections 32 and 33 of the Act, respectively, and for other corporate purposes. Investments by Southern and its subsidiaries would only be made in accordance with existing or future authorizations or in accordance with such exemptions as may exist under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-17159 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2726]

Tennessee; (With Contiguous Counties in Alabama); Declaration of Disaster Loan Area

Lawrence County and the contiguous counties of Giles, Lewis, Maury, and Wayne in the State of Tennessee, and Lauderdale and Limestone Counties in the State of Alabama constitute a disaster area as a result of damages caused by tornadoes which occurred on June 26, 1994. Applications for loans for physical damage may be filed until the close of business on September 6, 1994 and for economic injury until the close of business on April 5, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

| | Percent |
|---|---------|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 7.125 |
| Homeowners without Credit Available Elsewhere | 3.625 |
| Businesses With Credit Available Elsewhere | 7.125 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.125 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ... | 4.000 |

The numbers assigned to this disaster for the State of Tennessee are 272612 for physical damage and 829100 for economic injury, and in Alabama the numbers are 272712 for physical damage and 829200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 5, 1994.

Cassandra M. Pulley,
Acting Administrator.

[FR Doc. 94-17201 Filed 7-14-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 1, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49631

Date filed: June 29, 1994

Parties: Members of the International Air Transport Association
Subject: Telex Reso 024f—Namibia/South Africa

Proposed Effective Date: August 1, 1994

Docket Number: 49632

Date filed: June 29, 1994

Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 688 Australia-Europe Excursion fares r-1—Reso 0711I Amendment to Mail Vote

Proposed Effective Date: July 1, 1994

Docket Number: 49633

Date filed: June 29, 1994

Parties: Members of the International Air Transport Association
Subject: PAC/Reso/378 dated June 24, 1994 16th PAC—Expedited Resos r-1 to r-6

Proposed Effective Date: August 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-17178 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 1, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49634

Date filed: June 29, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1994

Description: Application of Globair Corp., pursuant to Section 401(d)(1) of the act, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Globair to provide scheduled foreign air transportation of persons, property and mail. Globair intends to provide service between New York, one or more European points, and Tel Aviv, Israel. Globair also intends to operate between New York and Miami, and will be applying in the near future for authority to provide scheduled interstate and overseas air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-17177 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Flight Service Station at Burley, ID; Closing

Notice is hereby given that on or about August 24, 1994, the flight service station at Burley, Idaho, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Boise, Idaho. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on June 14, 1994.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 94-17216 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Idaho Falls, ID; Closing

Notice is hereby given that on or about August 3, 1994, the flight service station at Idaho Falls, Idaho, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Boise, Idaho. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on June 14, 1994.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 94-17215 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Bernalillo and Sandoval Counties, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Bernalillo and Sandoval Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT:

Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo, Santa Fe, NM 87505, Telephone: (505) 820-2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct an access controlled transportation facility, known as Paseo del Volcan, on a new alignment on the west mesa of Albuquerque, New Mexico. Paseo del Volcan is included in the Long Range Major Street Plan for the Albuquerque urban Area and is intended to provide a connector between Interstate 40 (I-40) west of the urban area and Interstate 25 (I-25) north of the urban area. This project would preserve the investment and utility of the existing infrastructure, operations and transportation service in the Albuquerque metropolitan area. Of particular importance is the potential benefit to the Interstate system passing through the City of Albuquerque. The EIS will allow for right of way preservation and may also provide limited phased constructed based on current needs. Paseo del Volcan would begin at a new or improved interchange on I-40 west of Albuquerque, proceed north and then west to provide a connector with I-25 north of Albuquerque. The I-25 connection will be via a new or improved interchange on I-25 east of Bernalillo, or via NM 44 with a new or improved interchange west of Bernalillo. The total distance is approximately 35 miles (56.3 km). One option includes a new bridge across the Rio Grande near Bernalillo, New

Mexico. Interchanges are envisioned at defined major streets with at least one mile intervals between access points. New or improved interchanges at I-40, I-25 and NM 44 are also under consideration.

Options under consideration include (1) taking no action; (2) construction of an access controlled facility with appropriate consideration of provisions of pedestrian, equestrian and bicycle facilities and for demand reduction strategies and alternative transportation modes such as transit, light rail and high occupancy vehicle accommodations. The build alternates also will include variations in alignment location and termini. It is anticipated that the facility would be constructed in phases with the termini and configuration based on current needs.

Informal scoping for the proposal began in 1991. Comments were solicited from appropriate Native American groups, Federal, state and local agencies and from private organizations and citizens. Two scoping open houses and three community open houses have been held.

A major investment study scoping meeting was held to comply with recently promulgated metropolitan transportation planning regulations.

The draft EIS will be made available for Native American, public and agency review and comment. A public hearing will be advertised and held after document distribution and review. To ensure that the full range of issues related to this proposed action are addressed and all significant issues and impacts identified, comments and suggestions are invited from all interested parties. Comments on questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 30, 1994.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 94-17185 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. MC-94-14]

State Commercial Motor Vehicle Safety Law Affecting Interstate Commerce; Notice of Review and Preliminary Preemption Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of review of State of Mississippi commercial motor vehicle safety law; notice of preliminary preemption determination; request for comments.

SUMMARY: The FHWA is reviewing a State of Mississippi commercial motor vehicle safety law to determine whether the law may be in effect and enforced with respect to commercial motor vehicles in interstate commerce. This review is required by the Motor Carrier Safety Act of 1984. In a preliminary finding, the FHWA has determined that the State law is incompatible with Federal regulations. Unless the preliminary finding is refuted by evidence or arguments received in response to this notice, a determination will be made that the law is preempted and shall not have effect and be enforced.

DATES: Comments must be received on or before September 13, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, room 4232, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Taylor, Office of Motor Carriers, HFO-30, (202) 366-0133; or Mr. David Sett, Office of the Chief Counsel, HCC-20, (202) 366-0834; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act) directs the Secretary of Transportation to conduct rulemaking proceedings to determine whether State laws may be in effect and enforced with respect to commercial motor vehicles in interstate commerce. The FHWA may, upon its own initiative or the petition of any interested person, begin proceedings to determine the preemptive effect of Federal regulations. 49 U.S.C. app. 2507.

Under the United States Constitution, the FHWA shares with the States the power to regulate commercial motor vehicles in interstate commerce. However, State laws which are incompatible with and do not have the same effect as Federal regulations may be preempted.

The Commercial Motor Vehicle Safety Regulatory Review Panel, which was established by the Act to analyze State commercial motor vehicle safety laws and regulations, notified the FHWA in its final report in August 1990 that a State of Mississippi law was incompatible with Federal regulations. The law in question exempts vehicles engaged in certain industries, such as lumber and gravel hauling and farming, from compliance with State motor carrier safety laws and regulations.

The specific provisions which have preliminarily been found to be preempted as they apply to interstate commerce are found in Section 77-7-16(3)(g)-(i), Mississippi Code of 1972. Subsection (3) exempts certain vehicles from the provision in the Code authorizing the State Public Service Commission to inspect vehicles for safe operation and safe use of equipment. Included in this exemption are:

- (g) Motor vehicles owned and operated by any farmer who:
 - (i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;
 - (ii) Is not using the vehicle to transport hazardous materials of a type and quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and
 - (iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.
- (h) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(i) Motor vehicles engaged exclusively in hauling gravel or other unmanufactured road building materials.

The FMCSRs do not contain compatible exemptions. Generally, the Federal Motor Carrier Safety Regulations (FMCSRs) do not allow industry-based exemptions. State laws which provide such exemptions for vehicles in interstate commerce are deemed less stringent than the FMCSRs.

Drivers of farm vehicles, such as defined in paragraph (g) of the Mississippi Code, do have limited (49

CFR 391.67, articulated vehicles) and fall (49 CFR 391.2(c), nonarticulated vehicles) exemptions from driver qualification requirements of Part 391 of the FMCSRs. Unlike the Mississippi Code, however, the FMCSRs do not exempt farm vehicles or their drivers from any other motor carrier safety requirements. Paragraph (g) is, therefore, preliminarily determined to be preempted insofar as it provides exemptions for farm vehicles not found in the FMCSRs.

The exemptions in paragraphs (h) and (i) for gravel and log haulers have no parallels in the FMCSRs. Each of these provisions in the Mississippi Code are therefore incompatible with the FMCSRs and are preliminarily determined to be preempted.

Insofar as these exemptions affect vehicles in interstate commerce, they are contrary to the guideline for regulatory review in 49 CFR Part 355, app. A, which provides that the "requirements must apply to all segments of the motor carrier industry." If as a result of this review, the FHWA finalizes this determination that the exemption is less stringent than Federal regulations, the State law will be preempted and shall not be in effect and enforced by the State of Mississippi with respect to commercial motor vehicles in interstate commerce. 49 U.S.C. app. 2507(c)(3).

The FHWA encourages all interested persons to submit comments on this review and preemption determination. In addition, any person, including the State of Mississippi, may petition the FHWA for a waiver from a preemption determination. 49 U.S.C. app. 2507(d). A petitioner is afforded the opportunity for a hearing on the record. A petition for a waiver may be combined with this proceeding, if made within the 60-day comment period. 49 CFR 355.25(e). A waiver may be granted if it is demonstrated that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

It should be reemphasized that this preliminary preemption determination is applicable only to certain State of Mississippi commercial motor vehicle safety laws insofar as they apply to vehicles in interstate commerce. State of Mississippi laws applicable only to vehicles in intrastate commerce are not subject to preemption, and, moreover, appear to be compatible for purposes of

the Motor Carrier Safety Assistance Program because they fall within the Tolerance Guidelines. 49 CFR Part 350, app. C.

(49 U.S.C. App. Sec. 2507; 23 U.S.C. Sec. 315; 49 CFR 1.48)

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94-17176 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 5, 1994.

The Department of the 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.

Office of Thrift Supervision (OTS)

OMB Number: 1550-0026.

Form Number: FFIEC 001.

Type of Review: Extension.

Title: Annual Report of Trust Assets.

Description: The Annual Report of Trust Assets is submitted by financial institutions that operate trust departments. The report is the only source of information available regarding market values of assets held in trust departments. The information compiled by the FDIC and published in an annual report that is used by financial institutions, federal supervisory agencies and other groups.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 2 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 223 hours.

Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395-7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-17165 Filed 7-14-94; 8:45 am]

BILLING CODE 4810-25-P

Public Information Collection Requirements Submitted to OMB for Review

July 7, 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 (IRS)

OMB Number: 1545-0130.

Form Number: IRS Form 1120S, Schedule D, and Schedule K-1.

Type of Review: Revision.

Title: U.S. Income Tax Return for an S Corporation (1120S); Capital Gains and Losses and Built-In Gains (Schedule D); Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K-1).

Description: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 1,880,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

| | Form 1120S | Schedule D (Form 1120S) | Schedule K-1 (Form 1120S) |
|--|----------------------------|---------------------------|---------------------------|
| Recordkeeping | 62 hours, 40 minutes | 9 hours, 20 minutes | 14 hours, 50 minutes. |
| Learning about the law or the form | 20 hours, 43 minutes | 4 hours, 13 minutes | 10 hours, 19 minutes. |

| | Form 1120S | Schedule D (Form 1120S) | Schedule K-1 (Form 1120S) |
|--|----------------------------|---------------------------|---------------------------|
| Preparing the form | 36 hours, 37 minutes | 9 hours, 13 minutes | 14 hours, 44 minutes. |
| Copying, assembling, and sending the form to the IRS | 4 hours, 1 minute | 1 hour, 20 minutes | 1 hour, 4 minutes. |

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 452,979,090 hours.
OMB Number: 1545-0938.
Form Number: IRS Form 1120-IC-DISC, Schedule K, and Schedule P.
Type of Review: Revision.
Title: Interest Charge Domestic International Sales Corporation Return (1120-IC-DISC); Shareholder's Statement of IC-DISC Distributions (Schedule K);

Intercompany Transfer Price or Commission (Schedule P).
Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120-IC-DISC to report their income and deductions. The IC-DISC is not taxed, but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120-IC-DISC to check the IC-DISC's computation of income. Schedule K

(Form 1120-IC-DISC) is used to report income to shareholders; Schedule P (Form 1120-IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,200.
Estimated Burden Hours Per Respondent/Recordkeeper:

| 0 | Form 1120-IC-DISC | Schedule K (1120-IC-DISC) | Schedule P(1120-IC-DISC) |
|---|----------------------|---------------------------|--------------------------|
| Recordkeeping | 95 hr., 54 min. | 4 hr., 4 min. | 12 hr., 55 min. |
| Learning about the law or the form | 20 hr., 8 min. | 47 min. | 1 hr., 17 min. |
| Preparing the form | 30 hr., 1 min. | 54 min. | 1 hr., 34 min. |
| Copy, assembling, and sending the form to the IRS | 2 hr., 9 min. | | |

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 232,253 hours.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
 [FR Doc. 94-17166 Filed 7-14-94; 8:45 am]
 BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

July 8, 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, N.W., Washington, D.C. 20220.

Office of Thrift Supervision (OTS)

OMB Number: New.
Form Number: OTS Form 1586.
Type of Review: New collection.
Title: Instructions for Filing Out the Interest-Rate Risk Appeals Submission.
Description: The form is used to obtain information from savings associations who want to appeal their interest-rate risk component.

Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 30 hours.
Frequency of Response: Quarterly, Annually.
Estimated Total Reporting Burden: 1,200 hours.
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, N.W., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf (202) 395-7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
 [FR Doc. 94-17167 Filed 7-14-94; 8:45 am]
 BILLING CODE 4810-25-P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 135

Friday, July 15, 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, July 21, 1994.

LOCATION: Room 410, 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 last agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sayde E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: July 13, 1994.

Sadye E. Dunn,
Secretary.

[FR Doc. 94-17363 Filed 7-13-94; 3:16 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, July 20, 1994.

LOCATION: ROOM 420, EAST WEST TOWERS, 4330 EAST WEST HIGHWAY, BETHESDA, MARYLAND.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

FY 1996 BUDGET: The staff will brief the Commission on issues related to the Commission's budget for fiscal year 1996.

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: July 13, 1994.

Sadye E. Dunn,
Secretary.

[FR Doc. 94-17364 Filed 7-13-94; 3:16 pm]

BILLING CODE 6355-01-M

Corrections

Federal Register

Vol. 59, No. 135

Friday, July 15, 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 TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-127; Amdt. 195-52]
RIN 2137-AC27

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards

Correction

In rule document 94-15510 beginning on page 33388 in the issue of Tuesday,

June 28, 1994, make the following corrections:

§ 195.246 [Corrected]

1. On page 33397, in the second column, in § 195.246, paragraph (b), in the third line, "3.7 m 12-ft-deep" should read "3.7 m (12 ft) deep".

§ 195.248 [Corrected]

2. On the same page, in the same column, in amendatory instruction 18. for § 195.248, in the eighth line, "12-ft-deep" should read "3.7 m (12 ft) deep".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8534]

1545-AS55

Real Estate Mortgage Investment Conduits

Correction

In rule document 94-9548 beginning on page 18746 in the issue of Wednesday, April 20, 1994, make the following correction:

1. On page 18746, in the second column, in the last line at the bottom of the page, "§ 1.860G1(a)(3)(i)" should read "§ 1.860G-1(a)(3)(i)".

2. On the same page, in the 3rd column, beginning in the 15th line, "April 14, 1994" should read "April 4, 1994".

BILLING CODE 1505-01-D

Federal Register

Friday
July 15, 1994

Part II

Securities and Exchange Commission

17 CFR Part 228, et al.
Rulemaking for EDGAR System and
Adoption of Updated Filer Manual; Final
Rules and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 259

[Release Nos. 33-7072; 34-34330; 35-26079; IC-20388]

RIN 3235-AC48

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is announcing the implementation of Financial Data Schedules required to be furnished in connection with certain electronic filings processed by the Divisions of Corporation Finance or Investment Management that are submitted on the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. Financial Data Schedules will be required commencing on September 1, 1994. The Commission also is adopting technical and clarifying amendments to the Financial Data Schedule rules.

EFFECTIVE DATE: The effective date of the rule changes is September 1, 1994. Implementation of Financial Data Schedule requirements will commence with filings made on or after September 1, 1994.

FOR FURTHER INFORMATION CONTACT: For Division of Corporation Finance filings, Barbara C. Jacobs or James R. Budge, Office of Disclosure Policy, at (202) 942-2910, or Sylvia J. Reis, CF EDGAR Policy, at (202) 942-2940. For Division of Investment Management filings, Anthony A. Vertuno, EDGAR IM Project, at (202) 942-0591. For filings under the Public Utility Holding Company Act of 1935, David Marsh, Office of Public Utility Regulation, at (202) 942-0558.

SUPPLEMENTARY INFORMATION: The Commission is announcing the implementation of Financial Data Schedule requirements and also adopting revisions to Item 601(c)(1)(ii)¹ of Regulations S-B² and S-K,³ and is adding new paragraph (c)(2)(iv)⁴ thereto. The Commission also is adopting revisions to paragraph (e) of Rule 483⁵ and Form U-13-60.⁶

¹ 17 CFR 228.601(c)(1)(ii) and 17 CFR 229.601(c)(1)(ii).

² 17 CFR part 228.

³ 17 CFR part 229.

⁴ 17 CFR 228.601(c)(2)(iv) and 17 CFR 229.601(c)(2)(iv).

⁵ 17 CFR 230.483(e).

⁶ 17 CFR 259.313.

I. Implementation of Financial Data Schedules in Connection With Division of Corporation Finance and Division of Investment Management Filings

On February 23, 1993, the Commission adopted interim rules to implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Divisions of Corporation Finance and Investment Management and for those making filings with respect to such registrants.⁷ These rules included provisions requiring electronic filers to furnish Financial Data Schedules. A Financial Data Schedule is an exhibit that will contain financial information extracted or derived from financial data within a filing that is marked (or "tagged") to allow electronic manipulation of such information.⁸

While most provisions of the interim rules became effective on April 26, 1993, the Financial Data Schedule provisions initially were to become effective on November 1, 1993, in order to provide additional time for system programming. However, on September 28, 1993, the Commission's Office of Information Technology announced that Financial Data Schedules would not be accepted by the EDGAR system until sometime in the second quarter of 1994.⁹ The Commission announces today that the EDGAR system's capacity to accept and process Financial Data Schedules has been fully developed and tested. As a result, Financial Data Schedules will be required to be submitted in connection with filings made on or after September 1, 1994.

As discussed more fully in the Adopting Releases, Financial Data Schedules are required to be submitted with electronic filings under the Securities Act of 1933 ("Securities Act")¹⁰ and the Securities Exchange Act of 1934 ("Exchange Act")¹¹ that contain updated financial information (other than through incorporation by reference) and with designated filings under the Investment Company Act of 1940¹² and the Public Utility Holding

⁷ Release Nos. 33-6977 (February 23, 1993) (58 FR 14628) ("Corporation Finance Release"); IC-19284 (February 23, 1993) (58 FR 14848) ("Investment Company Release"); and 35-25746 (February 23, 1993) (58 FR 14999) ("Public Utility Release"), cumulatively referred to as the "Adopting Releases".

⁸ For a complete discussion of Financial Data Schedules, see Section IV.D of the Corporation Finance Release. See also Section IV.D of the Investment Company Release and Section IV of the Public Utility Release.

⁹ See Release No. 34-32971 (September 28, 1993) (58 FR 51659).

¹⁰ 15 U.S.C. 77a et seq.

¹¹ 15 U.S.C. 78a et seq.

¹² 15 U.S.C. 80a-1 et seq.

Company Act of 1935 ("1935 Act").¹³ Advance copies of the EDGAR Filer Manual and EDGARLink version 3.5, which support construction of Financial Data Schedules, were made available to the public in April 1994; minor modifications will be made available prior to the mandated implementation date. This distribution scheme was chosen to allow mandated electronic filers ample time to commence test filings in advance of the September 1994 implementation date.¹⁴

After Financial Data Schedule requirements are implemented, an electronic filer's failure to furnish a schedule will not prevent acceptance of the filing for which the schedule is required. However, inasmuch as the schedule may be used by the Commission staff, processing of the filing may be delayed pending filing of the schedule. Further, electronic filers that have not filed a required Financial Data Schedule will be ineligible to use Form S-2,¹⁵ Form S-3,¹⁶ and Form S-8.¹⁷ If a filing is made without a required Financial Data Schedule, or if a schedule is submitted with errors and is therefore identified by EDGAR as a "flawed" exhibit, the filer must remedy the omission or flawed schedule by submitting a correctly compiled schedule as an amendment to the original filing.¹⁸

II. Clarifying Amendments and Other Matters Involving Division of Corporation Finance Filings

A. Rule Changes

In the Adopting Releases, the Commission solicited comments or suggestions from interested parties relating to the Financial Data Schedule requirements. In response, the Commission received three comment letters.¹⁹ Filers generally have reacted favorably to the changes made to the proposed Financial Data Schedule requirements now embodied in the adopted rules. However, in response to

¹³ 15 U.S.C. 79a et seq.

¹⁴ The Commission is adopting the EDGAR Filer Manual for EDGARLink version 3.5 concurrently with this release; the updated Filer Manual also has an effective date of September 1, 1994. See Release No. 33-7073 (July 8, 1994).

¹⁵ 17 CFR 239.12.

¹⁶ 17 CFR 239.13.

¹⁷ 17 CFR 239.16b. In addition, accelerated effectiveness will not be available for registration statements that do not contain required Financial Data Schedules.

¹⁸ If the amendment is solely for the purpose of adding or revising this exhibit, the filing may consist of the cover page, signature page, exhibit index, and the new or revised exhibit. The rest of the filing need not be resubmitted.

¹⁹ These letters are available for inspection in the Commission's public reference room, File No. S7-6-93.

questions from filers, the Commission is adopting technical and clarifying amendments to Item 601(c) of Regulations S-B and S-K²⁰ to provide registrants with a clearer understanding of the filing requirements relating to Financial Data Schedules.

Because the amendments adopted today are merely technical corrections to clarify existing requirements and relate generally to agency procedure or practice, proposal for comment is not required under the Administrative Procedure Act.²¹ Further, the Commission finds good cause under section 553(b) of that Act for not publishing the amendments for comment because such publication is unnecessary. The rules being amended were adopted after notice and opportunity for public comment, and no substantive obligations will change as a result of the amendments. The changes are responsive to filer concerns raised with the staff relating to ambiguity in the current language of the rules. Since no public comment is required, it follows that this rulemaking is not subject to the requirements of the Regulatory Flexibility Act.²²

1. Periods Covered in Financial Data Schedule

As adopted, Item 601(c) states that subsequent to becoming subject to mandated electronic filing, any electronic filing that includes financial statements of the registrant:

For a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule containing information for the updating period or periods (emphasis added).²³

Some filers have expressed uncertainty about the meaning of the term "updating period" as it relates to income statements included in quarterly reports on Form 10-Q, asking if the schedule should include information only for the period of the report, that is, one quarter's information, or if cumulative year to date information should be included, or both.²⁴ In the Corporation Finance Release, the Commission explained that information would be required for the interim year

to date period (e.g., nine months in the third quarter Form 10-Q).²⁵ Accordingly, the Commission is amending the language of Item 601(c) to clearly state that information is required for the most recent annual or interim year to date periods (or both if included in a registration statement to which the schedule relates).²⁶

2. Representing Immaterial or Inapplicable Values

Filers must furnish a value corresponding to each line item required in the various schedules.²⁷ One commenter suggested that a "N/A" (not applicable) designation be allowed in response to a Financial Data Schedule line item where corresponding information was omitted from the underlying financial statements because it was immaterial or inapplicable, as permitted by Regulation S-X.²⁸ Because of system design considerations, an "N/A" designation is not feasible. However, in order to address the issue, the Commission is amending Item 601(c) to provide specifically that if an item is inappropriate or immaterial in the underlying financial statements, a filer must place a "0" (zero) next to the appropriate tag in the Financial Data Schedule. This will inform the EDGAR system that the data entry cannot be used for ratio calculations or other arithmetic functions.

3. No Schedule Required With Form 11-K

Financial Data Schedules were never intended to be required in connection with reports on Form 11-K, the annual report for employee stock purchase, savings and similar plans,²⁹ and consequently, no affirmative obligation to submit a Schedule was adopted in Regulation S-K, Regulation S-B or the Form itself. In order to make that policy clear, a note has been added to Regulation S-K and S-B exempting

filings on Form 11-K from Financial Data Schedule requirements.³⁰

B. Other Matters

1. Schedule To Be Filed by Public Utility Companies and Public Utility Holding Companies in Connection With Filings Processed by the Division of Corporation Finance

The adopted rules provide that public utility companies and public utility holding companies (jointly referred to as "public utilities") must use Schedule UT³¹ in preparing their Financial Data Schedules submitted in connection with Division of Corporation Finance filings.³² One commenter stated that it was unclear when a company is considered a "public utility company" under the Financial Data Schedule rules. The term "public utility company" is defined in the 1935 Act as "an electric utility company or a gas utility company," as those terms are defined in that Act.³³ This definition was intended to apply to the provisions in question.

The commenter also requested clarification as to whether an option would be available to a public utility company to choose between Schedule UT or the Schedule based on Article 5 of Regulation S-X.³⁴ Generally, public utilities will be required to use Schedule UT in connection with their filings under the Securities Act or the Exchange Act. However, as is true with the presentation of other forms of financial information, in unusual circumstances where a public utility's financial statements simply would be better reflected by the use of a Financial Data Schedule other than Schedule UT, appropriate relief may be granted upon consultation with the staff of the Division of Corporation Finance.

2. Interpretation of Items Required by Financial Data Schedules

One commenter expressed concerns that the Financial Data Schedule captions are not sufficiently specific to encompass all financial statement reporting components. System constraints necessarily limit the different types of Financial Data

²⁰ See Section IV.D.3 of the Corporation Finance Release.

²¹ A Financial Data Schedule furnished with a Securities Act registration statement that includes financial information for both annual and interim periods would include two columns of data—one column for the annual period, and another for the interim period.

²² If a consolidated totals schedule (Schedule CT) is used with two or more partial schedules applicable to disparate industry segments of a single conglomerate corporation, a value is required for each item in the Schedule CT itself. Tags and values for inapplicable or immaterial items in the associated schedules are not required to be included; if, however, tags for such items are included, a value "0" (zero) is required.

²³ 17 CFR part 210.

²⁴ 17 CFR 249.311.

²⁵ See new note to paragraph (c)(1)(ii) of Item 601 of Regulation S-B and Regulation S-K.

²⁶ Appendix E to Item 601(c). Schedule UT follows the same format for the Financial Data Schedule (OPUR1) required in connection with annual reports filed under the 1935 Act.

²⁷ These rules are found at 17 CFR 228.601(c)(3)(v) and 17 CFR 229.601(c)(3)(v).

²⁸ See 1935 Act sections 2(a)(3) and 2(a)(4) for definitions of "electric utility company" and "gas utility company" (15 U.S.C. 79b (a)(3) and (a)(4)).

²⁹ Appendix A to Item 601(c). Article 5 of Regulation S-X is found at 17 CFR 210.5-01 through 210.5-04.

²⁰ 17 CFR 228.601(c) and 17 CFR 229.601(c). For purposes of this release, any references to Item 601 of Regulation S-K also pertain to Item 601(c) of Regulation S-B.

²¹ 5 U.S.C. 553(b).

²² 5 U.S.C. 603, 604.

²³ Item 601(c)(1)(ii) of Regulations S-B and S-K.

²⁴ A summary of staff telephone conversations on this point is available for inspection in the Commission's public reference room, File No. S7-6-93.

Schedule items to a feasible number of generic categories, with each item requiring a response. Although there is an infinite number of possible financial statement reporting variations, the schedule items can capture only broadly defined and frequently occurring account types. Consequently, the flexibility of presentation generally available to registrants in their financial statements is restricted in the context of Financial Data Schedules; filers will not be allowed to customize line items in the schedules by creating new tags or line items.³⁵ Filers must consider the information in underlying financial statements and determine the best fit into the line items on the schedule. Financial Data Schedule line items are not provided for unusual or infrequently occurring account types. Data relating to such items, however, will be reflected in relevant totals included in the Financial Data Schedule.

III. Matters Applicable to Investment Management Filers

A. Technical Revisions to Rule 483(e)

The Commission is amending Rule 483(e) to correct a typographical error in the Investment Company Release and to conform the Financial Data Schedule items to revised form requirements adopted by the Commission and changes in the requirements for preparation of financial statements under generally accepted accounting principles. In addition, the Commission is amending Rule 483(e) to provide specifically that, if an item is inappropriate or immaterial in the underlying financial statements, a filer must place a "0" (zero) next to the appropriate tag in the Financial Data Schedule.³⁶

B. Technical Revisions to Form U-13-60

The Commission is amending Form U-13-60 to correct a typographical error in the Public Utility Release.

IV. Statutory Basis

The amendments to Item 601(c) of Regulations S-B and S-K are promulgated pursuant to Securities Act sections 6, 7, 8, 10 and 19 and Schedule A; Exchange Act sections 3, 9, 10, 12, 13, 14, 15, 23 and 35A; 1935 Act section 20 and Investment Company Act of 1940 sections 8, 30, 31 and 38. The amendments to Rule 483(e) under the Securities Act are adopted under:

³⁵ EDGARLink version 3.5 includes a facility to aid filers in the construction of Financial Data Schedules. Filers will be prompted to insert figures following fixed tag names that correspond to the various schedule items.

³⁶ See new paragraph (e)(3)(iii) of Rule 483. See also *supra* Section II.A.2 of this Release.

Securities Act sections 2, 6, 7, 8, 10 and 19(a); Exchange Act sections 3, 12, 13, 14, 15, 23 and 35A; and Investment Company Act sections 8, 30, 31 and 38. The amendments to 1935 Act Form U-13-60 are being adopted under sections 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the 1935 Act.

List of Subjects in 17 CFR Parts 228, 229, 230 and 259

Holding companies; Investment Companies; Reporting and recordkeeping requirements; Securities.

Text of the Amendments

For the reasons set forth above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. In § 228.601, by revising paragraph (c)(1)(ii) and by adding paragraph (c)(2)(iv) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(c) *Financial Data Schedule.*—(1) *General.* (i) * * *

(ii) Any electronic filing that includes financial statements of the registrant for a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule containing financial information for such fiscal year or interim year to date periods, or both.

Note: Financial Data Schedules are not required in connection with annual reports on Form 11-K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iv) Except as otherwise provided in the EDGAR Filer Manual, a response is required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use the value "0" (zero) in response to that item.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

4. In § 229.601, by revising paragraphs (c)(1)(ii) and by adding paragraph (c)(2)(iv) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(c) *Financial Data Schedule.*—(1) *General.* (i) * * *

(ii) Any electronic filing that includes financial statements of the registrant for a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule containing financial information for such fiscal year or interim year to date periods, or both.

Note: Financial Data Schedules are not required in connection with annual reports on Form 11-K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iv) Except as otherwise provided in the EDGAR Filer Manual, a response is required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use the value "0" (zero) in response to that item.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

6. In § 230.483, by adding paragraph (e)(3)(iii) and by revising paragraph (e)(4) to read as follows:

§ 230.483 Exhibits for certain registration statements, financial data schedule.

- (e) *Financial data schedule.* * * *
- (3) *Format and Presentation of Schedule.* * * *
- (iii) Except as otherwise provided in the EDGAR Filer Manual, a response is

required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use

the value "0" (zero) in response to that item.

(4) *Contents of Financial Data Schedule.* The Schedule shall set forth the financial information and other data specified below that are applicable to the registrant.

ARTICLE 6 OF REGULATION S-X

| Item No. | Item description |
|------------|--|
| 6-03 | Investments—cost. |
| 6-04-4 | Investments. |
| 6-04-6 | Receivables. |
| 6-04-8 | Other assets. |
| 6-04-9 | Balancing amount to total assets. |
| 6-04-9 | Total assets. |
| 6-04-10 | Accounts payable for securities. |
| 6-04-13 | Senior long-term debt. |
| 6-04-13 | Balancing amount to total liabilities. |
| 6-04-14 | Total liabilities. |
| 6-04-16 | Senior equity securities. |
| 6-04-16 | Paid-in-capital—common shareholders. |
| 6-04-16 | Number of shares or units—current period. |
| 6-04-16 | Number of shares or units—prior period. |
| 6-04-17(a) | Accumulated undistributed net investment income (current year). |
| 6-04-17(b) | Overdistribution of net investment income. |
| 6-04-17(b) | Accumulated undistributed net realized gains (losses). |
| 6-04-17(b) | Overdistribution of realized gains. |
| 6-04-17(c) | Accumulated net unrealized appreciation (depreciation). |
| 6-04-19 | Net assets. |
| 6-07-1(a) | Dividend income. |
| 6-07-1(b) | Interest income. |
| 6-07-1(c) | Other income. |
| 6-07-2 | Expenses—net. |
| 6-07-6 | Net investment income (loss). |
| 6-07-7(a) | Realized gains (losses) on investments. |
| 6-07-7(d) | Net increase (decrease) in appreciation (depreciation). |
| 6-07-9 | Net increase (decrease) in net assets resulting from operations. |
| 6-09-2 | Net equalization charges and credits. |
| 6-09-3(a) | Distributions from net investment income. |
| 6-09-3(b) | Distributions from realized gains. |
| 6-09-3(c) | Distributions from other sources. |
| 6-09-4(b) | Number of shares sold. |
| 6-09-4(b) | Number of shares redeemed. |
| 6-09-4(b) | Number of shares issued—reinvestment. |
| 6-09-5 | Total increase (decrease). |
| 6-09-7 | Accumulated undistributed net investment income (prior year). |
| 6-04-17(b) | Accumulated undistributed net realized gains (prior year). |
| 6-04-17(b) | Overdistribution of net investment income (prior year). |
| 6-04-17(b) | Overdistribution of net realized gains (prior year). |

Form N-SAR

| | |
|-----|-------------------------|
| 72F | Gross advisory fees. |
| 72P | Interest Expense. |
| 72X | Total expenses (gross). |
| 75 | Average net assets. |

Form N-1A

| | |
|------|--|
| 3(a) | Net asset value per share—beginning of period. |
| 3(a) | Net investment income (loss) per share. |
| 3(a) | Net realized and unrealized gain (loss) per share. |
| 3(a) | Dividends per share from net investment income. |
| 3(a) | Distributions per share from realized gains. |
| 3(a) | Per share returns of capital and distributions from other sources. |
| 3(a) | Net asset value per share—end of period. |
| 3(a) | Ratio of expenses to average net assets. |
| 3(b) | Average debt outstanding during period. |
| 3(b) | Average debt outstanding per share. |

**PART 259—FORMS PRESCRIBED
UNDER THE PUBLIC UTILITY
HOLDING COMPANY ACT OF 1935**

7. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

Note: The text of the following form and the amendment will not appear in the Code of Federal Regulations.

8. In Form U-13-60 (referenced in § 259.313), by revising the item numbers and caption headings in Schedule XIX to read as follows:

INSTRUCTIONS AND FORM—FORM U-13-60 ANNUAL REPORT FOR MUTUAL AND SUBSIDIARY SERVICE COMPANIES

| Item No. | Caption heading |
|--------------|---|
| Schedule XIX | Financial data schedule |
| 1 | Net Service Company Property. |
| 2 | Total Investments. |
| 3 | Total Current and Accrued Assets. |
| 4 | Total Deferred Debits. |
| 5 | Balancing Amount For Total Assets and Other Debits. |
| 6 | Total Assets and Other Debits. |
| 7 | Total Proprietary Capital. |
| 8 | Total Long-Term Debt. |
| 9 | Notes Payable. |
| 10 | Notes Payable to Associate Companies. |
| 11 | Balancing Amount For Total Current and Accrued Liabilities. |
| 12 | Total Deferred Credits. |
| 13 | Accumulated Deferred Income Taxes. |
| 14 | Total Liabilities and Proprietary Capital. |
| 15 | Services Rendered to Associate Companies. |
| 16 | Services Rendered to Nonassociate Companies. |
| 17 | Miscellaneous Income or Loss. |
| 18 | Total Income. |
| 19 | Salaries and Wages |
| 20 | Employee Pensions and Benefits. |
| 21 | Balancing Amount For Total Expenses. |
| 22 | Total Expenses. |
| 23 | Net Income (Loss). |
| 24 | Total Expenses (Direct Costs). |
| 25 | Total Expenses (Indirect Costs). |
| 26 | Total Expenses (Total). |
| 27 | Number Of Personnel End Of Year. |

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17102 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE
COMMISSION**

17 CFR Part 232

[Release Nos. 33-7073; 34-34331; 35-26080; 39-2320; IC-20389]

RIN 3235-AG10

**Adoption of Updated EDGAR Filer
Manual**

AGENCY: Securities and Exchange
Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer

Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to Regulation S-T will be effective on September 1, 1994. The new edition of the EDGAR Filer Manual (EDGAR Release 3.5) will be effective on September 1, 1994. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of September 1, 1994.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942-8800; in the Division of Corporation Finance, Barbara C. Jacobs or James R. Budge at (202) 942-2910; in the Division of Investment Management, Anthony A. Vertuno at (202) 942-0591.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer

Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.¹ Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.² Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.³ The most

¹ The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. See Release No. 33-6986 (April 1, 1993) (58 FR 18638).

² See Rule 301 of Regulation S-T (17 CFR 232.301).

³ See Release Nos. 33-6977 (February 23, 1993) (58 FR 14628), IC-19284 (February 23, 1993) (58 FR 14848), 35-25746 (February 23, 1993) (58 FR

important revisions in the Filer Manual relate to the preparation and submission of Financial Data Schedules, which must be included with applicable filings on or after September 1, 1994.⁴ Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The revised Filer Manual and the amendment to Rule 301 will be effective on September 1, 1994.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638-8241.

Statutory Basis

The amendment to Regulation S-T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁵

14999), and 33-6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing.

⁴ See Release No. 33-7072, published concurrently, for further information regarding the implementation of Financial Data Schedules.

⁵ 15 U.S.C. 77f, 77g, 77h, 77j and 774a).

Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,⁶ Section 20 of the Public Utility Holding Company Act of 1935,⁷ Section 319 of the Trust Indenture Act of 1939,⁸ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.⁹

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment Companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 7811(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR

⁶ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 7811.

⁷ 15 U.S.C. 79t.

⁸ 15 U.S.C. 77sss.

⁹ 15 U.S.C. 80a-8, 80a-29, 80a-30 and 80a-37.

Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The August 1994 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 3.5)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638-8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848-8199.

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17103 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260, 269, 270 and 274

[Release Nos. 33-7074; 34-34332; 35-26081; 39-2321; IC-20390. File No. S7-20-94]

RIN 3235-AG10

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing minor and technical changes to its rules governing electronic filing on the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, and also is providing guidance on avoiding errors in the EDGAR filing process.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-20-94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: For Corporation Finance filings, Barbara C. Jacobs, James R. Budge or Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3-12, 450 Fifth Street, NW., Washington, DC 20549, at (202) 942-2910. For Division of Investment Management filings, Anthony A. Vertuno or Ruth Armfield Sanders, EDGAR IM Project, at (202) 942-0591. For filings under the Public Utility Holding Company Act of 1935, Richard T. Miller, Office of Public Utility Regulation, at (202) 942-0545.

SUPPLEMENTARY INFORMATION: The Commission today requests public comment on a number of minor and technical changes to the rules governing the submission of documents filed via the EDGAR system. These proposals reflect the experience of the staff since the rules implementing the EDGAR system were adopted in February 1993.¹

The changes, if adopted, will affect Regulation S-B,² Regulation S-K,³ the Rules and Regulations⁴ under the Securities Act of 1933 ("Securities Act"),⁵ Regulation S-T, the Forms under the Securities Act,⁶ the Rules, Regulations and Schedules⁷ under the Securities Exchange Act of 1934 ("Exchange Act"),⁸ the Forms under the Exchange Act,⁹ the Rules¹⁰ and Forms¹¹ under the Public Utility Holding Company Act of 1935 ("Public Utility Act"),¹² the Rules¹³ under the Trust Indenture Act of 1939 ("Trust Indenture Act")¹⁴, and the Rules¹⁴, and the Rules¹⁵ under the Investment Company Act of 1940 ("Investment Company Act").¹⁶ Guidance also is provided in Part III of this Release to assist in preventing errors when making EDGAR filings.

I. Background and Proposed Amendments

In February 1993, the Commission adopted Regulation S-T, governing mandated electronic filing, and a number of amendments to its rules, schedules and forms, to begin implementation of the EDGAR system, whereby most registrants whose filings are processed by the Division of Corporation Finance and the Division of Investment Management will make their submissions electronically. Phase-in to mandated electronic filing began on April 26, 1993, the date on which the interim rules became effective.¹⁷ On December 6, 1993, the last group of

Corporation Finance); Release No. IC-19284 (February 23, 1993) (58 FR 14848) (relating to rules specific to investment companies and institutional investment managers); Release No. 35-25746 (February 23, 1993) (58 FR 14999) (relating to rules specific to public utility holding companies); and Release No. 33-6980 (February 23, 1993) (58 FR 15009) (instructions for filing fees).

² 17 CFR part 228.

³ 17 CFR part 229.

⁴ 17 CFR part 230.

⁵ 15 U.S.C. 77a *et seq.*

⁶ 17 CFR part 239.

⁷ 17 CFR part 240.

⁸ 15 U.S.C. 78a *et seq.*

⁹ 17 CFR part 249.

¹⁰ 17 CFR part 250.

¹¹ 17 CFR part 259.

¹² 15 U.S.C. 79a *et seq.*

¹³ 17 CFR part 260.

¹⁴ 15 U.S.C. 77aaa *et seq.*

¹⁵ 17 CFR part 270.

¹⁶ 15 U.S.C. 80a-1 *et seq.*

¹⁷ The Financial Data Schedule provisions will be implemented on September 1, 1994. See Release No. 33-7072 (July 8, 1994). Financial Data Schedules are exhibits that contain financial information extracted or derived from financial data within a filing that is marked to allow electronic manipulation of such information. For a complete discussion of Financial Data Schedules, see Release No. 33-7072, Section IV.D of Release No. 33-6977. Section IV.D of Release No. IC-19284, and Section IV of Release No. 35-25746.

approximately 3,400 filers chosen to participate in a Congressionally-mandated significant test group was phased in, commencing a six-month hiatus from further phase-in. As of June 17, 1994, over 59,000 live filings and 48,000 test filings had been submitted on the EDGAR system. Both system development and staff training on EDGAR are continuing.

The electronic filing system currently is being evaluated to determine whether the Commission should, as planned, make the interim rules final and applicable to all registrants, including those in the significant test group, and proceed with the phase-in process. This determination is anticipated to be announced by the Commission later this summer.

The staff has gained substantial experience with the EDGAR system and its implementing regulations since the first mandated filings were made in April 1993 and has determined that certain refinements to the rules would be desirable. Most of the proposals are minor amendments that would affect substantive filing requirements (several of which represent codifications of rule interpretations), or that would clarify language in the current requirements in an effort to enhance filers' understanding of their electronic filing obligations. Others consist of matters involving Commission procedures and practices as well as technical corrections to the rules adopted previously. The specific proposals are set forth below.

Several of the following proposals would change in minor ways the manner in which an electronic filer complies with its filing obligations with the Commission. Others would codify interpretations of current EDGAR rules and otherwise clarify existing filing requirements.¹⁸ Comment is solicited on the need for each proposed change and whether there are any alternatives to each proposal.

A. Changes to Regulation S-T

Regulation S-T, which controls the preparation and submission of electronic filings to the Commission, would be amended as described below.

• **Rule 12(b) of Regulation S-T.** Regulation S-T would be amended to codify that electronic filers are permitted to submit filings on diskette and magnetic tape to the Commission's Operations Center in Alexandria, Virginia. Filers who file on diskette and

¹⁸ A number of proposals involving incorrect cross-references, typographical errors and other technical changes are not discussed individually here but are set forth in the text of the proposed rules, below.

¹ The EDGAR rules were adopted in four releases: Release No. 33-6977 (February 23, 1993) (58 FR 14628) (containing a general description of the EDGAR system, Regulation S-T (the electronic filing regulation) (17 CFR part 232), and the rules applicable to filings processed by the Division of

magnetic tape may prefer to send them directly to the Operations Center to expedite acceptance processing of their submissions, since diskettes and tapes sent to the Commission's headquarters must be forwarded to the Operations Center for processing.

• *Proposed Rule 13(d) of Regulation S-T.* Exchange Act Rule 14a-6(b) provides that definitive proxy statements may be "filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holder."¹⁹ Similar provisions are found in other Commission rules.²⁰ Although electronic filers could mail diskettes or magnetic tapes, those choosing to file by direct transmission do not have this option. Instead, they must file before or on the date the paper counterpart is mailed to investors; such filing date must be a business day of the Commission. Paper filers (or those using diskettes or magnetic tape) have more flexibility, because not only can they satisfy their filing obligations by putting copies in the mail to the Commission at the time of distribution (thus allowing the actual filing to occur after the distribution), they also can satisfy their filing obligation by mailing on Saturday or Sunday, an option not available to direct transmission filers. To place electronic filers on the same footing with paper filers with respect to these filing requirements, a new provision allowing electronic filers to file their definitive proxy materials (or other documents, as applicable) before or on the date the paper distribution is made, or if the distribution does not occur on a business day of the Commission, as soon as practicable on the next business day.

• *Rule 101(a)(1)(i) of Regulation S-T.* The Regulation S-T list of mandated electronic submissions would be revised to specifically include prospectuses filed under the Securities Act.²¹

¹⁹ 17 CFR 240.14a-6(b).

²⁰ See, 17 CFR 240.14a-6(c) (relating to personal soliciting materials); 17 CFR 240.14a-11(c) (relating to information delivered to investors prior to sending a required proxy statement in an election contest); 17 CFR 240.14a-12(b) (relating to delivery of soliciting materials prior to sending a required proxy statement in circumstances other than election contests); 17 CFR 240.14c-5(b) (relating to definitive information statements); and 17 CFR 240.16b-3(b)(2)(ii) (relating to employee benefit plan information to be furnished to investors prior to a vote on changes to the plan).

²¹ This would make it clear that prospectus filings pursuant to Securities Act Rules 424 (17 CFR 230.424) and 497 (17 CFR 230.497) are to be filed electronically. For investment company filings, Rule 101(a)(1)(i) would include statements of additional information and, where required to be filed with the Commission, prospectuses submitted

• *Rule 101(a)(1)(iii) of Regulation S-T.* The Regulation S-T list of mandated electronic submissions would be revised to specifically exclude Form 13F²² from the list of mandated electronic filings, consistent with other rule provisions and codifying current staff interpretations.²³

• *Proposed Rule 101(b)(3) of Regulation S-T.* Employee benefit plans would be permitted to file their entire annual report on Form 11-K²⁴ in paper or in electronic format.²⁵ Currently, Regulation S-T requires Forms 11-K to be filed electronically,²⁶ but registrants may choose to file any financial statements and schedules prepared in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 ("ERISA")²⁷ in paper under cover of Form SE.²⁸ While this proposal would allow all Forms 11-K to be filed in paper, comment is requested as to whether this option should be available only to plans including ERISA financial statements and schedules. If commenters believe that Form 11-K should remain a required electronic filing, comment is solicited on whether the rules and forms should be amended to specify that only ERISA financial documents prepared on pre-printed forms filed with the Department of Labor or the Internal Revenue Service should be allowed to be filed under cover of Form SE. This would more clearly reflect the Commission's original intention in adopting the Form SE procedure applicable to these reports, which was to provide filers a way to avoid undue burden and expense in converting documents filed with other government agencies into a format compatible with EDGAR. If registrants prepare financial statements and schedules in a format readily convertible to a format acceptable to EDGAR, arguably such financial

under Securities Act Rule 492 (17 CFR 230.492). See proposed amendments to paragraphs (a) and (e) of Rule 902 of Regulation S-T, which would codify a limited exception to the electronic filing requirements for Securities Act Rule 492 filings.

²² 17 CFR 249.325.

²³ See Rule 903(a)(3) of Regulation S-T (17 CFR 232.903(a)(3)). See also Section V. of Release No. IC-19284.

²⁴ 17 CFR 249.311.

²⁵ Of course, the same would be true for employee benefit plan annual reports filed as amendments to Forms 10-K (17 CFR 249.310) or 10-KSB (17 CFR 249.310b), as permitted by Exchange Act Rule 15d-21 (17 CFR 240.15d-21).

²⁶ Rule 101(a)(1)(iii) of Regulation S-T (17 CFR 232.101(a)(1)(iii)).

²⁷ Pub. L. No. 93-406 (codified at 29 U.S.C. 1001 et seq.).

²⁸ 17 CFR 232.311(c) and General Instruction E of Form 11-K. Form SE is found at 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

information should be included in electronic format, even if prepared in accordance with the financial reporting requirements of ERISA.

• *Proposed Rules 101(b)(4) and (5) of Regulation S-T.* The following filings would be explicitly included among those allowed to be submitted in electronic format, consistent with other rule provisions and codifying current staff interpretations: Reports on Form 13F, filed with the Commission by institutional investment managers as required by section 13(f)(1)²⁹ of, and Rule 13f-1³⁰ under, the Exchange Act, on magnetic tape in the format described in Form 13F-E;³¹ and

Exhibits to Form N-SAR,³² except that the Financial Data Schedule required under Rule 483 under the Securities Act³³ must be filed in electronic format.³⁴

• *Rule 101(c) of Regulation S-T.* The following filings would be required to be filed in paper rather than electronically, codifying current staff interpretations:

Form F-6, for registration under the Securities Act of depositary shares represented by American Depositary Receipts.³⁵ Comment is solicited as to whether Form F-6 should be an optional electronic filing rather than one required to be filed in paper;

Annual reports filed with the Commission by indenture trustees pursuant to the Trust Indenture Act;³⁶ Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act;³⁷ and,

Information relating to employee benefit plan transactions required to be filed pursuant to Rule 16b-3(b)(2)(ii)³⁸ under section 16 of the Exchange Act.³⁹

²⁹ 15 U.S.C. 78m(f)(1).

³⁰ 17 CFR 240.13f-1.

³¹ 17 CFR 249.326. See Rule 903(a)(3) of Regulation S-T (17 CFR 232.903(a)(3)).

³² 17 CFR 274.101.

³³ 17 CFR 230.483.

³⁴ See Rule 903(a)(1) of Regulation S-T (17 CFR 232.903(a)(1)).

³⁵ 17 CFR 239.36. Proposed Rule 101(c)(18) of Regulation S-T.

³⁶ See section 313(d) of the Trust Indenture Act (15 U.S.C. 77mm(d)). Proposed Rule 101(c)(19) of Regulation S-T. Section 313 of the Trust Indenture Act requires indenture trustees to mail to all registered holders of indenture securities at stated intervals no less than 12 months a brief report with respect to any of several enumerated events set forth in the statute. Indenture trustees are required to file a copy of such reports with each stock exchange upon which the indenture securities are listed, and also with the Commission, at the time the report is mailed to security holders.

³⁷ 15 U.S.C. 78(h). Proposed Rule 101(c)(20) of Regulation S-T.

³⁸ 17 CFR 240.16b-3(b)(2)(ii).

³⁹ 15 U.S.C. 78p. Proposed Rule 101(c)(21) of Regulation S-T. Rule 16b-3(b)(ii) requires an

Continued

• *Rule 101(c)(2) of Regulation S-T.* The rules governing the submission of supplemental information would be revised to specify that such information should be furnished in paper only if the submitter requests that the information be returned after staff review and where the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C or Rule 12b-4 of Regulation 12B.⁴⁰ This proposal would not affect the current provision requiring that supplemental information submitted in connection with a confidential treatment request be submitted in paper.

• *Rule 101(c)(3) of Regulation S-T.* The provision exempting shareholder proposal submissions from electronic filing would be clarified to state that all correspondence relating to shareholder proposals submitted to the staff pursuant to Exchange Act Rule 14a-8⁴¹ should be filed in paper.

• *Rule 101(c)(8) of Regulation S-T.* A reference to the Commission's regional offices would be amended to reflect current nomenclature.

• *Rule 101(c)(10) of Regulation S-T.* The exclusion from electronic filing afforded to promotional material and sales literature would be expanded to include all such materials supplementally furnished to the staff of the Division of Corporation Finance. The exclusion is currently limited to materials submitted pursuant to Securities Act Industry Guide 5.⁴² The exclusion also would be expanded to specify the exclusion of sales literature submitted under Rule 24b-2 of the Investment Company Act,⁴³ consistent with that rule.⁴⁴

• *Rule 102(a) of Regulation S-T.* Current Rule 102(a) of Regulation S-T states that "[e]xhibits to an electronic filing that have been filed previously in paper may, but shall not be required to be, restated in electronic format."⁴⁵

issuer to furnish in writing to the holders of record of the securities entitled to vote for an employee benefit plan, and file with the Commission, substantially the same information concerning the plan that would be required by the rules and regulations in effect under section 14(a) of the Exchange Act (15 U.S.C. 78n(a)) at the time, where consents are not solicited in a manner that is substantially in compliance with the Commission's proxy rules.

⁴⁰ 17 CFR 230.418(b) and 17 CFR 240.12b-4, respectively. These rules permit the return of supplemental information where the request for the return of the information is made at the time of submission and where such return is consistent with the protection of investors and with the provisions of the Freedom of Information Act (5 U.S.C. 552).

⁴¹ 17 CFR 240.14a-8.

⁴² 17 CFR 229.801(e).

⁴³ 17 CFR 270.24b-2.

⁴⁴ See Section III.C of Release No. IC-19284.

⁴⁵ 17 CFR 232.102(a).

That language would be clarified under the proposals by stating that exhibits incorporated by reference from filings previously made in paper (either before becoming subject to mandated electronic filing requirements or pursuant to a hardship exemption) may, but are not required to be, refiled in electronic format.⁴⁶

• *Rule 102(e) of Regulation S-T.* Current Rule 102(e) of Regulation S-T would be amended to clarify the requirement that, after a date three years after its phase-in date, a registered investment company or business development company may incorporate by reference only documents filed electronically. Specifically, the proposals would make it clear that the exemption in the rule for documents filed in paper pursuant to a hardship exemption would be applicable only if any required confirming copy has been submitted. The proposals would also provide that an exhibit, filed in paper, to Form N-SAR⁴⁷ may be incorporated by reference into another Form N-SAR filing.

• *Rule 302(b) of Regulation S-T.* The requirement to retain a manually signed signature page or other signature authentication document would be clarified to specifically require a manual signature with respect to each signatory to the electronic filing.

• *Proposed Rule 302(c) of Regulation S-T.* Commission rules no longer would require manual signatures on the paper copies of electronic filings required to be furnished by registrants to national securities exchanges and national securities associations.⁴⁸

• *Proposed Rules 303(a)(3) and (4) of Regulation S-T.* The following would be added to the list of documents which may not be incorporated by reference, consistent with other rule provisions⁴⁹ and codifying current staff interpretations:

For a registered investment company or a business development company making electronic submissions more than three years after its phase-in date, a document which has not been filed in electronic format, unless the document has been filed in paper pursuant to a

hardship exemption and any required confirming copy has been submitted or the document is an exhibit, filed in paper, to Form N-SAR, and is being incorporated by reference into another Form N-SAR filing.

For investment company filings, any Financial Data Schedule required under Securities Act Rule 483.⁵⁰

• *Rule 304(a) of Regulation S-T.* Descriptions of omitted graphic and image material would be allowed to be placed either in the text of an electronic filing where the omission occurs or in an appendix thereto, at the option of the filer. Registrants no longer would be required to list all omitted material in an appendix to the filing. Descriptions could be provided in narrative or tabular format, as appropriate.

• *Rule 304(d) of Regulation S-T.* Electronic filers subject to the requirement to furnish a stock performance comparison graph in their proxy statements pursuant to Item 402(I) of Regulation S-K⁵¹ would be required to satisfy that obligation in their electronic filing in the same manner as applicable to other types of omitted charts or graphs, that is, by describing the omitted performance graph by presenting the graph's data points in tabular form.⁵² The requirement to furnish a paper copy of the performance graph to the Branch Chief in the Division of Corporation Finance responsible for the review of the registrant's filings would be retained, in order to allow the staff to continue monitoring information as it is distributed to investors.⁵³ The current option to file the graph in paper under cover of Form SE⁵⁴ would be eliminated, as it can result in an electronic presentation that is incomplete to the reader without reference to the Form SE.

• *Proposed Rule 311(b) of Regulation S-T.* The rule governing filing of exhibits in paper under cover of Form SE would be amended to provide that exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act⁵⁵ may be filed in paper under cover of Form SE where such

⁵⁰ 17 CFR 230.483.

⁵¹ 17 CFR 229.402(I).

⁵² See letter from Mauri L. Osheroff, Associate Director, Regulatory Policy, Division of Corporation Finance, dated November 16, 1993, for an example of how the performance graph may be presented in tabular form in the proxy statement. This letter is available through the EDGAR Bulletin Board.

⁵³ The current requirement is found in Rule 304(d)(2) of Regulation S-T (17 CFR 232.304(d)(2)). It is proposed to be incorporated into paragraph (d) of that section.

⁵⁴ Rule 304(d)(1) of Regulation S-T (17 CFR 232.304(d)(1)).

⁵⁵ 15 U.S.C. 78m and 78n(d).

⁴⁶ See discussion of proposed Rule 311(b) of Regulation S-T, below, for treatment of exhibits to schedules filed pursuant to section 13 or 14(d) of the Exchange Act (15 U.S.C. 78(m) and (n)(d)).

⁴⁷ 17 CFR 274.101.

⁴⁸ For example, Exchange Act Rule 12b-11 (17 CFR 240.12b-11) requires that a manually signed copy of Exchange Act reports be filed with each exchange upon which the registrant's securities are registered. This manual signature requirement would be superseded by the proposed Regulation S-T requirement for electronically filed reports.

⁴⁹ See Rule 102(e) of Regulation S-T (17 CFR 232.102(e)) and proposed revisions thereto.

exhibits previously were filed in paper (either before becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. Currently, such documents must be filed in electronic format along with the schedule to which they relate, absent a hardship exemption.⁵⁶

• *Proposed Rule 311(c) of Regulation S-T.* Insurance companies that file information included in their annual statements provided to state insurance regulators (i.e., Schedules O and P)⁵⁷ as exhibits to their Forms 10-K would be allowed to file such documents in paper under cover of Form SE because of difficulties in translating them into a format compatible with EDGAR.⁵⁸

• *Rule 311(d) of Regulation S-T.* The proposed revisions would codify the staff's interpretation that a Financial Data Schedule is not among those exhibits to Form N-SAR that an investment company may submit in paper under cover of Form SE.

• *Rules 901(a) and 902(a) of Regulation S-T.* A note would be added to Rules 901 and 902 of Regulation S-T to make it clear that registrants become subject to mandated electronic filing upon their phase-in date and all subsequent filings must be made electronically, even filings made with respect to transactions that commenced prior to, and are in process, at the time a company is phased in.⁵⁹ The proposed note to Rule 902(a) would clarify the limited exception for definitive filings by investment companies under Rule 497 under the Securities Act.

• *Rule 901(c)(4) of Regulation S-T.* A note would be added to Rule 901 of Regulation S-T explaining that while companies subject to mandated electronic filing generally may choose to

electronically file Schedules 13D⁶⁰ and 13G⁶¹ with respect to a paper filer, domestic electronic filers are restricted from doing so with respect to foreign private issuers because EDGAR currently requires an IRS (tax identification number) to be inserted for the subject company as a prerequisite to acceptance of the filing. It is anticipated that the EDGAR system will be modified in the future to process such filings, but until such time, they must be filed in paper.

• *Rules 901(d) and 902(g) of Regulation S-T.* The statutory requirement⁶² to furnish the Commission with a paper copy of each electronic filing for a period of one year following a registrant's phase-in date would be modified to require new electronic filers to furnish to the Commission one paper copy of their first electronic filing only.⁶³ Filers have characterized the requirement as burdensome, and the Commission believes the need for a paper copy could be reduced to a minimum. This change will be effected only after the Commission makes a finding, as required by statute, that the EDGAR system is reliable, provides a suitable alternative to written and printed filings, and provides information as effectively and efficiently for filers, users and disseminators as the written or printed counterpart.⁶⁴ Comment also is solicited on whether the current due date for receipt of the paper copy (six business days after the electronic filing is made) should be extended, for example to ten or 15 business days after the date of electronic filing.

• *Rule 902(e) of Regulation S-T.* The proposed amendments would clarify the limited exception, currently contained in Rule 902(e) of Regulation S-T⁶⁵ for definitive filings by investment companies under Rule 497 of the Securities Act, to mandated electronic filing.

B. Changes to Item 601 of Regulations S-K and S-B

The following proposals would amend Item 601 of Regulations S-K and S-B, which govern the submission of exhibits, including the new Financial Data Schedule.

• The exhibit tables of Regulations S-K and S-B would be amended to indicate that charter documents are to be filed with quarterly reports on Forms 10-Q⁶⁶ and 10-QSB⁶⁷ pursuant to paragraph (b)(3) of Regulations S-K⁶⁸ and S-B⁶⁹ if such documents had been amended during the reporting period, thereby reflecting the requirements of Item 601(a)(4) of Regulations S-B and S-K.⁷⁰

• Item 601 of Regulations S-K and S-B would be amended to state that if an instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate must be reproduced in an electronic filing, together with a description of any other graphic and image material appearing on the certificate.⁷¹

• Item 601(b)(10) of Regulations S-K and S-B would be amended to clarify that a material contract that becomes effective or that is executed during the reporting period reflected by an annual or quarterly report must be filed as an exhibit to the periodic report filed for the corresponding period.⁷²

• Applications filed for the purpose of determining the eligibility of a person designated as trustee for debt securities registered under the Securities Act that are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, pursuant to section 305(b)(2) of the Trust Indenture Act,⁷³ would be required to be filed separately in the manner prescribed by the EDGAR Filer Manual.⁷⁴ Currently, such filings must be filed as an exhibit to a post-effective amendment to the registration statement to which the application relates. This

⁵⁶ For example, where an issuer delivers its Form 10-K with its Schedule 13E-4 (17 CFR 240.13e-101) in connection with its issuer tender offer proposal, the Form 10-K must be filed as an exhibit to the schedule, notwithstanding the fact that it previously had been filed with the Commission. See Item 9 of Schedule 13E-4. Under current rules, the Form 10-K would be required to be filed electronically as an exhibit, even if it originally had been filed in paper. Under the proposed rules, the exhibit would continue to be required, but it could be filed in paper under cover of Form SE if it originally had been filed in paper.

⁵⁷ See Item 601(b)(28) of Regulations S-K and S-B (17 CFR 229.601(b)(28) and 228.601(b)(28), respectively).

⁵⁸ Since April 1993, the staff, via delegated authority, has granted requests for continuing hardship exemptions for this type of document for a period of one year from the date of the grant of the exemption.

⁵⁹ Of course, under Rule 101(a)(1)(iii) a registrant may file its Form 10-K or Form 10-KSB in paper if it is the first document filed with the Commission following its phase-in date.

⁶⁰ 17 CFR 240.13d-101.

⁶¹ 17 CFR 240.13d-102.

⁶² See Section 35A(d)(3) of the Exchange Act (15 U.S.C. 78j(d)(3)).

⁶³ The current requirement to place a legend on the top of the paper copy would be modified and retained; the rules also would be modified to require the copy to be sent to the Commission's Operations Center in Alexandria, Virginia, as is currently the practice. If these provisions are adopted, all filers that have submitted a paper copy of at least one electronic filing would be relieved of any obligation to furnish such copies after the effective date of the amendment.

⁶⁴ See Exchange Act section 35A(d)(3)(B) (15 U.S.C. 78j(d)(3)(B)).

⁶⁵ 17 CFR 232.902(e).

⁶⁶ 17 CFR 249.308a.

⁶⁷ 17 CFR 249.308b.

⁶⁸ 17 CFR 229.601(b)(3).

⁶⁹ 17 CFR 228.601(b)(3).

⁷⁰ 17 CFR 228.601(a)(4) and 17 CFR 229.601(a)(4). Proposed revisions to the exhibit table of Item 601 of Regulations S-K and S-B.

⁷¹ Proposed instruction to Item 601(b)(4) of Regulations S-K and S-B [17 CFR 229.601(b)(4) and 17 CFR 228.601(b)(4), respectively].

⁷² Proposed Instruction 2 to Item 601(b)(10) to Regulations S-K and S-B (17 CFR 229.601(b)(10) and 17 CFR 228.601(b)(10), respectively).

⁷³ 15 U.S.C. 77eee(b)(2).

⁷⁴ Proposed revision of Item 601(b)(25)(ii) of Regulations S-K and S-B (17 CFR 229.601(b)(25)(ii) and 17 CFR 228.601(b)(25)(ii), respectively). A new electronic form type 305B2 will be added in future EDGAR programming to accommodate this type of filing.

change is intended to provide expedited processing of such filings, inasmuch as such filings could become automatically effective without staff intervention, a process not available with post-effective amendments. Of course, the general procedure requiring all other trust indenture eligibility applications on Form T-1 and T-2⁷⁵ to be submitted as an exhibit to the registration statement would remain intact.⁷⁶

- Item 601 also would be amended to clarify that earnings statements "made generally available" pursuant to § 11(a) of the Securities Act⁷⁷ should be filed as an exhibit to Exchange Act periodic reports only where the statement was made available using methods other than including the information in another filing with the Commission, as provided by Securities Act Rule.⁷⁸

- Financial Data Schedules would not be required to be filed in connection with registration statements on Form S-8⁷⁹ (for registration of securities issued pursuant to employee benefit plans), since updated financial information is rarely included in such filings.⁸⁰

- A note would be added to Item 601(c) of Regulations S-K and S-B, providing that the paper copy of an electronic filing sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S-T need not contain any Financial Data Schedule included in that filing. Similarly, registrants would not be required to furnish paper versions of their Financial Data Schedules with the paper copies sent to national securities exchanges and national securities associations pursuant to Commission rules.⁸¹ Both provisions are consistent with the Commission's position, also codified in the proposed note, that paper copies of the Schedule are not required with filings made in paper pursuant to a hardship exemption because the Schedule merely reflects information found elsewhere in the filing, and thus, it is only useful in electronic filings.⁸²

However, comment is solicited as to whether there would be some purpose served by requiring the provision of paper versions of the Financial Data Schedules to the national securities exchanges, national securities associations, their listed companies and the public and whether such a requirement should be adopted.

C. Changes to Securities Act Rule 483, Form S-6 and Investment Company Rule 20a-4

The following proposals would amend rules and forms under the Securities and Investment Company Acts in connection with Financial Data Schedule requirements:

- A note would be added to Securities Act Rule 483(e) indicating that paper copies of Financial Data Schedules are not required to be furnished to the Commission or to national securities exchanges or national securities associations.⁸³

- Form S-6⁸⁴ would be amended to make it clear that a Financial Data Schedule is required only upon the filing of an amendment to a registration statement on that form.

- Investment Company Act Rule 20a-4⁸⁵ would be amended to clarify that the Financial Data Schedule, required to be submitted by investment companies with certain proxy material, would be submitted as an exhibit.

D. Changes to Public Utility Act Rules and Forms

The following proposals would amend the Public Utility Act Rules and Forms:

- Forms U5B,⁸⁶ U5S,⁸⁷ and U-1⁸⁸ under the Public Utility Act would be amended to state that if an instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate must be reproduced in an electronic filing.⁸⁹

E. Other Changes

Other proposed amendments are listed below.

- Exchange Act Rule 12b-15⁹⁰ would be amended to specify the number of

copies required to be filed in connection with amendments to Exchange Act filings made in paper.

- An electronic filing provision of Regulation 13D relating to electronic amendments to Schedules 13D and 13G would be amended to track its parallel provision in Regulation S-T.⁹¹

- A note to Exchange Act Rule 14a-4⁹² would codify the Commission's position that proxy cards should be filed as appendices at the end of proxy statements filed in electronic format, and not as separate documents within the electronic submission.⁹³ In a similar vein, Instruction 3 to Item 10 of Schedule 14A⁹⁴ would instruct electronic filers to file employee benefit plan documents required to accompany the proxy statement as appendices to the proxy statement. As is currently true, filers would not be required to deliver the plan documents to shareholders unless they are a part of the proxy statement.

- Technical revisions would be made to the cover pages of proxy and information statements⁹⁵ to make them easier to understand and expedite processing. The rules would be revised to clarify that the cover page is for the use of the Commission and is not required to be distributed to security holders.⁹⁶ Further, a change would be made to Schedule 14A to ensure that the approximate date on which the proxy statement and form of proxy are first sent or given to security holders would be printed on the first page of the proxy statement sent to investors, and not on the cover sheet.⁹⁷

- The tender offer rules would be amended to clarify that tender offer periods are tolled because of failure to file required documents in electronic format only when the bidder is required to file electronically or, if applicable, after it has elected to do so by filing the Tender Offer Statement in electronic form.⁹⁸

⁷⁵ Proposed revision of Exchange Act Rule 13d-2(c) (17 CFR 240.13d-2(c)).

⁷⁶ 17 CFR 240.14a-4.

⁷⁷ See section IV.F.5 of Release No. 33-6977.

⁷⁸ 17 CFR 240.14a-101.

⁷⁹ For example, a box would be added for filers of definitive material to check if the fee had previously been paid with preliminary materials and a reference to Investment Company Act Rule 20a-1(c) (17 CFR 270.20a-1) would be added to the "Payment of Filing Fee" section, Schedule 14C, setting forth the requirements for information statements, is found at 17 CFR 240.14c-101.

⁸⁰ Proposed revisions to Rule 14a-6(m) (17 CFR 240.14a-6(m)) and Rule 14c-5(h) (17 CFR 240.14c-5(h)).

⁸¹ Proposed amendment to paragraph (b) of Item 1 of Schedule 14A.

⁸² Proposed revision of Rule 14e-1(e) (17 CFR 240.14e-1(e)). For example, if the bidder is an electronic filer and the target company is also an

⁷⁵ 17 CFR 269.1 and 17 CFR 269.2, respectively.

⁷⁶ See Item 601(b)(25)(ii) of Regulations S-K and S-B (17 CFR 229.601(b)(25)(ii) and 228.601(b)(25)(ii), respectively).

⁷⁷ 15 U.S.C. 77k(a).

⁷⁸ 17 CFR 230.158. Proposed revision of Item 601(b)(99)(iii) of Regulation S-K (17 CFR 229.601(b)(99)(iii)) and Item 601(b)(99)(ii) of Regulation S-B (17 CFR 228.601(b)(99)(ii)).

⁷⁹ 17 CFR 239.16b.

⁸⁰ Proposed revision of note to Item 601(c)(1) of Regulations S-K and S-B. This would be a revision to the note adopted in connection with the implementation of Financial Data Schedules, which indicates that no Financial Data Schedule is required for Form 11-K. See Release No. 33-7072.

⁸¹ Proposed note 2 to paragraph (c)(1) of Item 601 of Regulations S-K and S-B.

⁸² See n. 287 in Release No. 33-6977.

⁸³ Proposed note 2 to paragraph (e)(1) of Securities Act Rule 483. See proposed note 2 to Item 601(c) of Regulations S-K and S-B, discussed above.

⁸⁴ 17 CFR 239.16.

⁸⁵ 17 CFR 270.20a-4.

⁸⁶ 17 CFR 259.5b.

⁸⁷ 17 CFR 259.5s.

⁸⁸ 17 CFR 259.101.

⁸⁹ Proposed Instructions for Exhibits B to Forms U5B and U5S and Instruction A to Instructions as to Exhibits to Form U-1. This proposal parallels the proposed changes to Item 601(b)(4) of Regulations S-K and S-B, discussed above.

⁹⁰ 17 CFR 240.12b-15.

• The number of paper copies of Form SE⁹⁹ (for use with documents filed in paper pursuant to a hardship exemption or other specified purposes) and Form TH¹⁰⁰ (used in connection with paper filings pursuant to a temporary hardship exemption) required to be filed would be increased from three to four, to facilitate processing by the staff. As currently required, three paper copies of the exhibits or other documents submitted under cover of these forms would be required.

II. General Request for Comment

Comment is solicited with regard to each proposal respecting the viewpoints of both the filers and the users of information filed via EDGAR. Commenters should address any alternatives to these proposals they deem appropriate. Other suggestions relating to EDGAR and associated rules outside of these proposals will be considered in connection with the Commission's ongoing evaluation of the system. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.¹⁰¹ Comments should be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549, and should refer to File No. S7-20-94.

III. Common Mistakes Made by EDGAR Filers

Since the adoption of the interim rules in February 1993, the Commission staff has been working with electronic filers to help them satisfy their

electronic filing obligations. The staff has identified a number of items of information that have proven useful to electronic filers and should be conveyed to the electronic filing community at large. To that end, the staff has compiled the following list of suggestions to help electronic filers avoid some of the more common errors associated with electronic filing.

A. Review Documents in EDGAR Format and Use EDGARLink's Error Checking Features Prior to Filing

Filers should run their filing through EDGARLink's error checking process and review the entire document after conversion to electronic format, including the information in the submission and document headers before transmitting the filing to the Commission. Electronic filers that plan ahead and carefully error check and proofread documents prior to filing will generally have success in making their filings with the Commission. Some examples of errors that easily could have been avoided by error checking and reviewing the document prior to transmission are:

1. Inaccurate ASCII conversion resulting in table columns that do not line up correctly;¹⁰²
2. Including too many characters on a line;
3. Failure to place the text of the filing between the <TEXT> and </TEXT> tags, resulting in an accepted filing that appears to have no text (this usually occurs when the filer is not using EDGARLink to prepare the submission);
4. Filing draft versions of documents instead of the final version, as intended;
5. Including incorrect Central Index Key ("CIK")¹⁰³ and IRS identification numbers in the submission header, resulting either in the suspension of the filing, or in the case of filings using a subject company tagging scheme, in a filing being accepted with the wrong company being recorded as the subject company. Filers that hold more than

¹⁰²The EDGAR system requires all documents to be prepared in ASCII format. ASCII stands for "American Standard Code for Information Interchange," and represents letters, numbers, blank spaces, and a limited number of symbols. When properly translated to ASCII, word processing codes for features such as underlining and bold-face are removed and codes indicating indentation and tabbing are replaced by the appropriate number of spaces on a line. Improperly translated tables will not necessarily cause a filing to be suspended, but if the numbers within the column do not appear in their appropriate place within the filing, the information becomes difficult, if not impossible, for persons looking at the filing to read and understand.

¹⁰³CIK numbers are unique public identification numbers assigned by the Commission to each filer, filing agent and training agent.

one CIK and CIK Confirmation Code ("CCC") number,¹⁰⁴ because of affiliates that are also subject to electronic filing rules or because they act as filing agents, have sometimes inadvertently used the wrong CIK and CCC numbers in a submission header, thereby indicating that the filer was someone other than the intended filer, and resulting in the intended filer not having made its filing;

6. Using the wrong EDGAR submission type for the intended purpose. For example, if an Exchange Act reporting company marks the box on the cover of its Form 10-K to indicate that it includes no disclosure relating to delinquent reports required to be filed by its insiders pursuant to Section 16(a) of the Exchange Act,¹⁰⁵ the correct form type is 10-K405, not 10-K. The latter form type should be used only when the Item 405 box is not checked.¹⁰⁶

B. Appropriate Use of the <TEST> Tag

Filers should ensure prior to transmission that a document intended to be a live filing does not include a <TEST> tag in the submission header and that the transmission is being done in a live transmission session. If a document intended to be an official filing with the Commission is actually sent as a test, it will be treated as though no filing were made. The filing will not appear on the Commission's records and it will not be disseminated to the public. Conversely, if a submission intended to be a test is not transmitted during a test session or does not include a <TEST> tag in the header in a live transmission session, the test document will be considered an official filing and will be disseminated to the public, usually in a matter of minutes. While testing is encouraged, so is extra caution to ensure that the result intended is the result achieved.

C. Appropriate Use of the <CONFIRMING-COPY> Tag

Confirming electronic copies of filings made in paper are required in three instances. First, if a filing is made in paper pursuant to a temporary hardship exemption pursuant to Rule 201 of Regulation S-T,¹⁰⁷ a copy of the paper filing must be submitted in electronic format within six business days.

¹⁰⁴CCC numbers are identification codes chosen by the electronic filer and known by the EDGAR system which are matched against the filer's CIK number to identify the filing as one authorized by the filer.

¹⁰⁵15 U.S.C. 78p(a).

¹⁰⁶10-K405 is a new form type found in the EDGAR Filer Manual, adopted in Release No. 33-7073 (July 8, 1994).

¹⁰⁷17 CFR 232.201.

electronic company, and the bidder files its Tender Offer Statement in paper in violation of the electronic filing rules, the time periods will be tolled with respect to the tender offer until a confirming electronic copy of the Statement is submitted. Where the bidder is an electronic filer and the target is a paper filer, if the bidder elects to file in paper under Rule 901(c)(1) of Regulation S-T (17 CFR 232.901(c)(1)), it may do so without tolling the tender offer periods, because paper filing is specifically allowed that provision. However, if the electronic bidder elects to electronically file its Tender Offer Statement with respect to a paper company, as permitted by Regulation S-T, any subsequent filing in paper by the bidder with respect to the transaction will cause the tender offer periods to be tolled until confirming electronic copies of these documents are submitted.

⁹⁹17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

¹⁰⁰17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

¹⁰¹15 U.S.C. 78w(a).

Second, if a filing is made in paper in violation of the electronic filing requirements, a confirming electronic copy of that filing must be placed on the EDGAR database in order to avoid the sanctions imposed as a result of the electronic filing violation.¹⁰⁸ Third, confirming copies must be filed where a continuing hardship exemption has been granted to allow a filing to be made in paper upon the condition that it be followed up electronically within a specified period of time.¹⁰⁹ Confirming copies are *not* official filings, but rather, are copies of official filings previously made in paper. Some filers have inadvertently included a <CONFIRMING-COPY> tag in what they intended to be an official filing and failed to notice or appreciate the significance of the statement in their acceptance message that the document was received as a confirming electronic copy. At a later time, they are alerted to the fact that the Commission's records do not reflect their filing as an official document. The only course of remedial action is to refile the document as an official filing.

D. Timing Considerations

1. Filing Fees

Filers should follow precisely the guidelines on how to submit filing fees to the Commission's lockbox at Mellon Bank in Pittsburgh, Pennsylvania, including the provisions requiring the filer's filing fee account number to accompany the payment.¹¹⁰ This is particularly important in the case of "good money" filings that require confirmation of the fee prior to automatic acceptance by the EDGAR system, e.g., Securities Act registration statements. Filers also should plan ahead and follow up with respect to their wire transfer arrangements with their banks, to ensure that the money is sent as instructed. EDGAR cannot verify a fee that has not reached the lockbox because a bank has not wired the money to the Commission's account, or because

¹⁰⁸ Registrants who file documents in paper in violation of the electronic filing rules lose their eligibility to use Forms S-2 (17 CFR 239.12), S-3 (17 CFR 239.13), S-8, F-2 (17 CFR 239.32) and F-3 (17 CFR 239.33). In addition, documents filed in violation of the electronic filing rules may not be incorporated by reference into other filings. Finally, in certain circumstances, tender offer periods will be tolled until the electronic filing violation has been cured. See generally the note to paragraph (a) of Rule 101 of Regulation S-T (17 CFR 232.101(a)).

¹⁰⁹ See Rule 202(d) of Regulation S-T (17 CFR 232.202(d)).

¹¹⁰ See Rule 3a of the Commission's informal and other procedures (17 CFR 202.3a). See also the Filing Fees Account System Handbook, published by the Commission's Office of Filings and Information Services.

the wire transfer process took longer than anticipated.

2. Last Minute Filing

Filers should avoid waiting until late in the day on which a filing must be made before attempting to commence an electronic transmission of the filing. Even if the submission has no errors that would cause its suspension, delay until shortly before 5:30 p.m. on the desired filing date may result in missing that filing date.¹¹¹ Before a direct transmission begins using EDGARLink, the submission file is compressed (which takes an average of about one minute for a 40-80 page document if the filer is using a personal computer with a 386 processing chip), a dial-up and handshake with the EDGAR host system occurs, and an EDGARLink verification protocol must be completed. Further, the time assigned to the receipt of the first byte of information from the submission is established by EDGAR's clock, not the internal clock of the filer's computer. For the foregoing reasons, there can be no assurance that the filing will receive that day's filing date if a filer delays transmission until minutes before 5:30 p.m.

3. Adjustments to Filing Dates

Rule 13(b) of Regulation S-T allows electronic filers to request an adjustment to a filing date for an electronic filing if the filer, in good faith, attempts to file a document in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control.¹¹² This may occur when a filing is delayed beyond its due date because of technical problems, or a filing is made but contains errors causing its suspension.

It is not the staff's policy to grant filing date adjustments for Securities Act registration statements or other transactional filings, since shareholders' rights may be affected.¹¹³ In contrast, reasonable requests for an adjustment to the filing date of an Exchange Act report will be granted if the filing is made (or re-submitted) promptly. However, filers have an obligation to confirm the status of their filings and must read the related acceptance or suspension messages carefully to determine if the filing was

¹¹¹ Rule 13(a)(2) of Regulation S-T (17 CFR 232.13(a)(2)) provides that where a direct transmission of a filing commences on or before 5:30 p.m., the filing will receive that day's filing date if all of the conditions of acceptance are satisfied, even if acceptance processing is not complete until after 5:30 p.m. If a direct transmission of a filing is commenced after 5:30 p.m., the filing will receive the next day's filing date.

¹¹² 17 CFR 232.13(b).

¹¹³ See Section III.E.4 of Release No. 33-6977.

successfully made. For example, if a filing inadvertently was submitted as a test or a confirming electronic copy, and was therefore not considered an official filing, a new filing must be made immediately and the staff must be notified, if the second transmission was after the due date of the filing and an adjustment is desired. It is not the policy of the staff to grant adjustments backdating a filing over an extended period of time.

IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes contained in this release, commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals. It is anticipated that these proposals will not affect significantly the costs and burdens associated with filing requirements generally, or specifically with respect to electronic filing.

V. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments are to make minor revisions to the rules implementing the EDGAR system.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules. It is not expected that increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the electronic filing requirements to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose additional burdens on small business issuers.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of

Corporation Finance, Mail Stop 3-12, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis

The foregoing amendments are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act, section 319 of the Trust Indenture Act, and sections 8, 30, 31 and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260 and 270

Accountants, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities, Utilities.

Text of the Proposed Amendments

In accordance with the foregoing, it is proposed that title 17, chapter II of the Code of Federal Regulations be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. By amending § 228.601 in the exhibit table, by adding an "x" corresponding to exhibits (3)(i) and (ii) under the caption "10-QSB" and removing the "x" corresponding to exhibit (27) under the caption "S-8," by adding an instruction following paragraph (b)(4)(iii), redesignating the Instruction to Item 601(b)(10) as Instruction 1 and adding Instruction 2, revising the second sentence of paragraph (b)(25)(ii), revising paragraph (b)(28)(iv), revising paragraph (b)(99)(ii), revising the note to paragraph (c)(1)(ii), redesignating the note following paragraph (c)(1)(vi) as Note 1 and adding Note 2, to read as follows:

§ 228.601 (Item 601) Exhibits.

(b) * * *
(4) Instruments defining the rights of security holders, including indentures.

(iii) * * *

Instruction for electronic filings. If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be

reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S-T (§ 232.304 of this chapter).

(10) Material Contracts. (i) * * *

Instruction 1 to Item 601(b)(10). * * *
Instruction 2 to Item 601(b)(10). If a material contract is executed or becomes effective during the reporting period reflected by a Form 10-QSB or Form 10-KSB, it shall be filed as an exhibit to the Form 10-QSB or Form 10-KSB filed for the corresponding period. See paragraph (a)(3) of this Item.

(25) Statement of eligibility of trustee.

(ii) * * * Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b-1 through § 260.5b-3 of this chapter and by the EDGAR Filer Manual.

(28) Information from reports furnished to state insurance regulatory authorities. * * *

(iv) If ending reserves in paragraphs (b)(28)(ii)(A) and (b)(28)(ii)(B) of this Item or the proportionate share of the small business issuer and its other subsidiaries in paragraph (b)(28)(ii)(C) of this Item are less than 5% of the total ending reserves in paragraphs (b)(28)(ii)(A) and (b)(28)(ii)(B) of this Item, and the proportionate share of (b)(28)(ii)(C) of this Item, small business issuers may omit that category and note that fact. If the amount of the reserves attributable to fifty percent-or-less-owned equity investees that file this information as companies in their own right exceeds 95% of the total in paragraph (b)(28)(ii)(C) of this Item, small business issuers do not need to provide reserves information for the other fifty percent-or-less-owned equity investees.

(99) Additional Exhibits

(ii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the

registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10-QSB or the Form 10-KSB, as appropriate, covering the period in which the earnings statement was released.

(c) Financial Data Schedule—(1)

(ii) * * *

Note: Financial Data Schedules are not required in connection with registration statements on Form S-8 (§ 239.16b of this chapter) or annual reports on Form 11-K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

(vi) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S-T (§ 232.901(d) of this chapter), or with the paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where appropriate pursuant to paragraph (c)(1)(ii) of this section.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78l, 78j, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

4. By amending § 229.601 in the exhibit table, by adding an "x" corresponding to exhibits (3)(i) and (ii) under the caption "10-Q" and removing the "x" corresponding to exhibit (27) under the caption "S-8," by designating the current instruction at the end of paragraph (b)(4) as Instruction 1 and adding Instruction 2, designating the current instruction at the end of paragraph (b)(10) as Instruction 1 and adding Instruction 2, revising the second sentence of paragraph (b)(25)(ii),

by revising paragraph (b)(99)(iii), revising the note to paragraph (c)(1)(ii), redesignating the note following paragraph (c)(1)(vi) as Note 1 and adding Note 2 thereafter, adding a ")" before the period at the end of paragraph (c)(3)(ii), to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) Instruments defining the rights of security holders, including indentures.

* * * * *

Instruction 1. * * *

Instruction 2 (for electronic filings). If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S-T (§ 232.304 of this chapter).

* * * * *

(10) Material Contracts. (i) * * *

Instruction 1. * * *

Instruction 2. If a material contract is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. See paragraph (a)(4) of this Item.

* * * * *

(25) Statement of eligibility of trustee.

* * * * *

(ii) Electronic filings. * * * Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b-1 through § 260.5b-3 of this chapter and by the EDGAR Filer Manual.

* * * * *

(99) Additional Exhibits

* * * * *

(iii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10-Q or the Form 10-K, as appropriate, covering the period in

which the earnings statement was released.

(c) Financial Data Schedule—(1)

* * *

(ii) * * *

Note: Financial Data Schedules are not required in connection with registration statements on Form S-8 (§ 239.16b of this chapter) or annual reports on Form 11-K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(iv) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S-T (§ 232.901(d) of this chapter), or with the paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where appropriate pursuant to paragraph (c)(1)(ii) of this section.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 79o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§ 230.405 [Amended]

6. By amending § 230.405 by revising the term "Graphic communications" to read "Graphic communication" each time it appears in that definition.

7. By amending § 230.483 by redesignating the note following paragraph (e)(1)(iv) as Note 1 and adding Note 2 thereafter to read as follows:

§ 230.483 Exhibits for Certain Registration Statements, Financial Data Schedule.

* * * * *

(e) Financial Data Schedule.

(1) General.

* * * * *

(iv) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 902(g) of Regulation S-T (§ 232.902(g) of this chapter), or with the

paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where required by the applicable form.

* * * * *

§ 230.488 [Amended]

8. By amending § 230.488 by removing paragraph (c)(2) and by redesignating paragraph (c)(1) as paragraph (c).

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

9. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

10. By amending § 232.12 by adding a sentence at the end of paragraph (b) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) * * * Submissions on magnetic tape or diskette may be filed either at the address indicated in paragraph (a) of this section, or at the Commission's Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

* * * * *

11. By amending § 232.13 by adding paragraph (d) following the note, to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

* * * * *

(d) Where the Commission's rules, schedules and forms provide that a document may be "mailed for filing with the Commission" at the same time it is published, furnished, sent or given to security holders or others, an electronic filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur on a business day of the Commission, as soon as practicable on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable), and not on the basis of the date of filing.

12. By amending § 232.101 by revising paragraphs (a)(1)(i), (a)(1)(iii), (c)(2),

(c)(3), (c)(8), and (c)(10), by revising the heading of paragraph (c), by removing the word "and" following the semicolon in paragraph (c)(16), and by adding paragraphs (b)(3), (b)(4), (b)(5), (c)(18), (c)(19), (c)(20), and (c)(21), to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) Mandated electronic submissions.

(1) * * *

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or registration statements filed pursuant to Sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78l(b) or (g));

* * * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, n, and o(d)), except Form 13F (§ 249.325 of this chapter), *provided that* if a registrant's first mandated electronic filing would be an annual report on Form 10-K (§ 249.310 of this chapter) or Form 10-KSB (§ 249.310b of this chapter) such annual report may, at the option of the registrant, be submitted in paper format;

* * * * *

(b) * * *

(3) Form 11-K (§ 249.311 of this chapter), if financial statements and schedules prepared in accordance with the requirements of ERISA are filed pursuant to Instruction 4 of that form. Registrants who satisfy their Form 11-K filing obligations by filing amendments to Forms 10-K or 10-KSB, as provided by Rule 15d-21 (§ 240.15d-21 of this chapter), also may choose to file such amendments in paper or electronic format;

(4) Reports on Form 13F (§ 249.325 of this chapter), filed with the Commission by institutional investment managers as required by Section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and Rule 13f-1 (§ 240.13f-1 of this chapter) under, the Exchange Act on magnetic tape in the format described in Form 13F-E (§ 249.326 of this chapter); and

(5) Exhibits to Form N-SAR (§ 274.101 of this chapter), except that the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) shall be filed in electronic format.

(c) Documents to be submitted in paper only.

* * * * *

(2) Supplemental information, if the submitter requests that the information be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for

confidential treatment under Rule 83 (§ 200.83 of this chapter) or if the submitter requests that the information be returned after staff review and the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C (§ 230.418(b) of this chapter) or Rule 12b-4 of Regulation 12B (§ 240.12b-4 of this chapter);

(3) Shareholder proposals and all related correspondence submitted pursuant to Rule 14a-8 of the Exchange Act (§ 240.14a-8 of this chapter);

* * * * *

(8) Filings made with the Commission's Regional or District Offices;

* * * * *

(10) Promotional and Sales Material submitted pursuant to Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance; and sales literature submitted under Rule 24b-2 of the Investment Company Act (§ 270.24b-2 of this chapter);

* * * * *

(18) Form F-6 (§ 239.36 of this chapter);

(19) Annual reports filed with the Commission by indenture trustees pursuant to Section 313 of the Trust Indenture Act (15 U.S.C. 77mmm);

(20) Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act (15 U.S.C. 78l(h)); and

(21) Written information concerning employee benefit plans required to be filed with the Commission pursuant to Rule 16b-3(b)(2)(ii) of the Exchange Act (§ 240.16b-3(b)(2)(ii) of this chapter).

13. By amending § 232.102 by revising paragraphs (a) and (e), to read as follows:

§ 232.102 Exhibits.

(a) Exhibits to an electronic filing that have not previously been filed with the Commission shall be filed in electronic format, absent a hardship exemption. Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter), Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b-23 or 12b-32 under the Exchange Act (§ 240.12b-23 or § 240.12b-32 of this chapter), Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter), Rules 0-4, 8b-23, and 8b-32 under the Investment Company Act (§ 270.0-4, § 270.8b-23 and § 270.8b-32 of this

chapter) and Rule 303 of Regulation S-T (§ 232.303). An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

Note: Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. See Rule 311(b) of Regulation S-T (17 CFR 232.311(b)).

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, after the date which is three years following a registrant's phase-in date, any incorporation by reference by a registered investment company or a business development company shall relate only to documents which have been filed in electronic format, unless

(1) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(2) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N-SAR being incorporated by reference only into another Form N-SAR filing.

* * * * *

14. By amending § 232.302 by revising paragraph (b) and adding paragraph (c), to read as follows:

§ 232.302 Signatures.

(a) * * *

(b) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(c) Where the Commission's rules require a registrant to furnish to a national securities exchange or national securities association paper copies of a document filed with the Commission in electronic format, signatures to such paper copies may be in typed form.

15. By amending § 232.303 by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(3) For a registered investment company or a business development company making an electronic submission more than three years after its phase-in date, documents that have not been filed in electronic format, unless:

(i) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(ii) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N-SAR being incorporated by reference into another Form N-SAR filing.

(4) Any Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

16. By amending § 232.304 by revising paragraphs (a) and (d) to read as follows:

§ 232.304 Graphic and image material.

(a) If an electronic filing omits graphic or image material included in the paper version of the document, the electronic version shall include a fair and accurate narrative description or tabular representation of the omitted material. Such descriptions or representations may be included in the text of the electronic filing where the graphic or image material appears in the paper version, or they may be listed in an appendix to the electronic filing. Differences between the electronic and paper versions of the document such as pagination, color, type size or style, or corporate logo need not be described.

(d) The performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(I) of Regulation S-K (§ 229.402(I) of this chapter), shall be furnished to the Commission in connection with an electronic filing by presenting the data in tabular or chart form within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. Registrants also shall submit supplementally a paper copy of the performance graph to their Branch Chief in the Division of Corporation Finance.

17. By amending § 232.306 by revising the first sentence of the note following paragraph (a), to read as follows:

§ 232.306 Foreign language documents and symbols.

Note: With respect to submission of an electronic filer's latest annual budget required to be filed as Exhibit B in Form 18 (§ 249.218 of this chapter) or as Exhibit (c) in Form 18-K (§ 249.318 of this chapter), for foreign governments and political subdivisions thereof, if an English version of such filer's last annual budget as presented to its legislative body has been prepared, it shall be filed electronically.

18. By amending § 232.311 by revising paragraphs (b), (c), and (d) and in paragraphs (e), (f) and (g), by replacing the references to "Form S-E" with references to "Form SE", and in paragraph (h)(2), by revising the reference "paragraphs (a) through (c)" to read "paragraphs (a) through (g)" to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

(b) Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions.

(c) Exhibits consisting of all or portions of an annual statement provided to state insurance regulators (e.g., Schedules O and P), required to be filed pursuant to Item 601(b)(28) of Regulation S-B or Regulation S-K (§ 228.601(b)(28) or § 229.601(b)(28) of this chapter, respectively), may be filed in paper under cover of Form SE.

(d) Exhibits to Form N-SAR (§ 274.101 of this chapter), other than the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter), may be filed in paper under cover of Form SE.

19. By amending § 232.901 by adding a note following the introductory text of paragraph (a), by adding a note following paragraph (c)(4), by revising the heading and introductory text of paragraph (d), and by revising paragraph (d)(2), to read as follows:

§ 232.901 Division of Corporation Finance EDGAR Transition.

(a) * * *

Note: Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic format pursuant to Rule 101 of Regulation S-T (§ 232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the transaction to which

a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. See Rule 101(a)(1)(iii) of Regulation S-T, that provides for optional paper filing of a Form 10-K or 10-KSB if it is the first document filed after a registrant's phase-in date.

* * * * *
(c) * * *
(4) * * *

Note: While companies subject to mandated electronic filing generally may choose to electronically file Schedules 13D and 13G with respect to a paper filer, domestic electronic filers are restricted from doing so with respect to foreign private issuers because EDGAR currently requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. Such filings must be made in paper until the EDGAR system is modified to process them electronically.

(d) *Paper Copies of Electronic Filings.* Electronic filers shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) * * *
(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING
SUBMITTED PURSUANT TO RULE 901(D)
OF REGULATION S-T

20. By amending § 232.902 by adding a note following paragraph (a), by revising the heading and introductory text of paragraph (g), and by revising paragraphs (e) and (g)(2), to read as follows:

§ 232.902 Division of Investment Management EDGAR Transition.

(a) * * *

Note: Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic format pursuant to Rule 101 of Regulation S-T (§ 232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the transaction to which a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. See paragraph (e) of this section that provides for optional paper filing of certain filings under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter).

(e) *Required electronic filing for Phased-in Filers.* A registrant that is

phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under Rule 101 of Regulation S-T (§ 232.101 of this chapter) and which are made on or after a registrant's phase-in date, *Provided, however,* that a registrant need not file electronically a filing, after the Registrant's phase-in date, under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date and is submitted for the purpose of filing the definitive prospectus and/or statement of additional information for that registration statement or amendment. A registrant submitting electronically a Rule 497 filing for the purpose of "sticker" its prospectus and/or statement of additional information need not submit electronically the prospectus and/or statement of additional information to which the "sticker" relates, provided that the text of the prospectus and/or statement of additional information has already been filed electronically as a public document.

(g) *Paper Copies of Electronic Filings.* Electronic filers shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) * * *

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, Virginia 22312-2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING
SUBMITTED PURSUANT TO RULE 902(g)
OF REGULATION S-T

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

21. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

Note: The text of the following form does not and the amendments will not appear in the Code of Federal Regulations.

22. By amending Form S-6 (referenced in § 239.16) by revising Instruction 5 to Instructions as to Exhibits to read as follows:

Instructions and Form

Form S-6

For Registration Under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N-8B-2.

INSTRUCTIONS AS TO EXHIBITS

5. When any amendment to a registration statement on this form is filed by an electronic filer, a Financial Data Schedule meeting the requirements of Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

24. By amending § 240.12b-15 by adding three sentences at the end of the section, to read as follows:

§ 240.12b-15 Amendments.

* * * The requirements of the form being amended shall govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. See Rule 309 of Regulation S-T (§ 232.309 of this chapter).

§ 240.12b-25 [Amended]

25. By amending § 240.12b-25 by removing the parenthetical phrase "(required to be filed on Form 8)" from paragraph (e)(2).

26. By amending § 240.13d-2 by revising paragraph (c), to read as follows:

§ 240.13d-2 Filing of amendments to Schedules 13D or 13G.

(c) The first electronic amendment to a paper format Schedule 13D (§ 240.13d-101) or Schedule 13G (§ 240.13d-102) shall restate the entire text of the Schedule 13D or Schedule 13G, but previously filed paper exhibits to such Schedules are not required to be

restated electronically. See Rule 102 of Regulation S-T (§ 232.102 of this chapter) regarding amendments to exhibits filed in electronic format.

27. By amending § 240.14a-4 by adding a note following paragraph (a)(3), to read as follows:

§ 240.14a-4 Requirements as to proxy.

- (a) * * *
- (3) * * *

Note to electronic filers: Electronic filers shall satisfy the filing requirements of Rule 14a-6(a) or (b) (§ 240.14a-6 (a) or (b)) with respect to the form of proxy by filing the form of proxy as an appendix at the end of the proxy statement. Forms of proxy shall not be filed as exhibits or separate documents within an electronic submission.

28. By amending § 240.14a-6 by adding a sentence to the end of paragraph (m), to read as follows:

§ 240.14a-6 Filing requirements.

(m) * * * The cover page required by this paragraph need not be distributed to security holders.

29. By amending § 240.14a-101 by revising the cover page after the section heading and before the notes, and by revising paragraph (b) of Item 1 and adding a sentence to the end of Instruction 3 to Item 10, to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant []
Filed by a Party other than the Registrant []

Check the appropriate box:
 Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to § 240.14a-11(c) or § 240.14a-12

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

\$125 per Exchange Act Rules 0-11(c)(1)(ii), 14a-6(i)(1), 14a-6(i)(2) or Investment Company Act Rule 20a-1(c).
 \$500 per each party to the controversy pursuant to Exchange Act Rule 14a-6(i)(3).

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Notes:

* * * * *

Item 1. Date, time and place information.

* * * * *

(b) On the first page of the proxy statement, as delivered to security holders, state the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

* * * * *

Item 10. Compensation Plans.

* * * * *

Instructions

* * * * *

3. * * * Electronic filers shall file with the Commission a copy of such written plan document in electronic format as an appendix to the proxy statement. It need not be provided to security holders unless it is a part of the proxy statement.

* * * * *

§ 240.14c-3 [Amended]

30. By amending § 240.14c-3 by removing the note following paragraph (b).

31. By amending § 240.14c-5 by adding a sentence at the end of paragraph (h), to read as follows:

§ 240.14c-5 Filing requirements.

* * * * *

(h) * * * The cover page required by this paragraph need not be distributed to security holders.

32. By amending § 240.14c-101 by revising the cover page after the section heading and before the note to read as follows:

§ 240.14c-101 Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Amendment No.)

Check the appropriate box:

- Preliminary Information Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
 Definitive Information Statement

(Name of Registrant As Specified In Charter)
 Payment of Filing Fee (Check the appropriate box):

- \$125 per Exchange Act Rules 0-11(c)(1)(ii), or 14c-5(g).
 Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Note:

33. By amending § 240.14e-1 by revising the first sentence of paragraph (e), to read as follows:

§ 240.14e-1 Unlawful tender offer practices.

* * * * *

(e) *Electronic filings.* If a bidder is required (or elects to file its tender offer documents in electronic format as provided by Rule 901(c)(1) of Regulation

S-T (§ 232.901(c)(1) of this chapter), the periods of time required by paragraphs (a) and (b) of this section shall be tolled for any period during which it has failed to file in electronic format, absent a hardship exemption (§§ 232.201 and 232.202 of this chapter), the Schedule 14D-1 Tender Offer Statement [§ 240.14d-100 of this chapter], any tender offer material specified in paragraph (a) of Item 11 of that Schedule, and any amendments thereto. * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

34. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted;

* * * * *

§ 249.208a [Amended]

35. By amending Form 8-A (referenced in § 249.208a), Instruction II.2 of Instructions as to Exhibits by revising the phrase "pursuant to Instruction I above," to read "pursuant to Instruction 3, above,".

Note: The text of Form 8-A is not and the amendment will not appear in the Code of Federal Regulations.

§ 240.308 [Amended]

36. By amending Form 8-K (referenced in § 240.308) by revising the first sentence of paragraph (a)(4)(iv) of Item 7, to read as follows:

Note: The text of Form 8-K is not and the amendment will not appear in the Code of Federal Regulations.

Form 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) * * *

(4) * * *

(iv) file the required financial statements for an acquired business as an amendment to this Form as soon as practicable, but not later than 60 days after the report on Form 8-K must be filed. * * *

* * * * *

37. By amending § 249.310 by revising the section heading and by removing the last sentence of the section, to read as follows:

§ 249.310 Form 10-K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

§ 249.310 [Amended]

38. By amending Form 10-K (referenced in § 249.310) by removing the last sentence of General Instruction A and by revising the second sentence of General Instruction G.(3), to read as follows:

Note: The text of Form 10-K is not and the amendment will not appear in the Code of Federal Regulations.

Form 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
General Instructions

* * * * *

G. Information to be Incorporated by Reference.

(3) * * * However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission by virtue of Rule 3a12-3(b) under the Exchange Act, the Items comprising the Part III information must be filed as part of the Form 10-K, or as an amendment to the Form 10-K, not later than the end of the 120-day period. * * *

§ 249.310 [Amended]

39. By amending Form 10-KSB (referenced in § 249.310b) by revising the last sentence of General Instruction E.3, to read as follows:

Note: The text of Form 10-KSB is not and the amendment will not appear in the Code of Federal Regulations.

Form 10-KSB

* * * * *

General Instructions

E. * * *

3. * * * If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10-KSB, or as an amendment to the Form 10-KSB, not later than the end of the 120-day period.

§ 249.311 [Amended]

40. By amending Form 11-K (referenced in § 249.311) by revising General Instruction E to read as follows:

Note: The text of Form 11-K is not and the amendment will not appear in the Code of Federal Regulations.

Form 11-K

For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934
General Instructions

* * * * *

E. Electronic Filers.

(a) Plans subject to ERISA that file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA may file the Form 11-K either in paper or in electronic format, at the filer's option. See Rule 101(b)(3) of Regulation S-T (§ 232.101(b)(3) of this chapter).

(b) Financial Data Schedules are not required to be submitted in connection with annual reports on this form. See Item 601(c)(1) of Regulations S-K and S-B (§ 229.601(c)(1) and § 228.601(c)(1), respectively).

§ 249.322 [Amended]

41. By amending Form 12b-25 (referenced in § 249.322 of this chapter) by amending the second sentence of Instruction 5 by revising the parenthetical phrase "(§ 232.12(b) of this chapter)" to read "(§ 232.13(b) of this chapter)".

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

42. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t unless otherwise noted.

§ 250.111 [Removed]

43. By removing § 250.111.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

44. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

§ 259.56 [Amended]

45. By amending Form U5B (referenced in § 259.5b) by revising Instructions for Exhibit B, to read as follows:

Note: The text of Form U5B is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form**Form U5B**

Registration Statement Filed Pursuant to Section 5 of the Public Utility Holding Company Act of 1935

* * * * *

Exhibits

* * * * *

Instructions

* * * * *

Exhibit B. With respect to the registrant and each subsidiary company thereof, furnish a copy of the charter, articles of incorporation, trust agreement, voting trust agreement, or other fundamental document of organization, and a copy of its by-laws, rules and regulations, or other instruments

corresponding thereto. If such documents do not set forth fully the rights, priorities and preferences of the holders of each class of capital stock described in the answer to Item 8(b) and those of the holders of any warrants, options or other securities described in the answer to Item 8(d), and of any limitations on such rights, there shall also be included the text appearing on each certificate or a copy of each resolution or other document establishing or defining such rights and limitations. The text of each such document shall be in the amended form effective at the date of filing the registration statement or shall be accompanied by copies of any amendments to it then in effect.

§ 259.5s [Amended]

46. By amending Form U5S (referenced in § 259.5s) by revising Exhibit B, to read as follows:

Note: The text of Form U5S is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form**Form U5S**

Annual Report

* * * * *

General Instructions

* * * * *

Exhibits

* * * * *

Exhibit B. With respect to the parent holding company and each subsidiary company thereof, a copy of the charter, articles of incorporation, trust agreement, voting trust agreement, or other fundamental document of organization, and a copy of its bylaws, rules and regulations, or other instruments corresponding thereto. If such documents do not set forth fully the rights, priorities and preferences of the holders of each outstanding class of capital stock and those of the holders of any warrants, options or other rights to acquire capital stock, and of any limitations on such rights, there shall also be included the text appearing on each certificate or a copy of each resolution or other document establishing or defining such rights and limitations. The text of each such document shall be in the amended form effective at the date of filing of the report or shall be accompanied by the text of any amendments to it then in effect.

§ 259.101 [Amended]

47. By amending Form U-1 (referenced in § 259.101) by revising Instruction A to Instructions as to Exhibits, to read as follows:

Note: The text of Form U-1 is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form**Form U-1**

Application or Declaration Under the Public Utility Holding Company Act of 1935

Instructions as to Exhibits

* * * * *

A. The constituent instruments, or in the case of certificates, the text appearing on the constituent instrument, defining or limiting the rights of the holders of each class of securities proposed to be issued, sold, acquired, guaranteed, assumed, or modified, including any amendments thereto presently proposed. The text of tentative drafts, as a minimum, shall be filed with the original statement.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

48. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

§ 260.0-12 [Removed]

49. Section 260.0-12 is removed.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

50. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39, unless otherwise noted;

51. By revising section 270.20a-4 to read as follows:

§ 270.20a-4 Exhibit Required for Certain Transactions: Electronic Filings.

If action is to be taken with respect to any transaction described in Items 11, 12, or 14 of Schedule 14A (§ 240.14a-101), and the statement on Schedule 14A or Schedule 14C (§ 240.14c-101) is filed electronically, a Financial Data

Schedule meeting the requirements of Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) shall be included as an exhibit.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

52. The authority citation for part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78ll(d), unless otherwise noted.

53. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 80a-1, *et seq.*, unless otherwise noted.

§§ 239.64, 249.444, 259.603, 269.8 and 274.403 [Amended]

54. By amending Form SE (referenced in §§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) by revising General Instruction II.A to read as follows:

Note: The text of Form SE is not and the amendment will not appear in the Code of Federal Regulations.

Form SE

Form For Submission of Paper Format Exhibits By Electronic Filers

* * * * *

General Instructions to Form SE—

* * * * *

II. Preparation and Filing of Form

A. Four complete copies of Form SE and three complete copies of exhibits filed thereunder shall be submitted in paper format.

* * * * *

§§ 239.65, 249.447, 259.604, 269.10 and 274.404 [Amended]

55. By amending Form TH (referenced in §§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) by revising General Instruction 2, to read as follows:

Note: The text of Form TH is not and the amendment will not appear in the Code of Federal Regulations.

Form TH

Notification of Reliance on Temporary Hardship Exemption

* * * * *

General Instructions

* * * * *

2. Four signed copies of this form shall accompany the paper format document and shall be filed within one business day after the date upon which the document filed in paper originally was to be filed electronically.

* * * * *

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17104 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-P

Friday
July 15, 1994

Environmental
Protection Agency
Federal Register

Part III

**Environmental
Protection Agency**

40 CFR Part 61
National Emissions Standards for
Hazardous Air Pollutants; Final Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 61
[FRL-5011-1]
RIN 2060-AE23
**National Emissions Standards for
Hazardous Air Pollutants**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is rescinding 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites licensed by the Nuclear Regulatory Commission (NRC) or an affected Agreement State (Agreement States). As required by section 112(d)(9) of the Clean Air Act as amended, EPA has determined that the NRC regulatory program protects public health with an ample margin of safety to the same level as would implementation of subpart T. Subpart T is a National Emission Standard for Hazardous Air Pollutants (NESHAPs) which was published on December 15, 1989 and which regulates emissions of radon-222 into the ambient air from uranium mill tailings disposal sites. Subpart T continues to apply to unlicensed uranium mill tailings disposal sites currently regulated under subpart T that are under the control of the Department of Energy (DOE).

DATES: This rule is effective June 29, 1994. The provisions in this rule will be applied immediately to all affected facilities including existing sources. Under section 307(b)(1) of the Clean Air Act, judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the Act, the provisions which are the subject of today's rule will not be subject to judicial review in any civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Gale C. Bonanno, Risk Assessment and Air Standards Branch, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, D.C. 20460 (202) 233-9219.

SUPPLEMENTARY INFORMATION:
Docket

Docket A-91-67 contains the rulemaking record. The docket is available for public inspection between

the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

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1. Background
A. Description of Uranium Mill Tailings

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States, and all piles emit radon gas, a decay product of radium in the waste material resulting from the processing of ore to recover uranium at the uranium mills.

B. Regulatory History

To deal specifically with the risks associated with these tailings, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901-7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978. The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or an Agreement State, is responsible for implementing the EPA standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97-415, sections 18(a) and 22(b), *reprinted in* 2 1982 U.S. Code Cong. & Admin. News (96 Stat.) 2077 and 2080. As partially amended thereby, EPA was required to promulgate standards of general applicability for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material as defined under section 11e(2)

of the AEA, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

As promulgated by EPA under subpart D of 40 CFR part 192 in 1983 and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a Title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at levels that could result in risks higher than allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T of 40 CFR part 61 under CAA section 112. In addition, the UMTRCA regulations called for an impoundment design that would achieve compliance with the 20 pCi/m²-s flux standard for 1,000 years, or at least 200 years, but prior to the recent EPA amendments did not include any requirement that monitoring occur to verify the efficacy of the design.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40, appendix A to conform NRC's regulations issued five years earlier to the provisions of EPA's general UMTRCA standards other than those affecting groundwater protection at 40 CFR part 192 (50 FR 41852). NRC completed conforming amendments for groundwater protection in appendix A of 10 CFR part 40 in 1987.

Neither the UMTRCA standards promulgated by EPA in 1983 nor the NRC standards promulgated in 1980 and amended in 1985, established compliance schedules to ensure that non-operational tailings piles would be closed, and that the 20 pCi/m²-s standard would be met, within a reasonable period of time. Moreover, the EPA standards and NRC criteria also did not require monitoring to ensure compliance with the flux standard. 50 FR 41852 (October 16, 1985). To rectify these shortcomings of the then current EPA and NRC programs regulating uranium mill tailings, EPA promulgated standards under Section 112 of the CAA on October 31, 1989, to ensure that the piles would be closed in a timely manner with monitoring.

On December 15, 1989, EPA published national standards regulating

radionuclide emissions to the ambient air from several source categories, including non-operational sites used for the disposal of uranium mill tailings. (54 FR 51654). These sites are either under the control of the DOE pursuant to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, 42 USC 7901 *et. seq.*, or are under the control of NRC or Agreement State-licenses pursuant to Title II of UMTRCA. These standards—subpart T of 40 CFR part 61 (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989.

Prior to today's action, subpart T of 40 CFR part 61, limited radon-222 emissions to the ambient air from non-operational uranium mill tailings disposal sites licensed by the NRC or an affected Agreement State. Subpart T required that these sites, which consist of large (i.e., numerous acre) impoundments or piles, comply with a radon flux standard of 20 pCi/m²-s. 40 CFR 61.222(a). Moreover, compliance must be achieved within two years of when the site becomes non-operational, 40 CFR 61.222(b), which for piles which had ceased operation prior to the time of promulgation was no later than December 15, 1991. While at the time of promulgation EPA recognized that many sources might not be able to achieve this date, EPA was constrained by then existing CAA section 112(c)(1)(B)(ii) which allows a maximum of two years for facilities to come into compliance. EPA stated that for those sites which could not meet the two-year date, the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. Subpart T also called for monitoring and recordkeeping to establish and demonstrate compliance. See 40 CFR 61.223 and 61.224.

Subpart T was part of a larger promulgation of radionuclide NESHAPs that represent the Agency's application of the policy for regulating pollutants under then existing CAA section 112, which was first announced in the benzene NESHAPs. 54 FR 38044 (September 14, 1989). The NESHAPs policy utilized a two-step approach. In the first step, EPA considered the lifetime risk to the maximally exposed individual, and found that it is presumptively acceptable if it is no higher than approximately one in ten thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated

number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on a safe level of acceptable risk is made. This becomes the starting point for the second step, determining the ample margin of safety.

In the second step, EPA strives to provide protection for the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million. In this step, the Agency sets a standard which provides an ample margin of safety, again considering all of the health risk and other health information considered in the first step, as well as additional factors such as costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

EPA noted that standards it had already promulgated pursuant to UMTRCA (42 U.S.C. 2022, 7901-7942) would eventually limit radon emissions from those sites to a flux of 20 pCi/m²-s (see 40 CFR part 192, subpart D), and thus EPA referred to that level as "baseline." EPA's risk assessment revealed that compliance with the 20 pCi/m²-s baseline would result in an estimated lifetime risk to the maximally exposed individual of approximately 1×10⁻⁴, a level EPA determined to be safe under the first step of the analysis. EPA further concluded in the second step, which considers additional factors such as cost and technological feasibility, that the baseline level also provided an ample margin of safety.

Even though EPA determined that the baseline was protective of public health with an ample margin of safety, EPA still found it was necessary to promulgate subpart T. This was because the baseline assumed compliance with the UMTRCA regulations even though those regulations did not require that compliance occur in the foreseeable future and, in fact, many sites were not proceeding towards the baseline level at the time subpart T was promulgated. In other words, EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations.

The primary subpart T standard is the requirement that radon-222 emissions not exceed a flux of 20 pCi/m²-s. 40 CFR 61.222(a). Additionally, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of

the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. Lastly, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit. See 40 CFR 61.223 and 61.224. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with a 20 pCi/m²-s flux standard (see 40 CFR part 192, subpart D), the UMTRCA regulatory program did not answer the critical timing concern addressed by subpart T.

The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683. However, due to then-existing CAA section 112(c)(1)(B)(ii), EPA was constrained to requiring compliance with the 20 pCi/m²-s baseline within two years, a date the Agency recognized many sites might find impossible to meet. EPA announced that those situations could be dealt with through site-specific enforcement agreements under CAA section 113. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. By so doing, subpart T in effect mandated that the cover to meet that emissions level be installed as expeditiously as practicable considering technological feasibility.

The numerical radon emission limit of subpart T is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is an emissions limit with compliance established by EPA through monitoring). However, the two year disposal requirement and the radon monitoring requirement were not separately required by the then existing UMTRCA regulations.

EPA amended 40 CFR part 192, subpart D on November 15, 1993, (58 FR 60340) to fill a specific regulatory gap with respect to timing and monitoring. Under subpart D, sites are now required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux

standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). EPA announced its goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and the affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. The new requirement for verifying the flux with monitoring is meant to assure the efficacy of the design of the permanent radon barrier following construction.

Section 84a(2) of the Atomic Energy Act requires NRC to conform its regulations to EPA's regulations promulgated under UMTRCA. As noted above, the then existing NRC criteria while providing a comprehensive response to EPA's general UMTRCA standards did not compel sites to proceed to final closure by a certain date nor did they require monitoring to confirm the efficacy of the design of the cover. NRC proposed uranium mill tailings regulations to conform the NRC requirements to EPA's proposed amended standards at 40 CFR part 192 subpart D. 58 FR 58657 (November 3, 1993). The final NRC regulations amend Criterion 6 and add a new Criterion 6A together with new definitions in the Introduction to appendix A to part 40 of title 10 of the CFR. (59 FR 28220, June 1, 1994).

These CAA and UMTRCA programs duplicate each other by creating dual regulatory oversight, including independent procedural requirements, while seeking to ensure compliance with the same numerical 20 pCi/m²-s flux standard. Concern over this duplication inspired several petitions for reconsideration, most notably from NRC, the American Mining Congress (AMC) and Homestake Mining Co. It was also alleged that subpart T was unlawful because it was physically impossible for some sites to come into compliance with subpart T in the time required. While those petitions remained pending before EPA (at least in part), EPA has taken several actions to address the issues they raised, including publishing the proposal to rescind subpart T, as well as the Final Rule to amend 40 CFR part 192, subpart D (UMTRCA regulations) and a Final Rule staying subpart T pending the conclusion of this rulemaking.

C. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), the Clean Air Act was substantially amended in November 1990. Included

in the amended Act was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) provides that no standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under section 112 if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover the mining waste (thereby controlling emissions).

D. Memorandum of Understanding (MOU) Between EPA, NRC and Affected Agreement States

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within

seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

E. The Settlement Agreement

As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and proposed rescission of subpart T under section 112(d)(9), and issued an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF v. Reilly*, No. 92-1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al. v. EPA*, Nos. 90-1058, 90-1063, 90-1068, and 90-1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, an agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a potential approach to regulation of NRC-licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). NRC agreed in principle with the agreement by letter.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. Actions implemented under the settlement agreement should result in the expeditious control of radon-222 emissions at non-operational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. This enables EPA to satisfy the criteria of section 112(d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by providing for changing EPA's UMTRCA regulations such that public health would be as well protected under UMTRCA as would implementation of subpart T under the CAA.

II. Rationale for Final Rule To Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees

In light of the new statutory authority provided EPA by section 112(d)(9) of the Clean Air Act as amended, EPA met with NRC and the affected Agreement

States to determine whether, with certain modifications to its regulatory program under UMTRCA, the NRC regulatory program might provide an ample margin of safety. If so, subpart T would be rendered superfluous and, therefore, needlessly duplicative and burdensome such that rescission pursuant to CAA section 112(d)(9) would be appropriate.

In applying the risk methodology for CAA section 112 to the risk assessment for subpart T, EPA has already determined that the baseline that would result once the 20 pCi/m²-s UMTRCA standard is met protects public health with an ample margin of safety. Thus, since the regulatory program implemented by NRC assures that sites will achieve the baseline (20 pCi/m²-s) as soon as practicable considering technological feasibility and factors beyond the control of the licensee, the NRC program protects the public to the same extent as subpart T, and subpart T is not necessary for these facilities. More specifically, appropriate modifications to the UMTRCA regulatory scheme as implemented by NRC and the affected Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements such that compliance with the baseline occurs as expeditiously as practicable considering technological feasibility and factors beyond the control of the licensee, protect public health with an ample margin of safety. In so concluding, EPA relies wholly upon the risk analysis it conducted in promulgating subpart T. EPA is not revisiting that analysis here.

A. The Regulatory Scheme Under UMTRCA

As a supplement to the Atomic Energy Act of 1954, as amended, UMTRCA (42 U.S.C. 2022, 7901-7942) was enacted to comprehensively address the dangers presented by uranium mill tailings, including their disposal:

Uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and * * * the protection of the public health, safety, and welfare * * * require[s] that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment * * *.

42 U.S.C. 7901(a); see *American Mining Congress v. Thomas*, 772 F.2d 617 (10th Cir. 1985), cert. denied, 426 U.S. 1158 (1986). As to uranium mill tailings disposal sites in particular, UMTRCA gives the Department of Energy (DOE) the responsibility to clean up and

dispose of certain sites (i.e., Title I), and gives NRC the responsibility for regulating those sites that are owned and operated by its licensees (i.e., Title II). EPA is responsible for promulgating the generally applicable environmental standards to be implemented by both NRC and DOE. 42 U.S.C. 2022(a), 7911-7924; AMC, 724 F.2d at 621. EPA published its final UMTRCA regulations on December 15, 1982 for Title I sites and on September 30, 1983 for Title II sites. 48 FR 590 and 48 FR 45926 (codified at 40 CFR part 192).

Parts of EPA's final UMTRCA regulations are directed to the permanent disposal of uranium mill tailings. See 40 CFR part 192, subpart D. Among the requirements of subpart D is the mandate that radon releases from the disposal sites not exceed a flux of 20 pCi/m²-s. 40 CFR 192.32 (a) and (b). Other aspects of subpart D pertain to groundwater, monitoring, design, and duration of closure. See 40 CFR 192.32 and 192.33. With the exception of the groundwater provisions at 40 CFR 192.20(a)(2)-(3), applicable to Title I sites, all aspects of EPA's regulations were upheld by the Tenth Circuit in *AMC v. Thomas*, 772 F.2d at 640. EPA is currently engaged in rulemaking to address the court's remand of the Title I groundwater provisions.

Because NRC implements EPA's general UMTRCA standards for its licensees (as do its Agreement States), it has promulgated its own implementing regulations in the form of "criteria." See generally 10 CFR part 40, appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for "site-specific" flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, "to the extent practicable" as provided in section 84c of the Atomic Energy Act of 1954, as amended. 10 CFR part 40, appendix A, Introduction.

Overall, NRC's implementation criteria set forth a rigorous program governing the reclamation of the disposal sites so that closure will (1) last for 1,000 years to the extent reasonable, but in any event at least 200 years, and (2) limit radon release to 20 pCi/m²-s throughout that period. The design must be able to withstand extreme weather and other natural forces. Upon review, EPA believed the NRC criteria comprise a comprehensive response to EPA's general standards at 40 CFR part 192, subpart D. However, as noted above, nothing in either EPA's 1983 general standards or NRC's 1985 amended

implementing criteria compelled sites to proceed towards final closure by a certain date. This was the reason for EPA's decision in 1989 to promulgate the subpart T NESHAPs under the CAA. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria previously required appropriate monitoring to ensure compliance with the 20 pCi/m²-s standard.

B. Clean Air Act Amendments of 1990: Section 112(d)(9) ("Simpson Amendment")

The purpose of this provision is to preserve governmental resources and avoid needless, burdensome, and potentially contradictory CAA regulations. Specifically, section 112(d)(9) makes explicit that EPA need not regulate radionuclides under section 112 of the CAA for those radionuclide sources that are sufficiently regulated by NRC or its Agreement States (under the Atomic Energy Act or its component Acts, such as UMTRCA). More particularly, section 112(d)(9) allows EPA to decline to regulate under section 112 if the Administrator determines "by rule, and after consultation with the [NRC]," that NRC's regulatory program for a particular source "category or subcategory provides an ample margin of safety to protect the public health."

As EPA interprets section 112(d)(9), the Agency may rescind the subpart T NESHAP as it applies to non-operational uranium mill tailings disposal facilities licensed by NRC or an affected Agreement State if the Agency (1) consults with NRC, (2) engages in public notice and comment rulemaking, and (3) finds that the separate NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T. While this rulemaking may commence prior to final development of NRC's regulatory program, that program must fully satisfy the statute at the time EPA takes final action. In so doing, EPA must find that the NRC regulatory program satisfies the CAA standard, not that full and final implementation of that program has already successfully occurred.

C. Memorandum of Understanding (MOU)

EPA, NRC and the affected Agreement States entered intensive discussions resulting in the execution of a Memorandum of Understanding (MOU), a copy of which was printed at the end of the proposed rule to rescind subpart T published December 31, 1991 (56 FR 67568). The primary purpose of the

MOU is to ensure that non-operational uranium mill tailings piles and impoundments licensed by NRC or an affected Agreement State achieve compliance through emplacement of a permanent radon barrier with the 20 pCi/m²-s flux standard specified in EPA's UMTRCA standards (40 CFR 192.32(b)(1)) as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The goal is that this occur at all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. The MOU called for EPA to modify its UMTRCA regulations (at 40 CFR part 192, subpart D) to address the timing concern that resulted in EPA's 1989 decision to promulgate subpart T. In addition, the MOU called for NRC to modify its implementing regulations at 10 CFR part 40, appendix A, as appropriate, and to immediately commence efforts to amend the licenses of the non-operational mill tailings disposal site owners and operators to include reclamation plans that require compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). This was to be accomplished either through voluntary cooperation with the licensees, or through administratively enforceable orders. In accordance with the MOU, the NRC and affected Agreement States agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all non-operational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²-s. These actions, coupled with NRC's commitment to enforce the amended licenses, are intended to provide the basis for EPA to make the requisite findings under CAA section 112(d)(9) for rescission of subpart T.

D. Settlement Agreement

In light of CAA section 112(d)(9), and in order to foster a consensus approach to regulation in this area, EPA then commenced discussions with NRC, the American Mining Congress (AMC), and the Environmental Defense Fund (EDF). As a result of discussions after execution of the MOU, a final settlement agreement was executed between EPA,

AMC, EDF, NRDC and individual site owners, to which NRC agreed in principle by letter. The settlement agreement continues the regulatory approach set forth in the MOU adding extensive detail to that agreement.

Under the agreement between EDF, AMC, individual sites and EPA, the pending litigation would not be dismissed until after certain terms in the agreement were fulfilled. The parties agreed that upon rescission of subpart T, they would jointly move the court to dismiss the challenges pertaining solely to subpart T. (Paragraph III.1.) By the terms of the agreement (paragraph III.15.), AMC's pending administrative petition for reconsideration of subpart T becomes moot with the final rescission of subpart T. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph III.12.), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation by the litigants of the underlying litigation.

E. Actions by NRC and EPA Pursuant to the MOU and Settlement Agreement

1. EPA Regulatory Actions

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing CAA section 112(d)(9) by publishing three Federal Register (FR) notices. In the first notice (56 FR 67537), EPA published a Final Rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAPs at 40 CFR part 61, subpart T. However, if EPA fails to complete that rulemaking by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAPs for radionuclides that appears at 40 CFR part 61, subpart T, as it applies to non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate

monitoring requirements for non-operational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA published a notice on June 8, 1993, proposing to amend 40 CFR part 192, subpart D. (58 FR 32174). On November 15, 1993, EPA published the Final Rule amending 40 CFR part 192, subpart D. (58 FR 60340). This Final Rule requires: (1) Emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard by all NRC or Agreement State licensed sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the permanent radon barrier; and (3) closure of the site closure as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA announced a goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA recognized that the UMTRCA regulatory scheme encompasses a design standard. EPA made minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Subpart D, as amended, requires site control be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are

initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The tailings closure plan (radon), either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably determined to promote timely compliance with the 20 pCi/m²-s flux standard. Milestones which are not reasonably determined to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon). In addition, subpart D requires that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are undertaken to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of the amendments to subpart D is for existing sites, or those that become non-operational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) within the time periods set forth in the MOU, including Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming non-operational.

However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated through appropriate monitoring, after providing an opportunity for public participation,

then the performance of the milestone(s) may be extended. If an extension is granted, then during the period of the extension, compliance with the 20 pCi/m²-s flux standard must be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the tailings closure plan (radon), be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that: (1) The licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m²-s flux standard; (2) such delay is consistent with the definition of "available technology;" and (3) such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health. Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in Attachment A of the MOU. (56 FR 67569).

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public notice and comment on proposals or requests to (1) incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the *Federal Register*. In addition, consistent with the MOU, members of the public may request NRC action on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities and procedures.

The UMTRCA regulations, as promulgated by EPA and implemented by NRC prior to the 1993 amendments, while ultimately limiting emissions to the same numerical level as subpart T, were supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last 1,000 years or at least 200 years, but did not require monitoring of emissions to confirm the performance of the earthen cover. See generally 10 CFR part 40, appendix A and 40 CFR part 192. Subpart D, as amended, requires all

appropriate monitoring be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, Method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m²-s flux standard. After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 pCi/m²-s flux standard, as contemplated by 40 CFR 192.32(b)(1)(ii). EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 pCi/m²-s flux standard by all sites, but does not require continuous emissions monitoring. Rather, a single monitoring event may suffice to verify the design of the permanent radon barrier to ensure continued compliance. Note, however, that if the NRC or an Agreement State extends the time for performance of milestones based on a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 pCi/m²-s flux standard must be demonstrated each year during the period of the extension.

2. NRC Regulatory Action

On May 26, 1994, the Commissioners approved final amendments conforming 10 CFR part 40, appendix A to 40 CFR part 192, subpart D. The final regulations adopted by NRC amend Criterion 6, add a new Criterion 6A and new definitions contained in the Introduction to appendix A. Criterion 6 was revised to provide for appropriate verification that the "final" (or "permanent" as defined by EPA) radon barrier, as designed and constructed, is effective in controlling releases of radon-222 to a level no greater than 20 pCi/m²-s when averaged over the entire pile or impoundment. Criterion 6(2) (59 FR 28220, June 1, 1994). The licensee must use EPA Method 115, or another method approved by the NRC as being at least as effective in demonstrating the effectiveness of the "final" radon barrier. *Id.* If the reclamation plan specifies phased emplacement of the "final" radon barrier, the verification must be performed on the portion of the

pile or impoundment as the "final" radon barrier for that portion is emplaced. Additionally, certain reporting and recordkeeping is required in connection with the verification of the effectiveness of the "final" radon barrier. Criterion 6(4) (59 FR 28220, June 1, 1994).

The Introduction section of appendix A to part 40 was amended by adding the following definitions: as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation and reclamation plan. While subpart D requires emplacement of the "permanent" radon barrier, NRC requires emplacement of the "final" radon barrier. According to NRC, the definition of final radon barrier, is intended to "facilitate the drafting of clear regulatory text and to eliminate any ambiguity with respect to compliance with the 20 pCi/m²-s flux standard" after completion of the final earthen barrier and not as a result of any temporary conditions or interim measures." (59 FR 28222, June 1, 1994). The final definitions of factors beyond the control of the licensee and available technology have been revised to include a list of possible factors and examples of grossly excessive costs respectively, consistent with subpart D.

Criterion 6A paragraph 1 requires completion of the "final" radon barrier as expeditiously as practicable considering technological feasibility after a pile or impoundment containing uranium byproduct materials ceases operation, and requires it to be done in accordance with a written Commission-approved reclamation plan. In addition, this paragraph requires inclusion of specified interim milestones as a condition of the individual site license. Criterion 6A also specifies the conditions for Commission approval of extensions for performance of milestones and continued acceptance of uranium byproduct and other materials in the pile or impoundment. 10 CFR part 40, appendix A Criterion 6A (2) and (3) (59 FR 28220, June 1, 1994). These provisions vary somewhat from NRC's proposal, to reflect changes made in EPA's final amendments to subpart D at §§ 192.32(a)(3) (iv) and (v). The changes are "(1) that only byproduct material, not 'similar' material, will be approved for continued disposal after the final radon barrier is essentially complete and the verification of radon flux levels has been made, and (2) that public participation is specifically to be provided for only in the case of continued disposal after radon flux verification, in addition to general

clarification of the paragraph." (59 FR 28224, June 1, 1994).

Additionally, NRC's final regulations in Criterion 6A provide for public participation consistent with the MOU and the settlement agreement. Such public participation will be provided through a notice published in the *Federal Register* including the opportunity for public comment on the proposed license amendment and the opportunity to request an informal hearing in accordance with the Commission's regulations at 10 CFR part 2, subpart L. The final regulations contain various revisions to NRC's proposal, both substantive and editorial in nature, primarily for consistency with EPA's final amendments to subpart D.

EPA believes the final revisions clarify NRC's proposal. EPA further believes that although NRC's conforming regulations are not identical to subpart D, the differences are minor in nature, and properly reflect application of the subpart D requirements to NRC's separate regulatory program. NRC's final rule appropriately conforms its regulations to 40 CFR part 192 subpart D. EPA notes that NRC's conforming amendments are an important consideration in EPA's determination that the NRC regulatory program protects the public health with an ample margin of safety.

3. Amendment of NRC and Agreement State Licenses

Consistent with their commitments under the MOU, as well as EPA's previous proposal to rescind subpart T (56 FR 67561 December 31, 1991), NRC and the affected Agreement States agreed to amend the licenses of all non-operational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones (e.g., wind blown tailings retrieval and placement on the pile, and interim stabilization). To this end, NRC and the Agreement States requested the licensees to voluntarily seek amended licenses and have completed processing those requests. NRC has continued the spirit of cooperation between EPA and NRC by keeping the Agency apprised of the status of the approval of reclamation plans and amendment of licenses.

As of September 30, 1993, NRC and the Agreement States had completed all license amendments for closure of licensed non-operational impoundments, with the exception of the license amendment incorporating the reclamation plan for the Atlas site located in Moab, Utah.

NRC informed EPA by letter that the Commission received extensive comments on NRC's July 20, 1993 proposal to approve the Atlas reclamation plan, including the closure schedule and interim milestones required by the MOU, and the Environmental Assessment and the Finding of No Significant Impact for the Atlas mill. NRC rescinded its Finding of No Significant Impact for the Atlas mill in October 1993. (58 FR 52516, October 8, 1993). One issue appears to be the potential for flooding of the Atlas impoundment if it is reclaimed on-site, due to the proximity of the site to the Colorado River. This concern and others appear to have caused delays in the license amendment for this site. NRC is actively pursuing a timely final decision on the acceptability of the existing Atlas site and its reclamation plan. To this end, NRC informed EPA by letter dated December 28, 1993, that NRC has conducted several meetings with the various representatives enumerated above and has requested additional technical information from the licensee. On March 30, 1994, NRC published a Notice of Intent to Prepare an Environmental Impact Statement and to Conduct a Scoping Process. (59 FR 14912). In that notice, NRC states its determination "that approval of the revised reclamation plan constitutes a major Federal action and that based on the level of controversy related to the proposed action [on-site reclamation] and uncertainties associated with the unique features of the Moab site, preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51 is warranted." (59 FR 14913, March 30, 1994). The notice describes the proposed action, possible alternative approaches and the scoping process. The alternative approaches include moving the pile to one of two alternative sites. *Id.*

The near edge of the town of Moab is located about 2 km to the east of the Atlas tailings impoundment. However, it appears the area within a 1.5 km radius of the Atlas mill tailings impoundment site is sparsely populated. An interim cover is being placed over the impoundment for radon emission control as the Atlas tailings impoundment dries sufficiently to allow access of the necessary equipment. As discussed in the Background Information Document (BID) for the amendments to 40 CFR part 192 subpart D, interim covers significantly reduce radon emissions. Technical Support for Amending Standards for Management of

Uranium Byproduct Materials: 40 CFR Part 192 Background Information Document, EPA 402-R-93-085, October 1993.

NRC announced on May 11, 1994 (59 FR 24490) that Atlas Corporation applied to amend condition 55 of its source material license. Atlas proposed to amend the milestone dates by extending the dates for windblown tailings retrieval and placement on the pile, placement of the interim cover and placement of the final radon barrier by one year. NRC has informed EPA that the Commission approved the extension of the date for placement of the interim cover to February 15, 1995 and that the milestone for emplacement of the "final" radon barrier was not extended. See Docket Entry A91-67 IV-D-50 (Letter from NRC to Atlas).

Since NRC will notice any proposed change in the milestone date for emplacement of the permanent radon barrier, EPA and others will have the opportunity to monitor such an extension at that time. Under the present circumstances, it appears an extension of the MOU target date of 1996 would be consistent with the factors to be considered under the "as expeditiously as practicable" standard at 40 CFR 192.32(a)(3)(i), since NRC has determined there is a need for consistency with mandatory requirements of the National Environmental Policy Act (NEPA) and there may be factors beyond the control of the licensee. 40 CFR 192.31(k). Based on representations from NRC, EPA believes that the extra time NRC is taking to further review the proposed Atlas mill site reclamation plan is necessary to address the large amount of public comments received and that it will result in a final solution that is more responsive to public comment.

NRC and the affected Agreement States have also agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing the permanent radon barriers, including interim milestones, and to ensure (and verify) the efficacy of the design and construction of the barrier to achieve compliance with the 20 pCi/m²-s flux standard contained in the amendments to subpart D. (56 FR 67568, December 31, 1991) (MOU, a copy of which was printed at the end of the proposed rule to rescind subpart T).

III. Final Rule to Rescind 40 CFR Part 61, Subpart T for NRC and Agreement State Licensees

EPA is rescinding subpart T as it applies to non-operational uranium mill tailings disposal sites licensed by NRC

or an affected Agreement State. The Agency sets forth this Final Rule pursuant to its authority under section 112(d)(9) of the CAA, as amended in 1990. The support for this action includes (1) the MOU, which reflects consultation with NRC and the affected Agreement States and sets forth a course of conduct to bolster NRC's regulatory program under UMTRCA so that it is protective of public health with an ample margin of safety, (2) the settlement agreement which adds comprehensive detail to the MOU, (3) EPA's amendments to 40 CFR part 192, subpart D, (4) the relevant NRC and Agreement State actions concerning license amendments, to date, and (5) NRC's amendments to its implementation regulations at appendix A, 10 CFR part 40.

A. EPA Determination Under CAA Section 112(d)(9)

1. Background

Section 112(d)(9) authorizes EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA determines, by rule, and after consultation with NRC, that the regulatory scheme established by NRC protects the public health with an ample margin of safety. The legislative history of section 112(d)(9) provides additional guidance as to what is meant by "an ample margin of safety to protect the public health" and what process the Administrator should follow in making that determination in a rulemaking proceeding under section 112(d)(9). The Conference Report accompanying S. 1630 points out that the "ample margin of safety" finding under section 112(d)(9) is the same "ample margin of safety" requirement that was contained in section 112 of the CAA prior to its amendment in 1990. The conferees also made clear that the process the Administrator was expected to follow in making any such determination under section 112(d)(9) was that "required under the decision of the U.S. Court of Appeals in *NRDC v. EPA*, 824 F.2d 1146 (D.C. Cir 1987) (*Vinyl Chloride*)."¹ H. Rep. No. 101-952, 101st Cong., 2d Sess. 339 (1990), reprinted in 1 A Legislative History of the Clean Air Act Amendments of 1990, at 1789 (1993) (hereinafter "Legislative History CAAA90").

EPA has already made a determination in promulgating subpart T that compliance with the 20 pCi/m²-s flux standard protects public health with an ample margin of safety. EPA conducted a risk analysis in promulgating subpart T in 1989. At that time, EPA determined that the 20 pCi/

m²-s flux standard was a "baseline" that was provided by EPA's general UMTRCA standards at 40 CFR part 192, subpart D. EPA further determined that compliance with that baseline would be protective of public health with an ample margin of safety. EPA promulgated subpart T to ensure achievement of the flux standard at non-operational sites in a timely manner. In conducting this rescission rulemaking, EPA is not revisiting either the risk analysis or decision methodology that supported the promulgation of subpart T; rather, EPA is only visiting whether NRC's regulatory program under UMTRCA will result in meeting the 20 pCi/m²-s flux standard established in subpart T as being the level that provides an ample margin of safety, with compliance achieved in a timely manner thereby rendering subpart T unnecessarily duplicative.

EPA's determination that the NRC regulatory program protects public health with an ample margin of safety includes a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part on a programmatic and site-specific basis: (1) The regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC consistent with the settlement agreement described above and (2) the license (i.e., tailings closure plan) requirements that establish milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard.

2. EPA's UMTRCA Standards

As discussed above, EPA has modified its UMTRCA regulations (40 CFR part 192 subpart D) to require compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (and factors beyond the control of the licensee), and to require appropriate monitoring to verify the efficacy of the design of the permanent radon barrier. By definition, no more rapid compliance can occur, as a practical matter, because this schedule represents the earliest that the sites could be closed when all factors are considered. EPA expects that these compliance schedules were developed and will be modified consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site. When EPA promulgated subpart T it recognized that many sources might not be able to comply with the two year compliance date then required pursuant to section 112. Based on this, subpart T includes a provision that in such a case

EPA would "establish a compliance agreement which will assure that disposal will be completed as quickly as possible." 40 CFR 61.222(b). The time period required for closure under subpart D embodies the same approach. In practice, therefore, both subpart T and subpart D establish the same basic timeframes for achievement of the flux standard. Assuming NRC and the Agreement States faithfully implement subpart D and the license amendments required under subpart D, EPA would not expect there to be any significant difference between these two programs in the amount of time required for sites to comply with the flux standard.

As discussed above, subpart D as amended, provides that NRC may grant an extension of time to comply with either of the following deadlines: (1) Performance of milestones based upon a finding that compliance with the 20 pCi/m²-s flux standard has been met or (2) final compliance beyond the date or relevant milestone based upon cost. EPA considers these two bases upon which NRC may grant an extension to be mutually exclusive, i.e., a request for a specific extension may be based on one or the other but not both grounds. If a milestone is being extended for a basis other than cost, such an extension may be granted if NRC finds that compliance with the 20 pCi/m²-s flux standard has been demonstrated using EPA Method 115 or an NRC approved alternative. In addition the site must continue to demonstrate compliance with this flux standard on an annual basis. However, if a licensee requests extension of the final compliance date (or relevant milestone) based upon cost, such an extension may only be granted if NRC finds that the three criteria specified in 40 CFR section 192.32(a)(3)(iii) are met. Any extensions of the final compliance date based upon cost will be by the nature of the criteria be granted on a site-specific basis.

If a licensee requests an extension of the final compliance date based upon cost, technology may not be used as a basis for granting the extension unless the costs are grossly excessive, as measured by normal practice within the industry. EPA recognizes that the emissions from the pile may exceed the 20 pCi/m²-s flux standard pending final compliance, but believes these increases will be minimal and of limited duration. EPA does not anticipate the short extensions in the time to complete the radon barrier contemplated in subpart D and the NRC conforming amendments to increase the maximum lifetime individual risk beyond 1 in 10,000, the level which EPA found presumptively safe under the benzene policy, and for

this category, protective of the public health with an ample margin of safety in promulgating subpart T. 54 FR 51656 (December 15, 1989). EPA believes that during the short extensions, this is consistent with the reality of short-term risks from radon emissions during the period of delay, and consistent with the risks associated with negotiated compliance agreements when non-operational sites fail to close within the two-year period required by subpart T. EPA believes these emissions should not exceed those emissions which could occur under subpart T if compliance agreements had been negotiated. Extensions based upon cost will only be granted if NRC or an Agreement State finds, after providing an opportunity for public participation, that the emissions caused by the delay will not cause significant incremental risk to the public health. Additionally, a site requesting an extension based upon cost must demonstrate that it is making a good faith effort to emplace the permanent radon barrier. In many situations, where an interim cover is in place, radon emissions are significantly reduced and tailings which are wet or ponded emit no significant levels of radon. If NRC or an Agreement State uses this flexibility, public notice is required, and as appropriate, EPA would be aware of its use and could also monitor extensions under the provisions of § 61.226(c) to determine whether the Agency should reconsider the rescission and seek reinstatement of subpart T, on either a programmatic or site-specific basis. Thus, under the circumstances, EPA believes affording authority for extensions of the final compliance date based upon cost is not inconsistent with protecting the public health.

Additionally, NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee," as that term is implicit in the definition of "as expeditiously as practicable." EPA understands that under subpart D's provisions there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for emplacement of the radon barrier that meets the standard of "as expeditiously as practicable considering technological feasibility." Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the "as expeditiously as practicable" standard of § 192.32(a)(3)(i). However, EPA stresses that such a change in

circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it changed a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC or an Agreement State in amending a license due to "factors beyond the control of the licensee," or for any other basis.

3. NRC's Conforming Regulations

As discussed previously, the Commission has approved final regulations to conform appendix A of 10 CFR part 40 to EPA's general standards promulgated under UMTRCA. (59 FR 28220, June 1, 1994.) EPA is today making a determination that NRC's final regulations support rescission. EPA believes NRC's final regulations adequately and appropriately implement EPA's amendments to 40 CFR part 192, subpart D. This determination is supported by the comments received in response to EPA's supplemental proposal to rescind subpart T. (59 FR 5674, February 7, 1994.) All commenters agreed that

NRC's proposed conforming regulations support EPA's proposal to rescind subpart T by either adequately and appropriately implementing subpart D, or may reasonably be expected to do so when finalized.

4. License Amendments

Table 1 illustrates that all NRC and affected Agreement State licenses, except one, have been modified pursuant to the MOU. Attachment A to the MOU, developed in conjunction with each site and considering the particular circumstances of that site, lists target dates for emplacement of the permanent radon barrier with "a guiding objective that this occur to all current disposal sites by the end of 1997, and within seven years of when the existing operating and standby sites cease operation." 56 FR 67568 (December 31, 1991). The MOU requires NRC and the Agreement States to "ensure * * * that cover emplacement on the tailings impoundments occurs as expeditiously as practicable considering both short-term reductions in radon releases and long-term stability of the uranium mill tailings." *Id.* Under the MOU, the compliance schedules (i.e., tailings closure plans (radon) under subpart D, as amended) were to be developed consistent with the MOU targets as reasonably applied to the specific circumstances of each site, with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU. EPA believes the NRC and the Agreement States have acted in good faith to implement their

commitments under the MOU by amending the site licenses. EPA also believes that uranium mill tailings disposal site owners and operators have acted in good faith by voluntarily requesting the license amendments. The license amendments by NRC and the affected Agreement States appear to reflect closure as expeditiously as practicable under the terms of the MOU and the requirements of subpart D as amended, thus supporting rescission of subpart T and a determination that the NRC program protects public health with an ample margin of safety. See Docket Entry A91-67 IV-D-46 (NRC Comments in Response to EPA's February 7, 1994 Proposal); Docket Entry A91-67 II-D-23 (February 7, 1994, Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division detailing approval of NRC licenses and milestone schedules); Docket Entry A91-67 II-D-45 (June 1, 1994, Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division detailing approval of Agreement State licenses and milestone schedules); Docket Entry A91-67 IV-D-52 (June 13, 1994, Letter to Gail Bonanno from State of Washington); Docket Entry A91-67 IV-D-49 (Letter to Gail Bonanno [sic] providing information for Washington State licensees, Dawn Mining Company and Western Nuclear, Inc.). In addition, consistent with their commitments under the MOU, NRC and the affected Agreement States are providing opportunities for public participation in the license amendment process.

TABLE 1.—STATUS OF RECLAMATION PLANS FOR NON-OPERATIONAL URANIUM MILL TAILINGS IMPOUNDMENTS¹

| Facility | Approval date for reclamation plan | Approval date for reclamation milestones | MOU date for final radon cover | License date for final radon cover |
|---|------------------------------------|--|--------------------------------|------------------------------------|
| ANC, Gas Hills, WY | 4/10/83 | 11/5/92 | 1995 | 12/31/94 ² 6/30/96 |
| ARCO Coal, Bluewater, New Mexico | 1/30/92 | 11/9/92 | 1995 | 12/28/94 |
| Atlas, Moab, Utah | ³ | 11/4/92 | 1996 | 12/31/96 |
| Conoco, Conquista, Texas | 9/8/93 | 9/8/93 | 1996 | 12/31/93 |
| Ford-Dawn Mining, Ford, WA | 9/30/93 | 9/30/93 | 2010 | ⁴ 12/31/18 |
| Hecla Mining, Duria, CO | 9/30/93 | 9/30/93 | 1997 | 12/31/95 |
| Homestake, Milan, NM | 7/23/93 | 11/9/92 | ⁵ 1996/2001 | ⁵ 12/31/01 |
| Pathfinder-Lucky Mc, Gas Hills, Wyoming | 9/17/93 | 12/29/92 | 1998 | 9/30/98 |
| Petrotomics, Shirley Basin, WY | 10/23/89 | 1/21/93 | 1995 | 12/31/95 |
| Quivira, Ambrosia Lake, NM | 10/5/90 | 1/22/93 | 1997 | ⁷ 12/31/97 |
| Rio Algom, Lisbon, UT | 9/29/93 | 12/31/96 | 1996 | 12/31/96 |
| Sohio L-Bar, Cebolleta, New Mexico | 5/1/89 | 11/4/92 | 1992 | 12/31/92 |
| UMETCO, Gas Hills, Wyoming | ⁸ | 12/2/92 | 1995 | 12/31/95 |
| UMETCO, Maybell, CO | 7/30/93 | 7/30/93 | 1997 | 12/31/97 |
| UMETCO, Uravan, CO | 12/31/87 | 12/31/87 | ⁶ 2002 | 12/31/96 |
| UNC, Church Rock, NM | 3/11/92 | 10/29/92 | 1997 | 12/31/97 |
| Union Pacific, Bear Creek, Wyoming | 4/3/92 | 11/5/92 | 1996 | 12/31/96 |
| WNI, Sherwood, WA | 9/30/93 | 9/30/93 | 1996 | ⁴ 1/31/98 |

TABLE 1.—STATUS OF RECLAMATION PLANS FOR NON-OPERATIONAL URANIUM MILL TAILINGS IMPOUNDMENTS¹—
Continued

| Facility | Approval date for reclamation plan | Approval date for reclamation milestones | MOU date for final radon cover | License date for final radon cover |
|---------------------|------------------------------------|--|--------------------------------|------------------------------------|
| WNI, Split Rock, WY | 6/17/93 | 11/5/92 | 1995 | 12/31/94 |

¹ NRC and the affected Agreement States committed to complete review and approval of reclamation plants, including schedules for emplacement of earthen covers on non-operational tailings impoundments by September 30, 1993.

² Two impoundments: 1996 date is for impoundment which was accepting waste from off-site for disposal. Licensee has requested an amendment for a one year extension of dates for placement of radon barrier on the two piles.

³ Delayed pending resolution of issues raised in response to *Federal Register* notice dated July 20, 1993.

⁴ Closure date change is because of groundwater remediation schedule.

⁵ Two impoundments: large impoundment to be completed by 1996, small impoundment by 2001 except for areas covered by evaporation ponds. Final radon barrier placement over the remainder of the small impoundment shall be completed within two years of completion of groundwater corrective actions.

⁶ Date in the MOU is for final reclamation.

⁷ Two impoundments: final radon barrier placement on both by December 31, 1997. One active cell.

⁸ Various early 1980s.

The license amendments noted in Table 1 reflect consistent application of the dates contained in the MOU. Three exceptions are worth noting. First, although the license amendment to incorporate the reclamation plan for the Atlas site is not complete, EPA is confident that NRC is actively pursuing final resolution of the pending reclamation plan. In the notice announcing its intent to prepare an environmental impact statement, NRC published a tentative schedule to: prepare a draft EIS and issue for public comment in October 1994; provide a 45 day comment period; and publish the final EIS in April 1995. (59 FR 14914, March 30, 1994). Pending final approval of a reclamation plan, the Atlas site is continuing to emplace an interim cover on the pile to control radon emissions, and recently received approval to extend the date for placement of the interim cover to February 15, 1995. The date for placement of the "final" radon barrier was not extended by NRC and remains December 31, 1996. See Docket Entry A91-67 IV-E-5 (Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division, summary of telephone conversation with legal counsel to AMC); Docket Entry A91-67 IV-D-50 (Letter from NRC to Atlas).

Second, the license amendments for the ANC Gas Hills site address two separate impoundments. Consistent with the MOU, the license amendment for the non-operational impoundment contains a December 31, 1994, date for emplacement of the permanent radon barrier. On February 11, 1994, NRC published a notice of receipt of a request to amend the reclamation schedule at the ANC Gas Hills site. (59 FR 6658). ANC has requested a one-year extension of the current date for emplacement of the permanent radon barrier. ANC

"believes [it] cannot begin authorized restoration activities in the time necessary to meet current reclamation milestone dates," due to an NRC communication "that a previous amendment request for a reclamation redesign proposal dated April 16, 1992, would not be reviewed by late 1992 or early 1993." *Id.* NRC notes that ANC is continuing to monitor and maintain the interim cover. Further, NRC states—

Approval of the request will be based on determination there be no harm to human health or the environment, that reclamation will be completed as expeditiously as practical[sic], verification that rescheduling reclamation will not impact the final closure date for the entire facility.

Additionally, an impoundment previously designated as operational for in-situ waste disposal is now non-operational. Emplacement of the permanent radon barrier on this second impoundment is scheduled to be completed by June 30, 1996, well within the seven year goal of the MOU for impoundments which cease operations after December 31, 1991.

On May 9, 1994, ANC informed NRC by letter that it would be ceasing operations and going out of business by the end of May 1994. On May 13, 1994, NRC issued an Order and Demand for Information to ANC. See Docket Entry A91-67 IV-D-47. This Order requires ANC to continue complying with all applicable license conditions, including monitoring and reclamation activities. The Order further states

"[D]iscontinuance of those programs and functions in the manner described by the Licensee in its letter of May 9, 1994, would constitute a willful violation of ANC's license." According to the Order, abandonment would constitute a "deliberate violation" of section 184 of the AEA of 1954, as amended, 10 CFR 40.41.(b), and 10 CFR

40.42. The Order further states that "such a deliberate act of abandonment would be a serious violation of the AEA * * * NRC regulations, and ANC's license," and could subject ANC and the individuals causing the violations to further enforcement actions and potential criminal sanctions. NRC also ordered that ANC submit additional information in order for NRC to determine "whether enforcement action should be taken to ensure compliance with NRC statutory and regulatory requirements."

EPA notes that the actions taken to date by NRC regarding this site indicate a good faith intention to implement the MOU and the requirements of subpart D and to respond quickly as the situation at the ANC Gas Hills site develops. EPA fully expects that NRC will take actions consistent with the Commission's enforcement policy and authority. See 10 CFR part 2, subpart B and appendix C. While difficult enforcement questions are raised about this site, EPA notes that the same questions would be raised if subpart T were not rescinded. Under the provisions of the rule adopted today, if future developments meet the criteria and conditions for reconsideration of rescission, the Agency expects it would receive a petition pursuant to § 61.226(b). EPA would then take action consistent with those provisions at that time. In any case, EPA reserves the right to initiate reconsideration if appropriate.

Lastly, the license amendment dates for two additional sites, the Ford-Dawn Mining site and the Western Nuclear, Inc. (WNI) site both located in the Agreement State of Washington, are also beyond the dates contained in the MOU. However, Washington State notes that for these sites the closure date was changed because of the groundwater remediation schedule, and the difficulty

experienced in drying the piles due to the evaporation and precipitation rates. In sum, EPA believes that the license amendments adopted by the State of Washington for these two sites reflect a good faith attempt to implement the MOU and reflect closure of the sites as expeditiously as practical considering technological feasibility under subpart D.

While NRC and the Agreement States have obtained license amendments for all but one of the relevant sites, they have not as yet established a record for enforcement of the milestones, including action on requests for extensions. To date, only one extension for placement of the interim cover at the Atlas site has been approved by NRC. Based on NRC representations, no milestones occurring after the date of the MOU, October 1991, have been missed and, as noted in footnote 2 of Table 1, an application for another extension is pending but no action has been taken. However, given their response to the requirements of the MOU, and the rulemaking conducted by NRC to implement the requirements of subpart D, EPA expects that the milestones established in the licenses for emplacement of the permanent radon barrier (i.e., the tailings closure plan (radon)) will be implemented and enforced in significant part on a programmatic and site-specific basis. The relevant portions of the amended licenses have been placed in the docket for this action, as well as letters from NRC to EPA apprising the Agency of the status of the license amendments.

EPA and NRC have completed almost all of the actions required by the MOU, including: revising the NRC and affected Agreement State licenses to reflect the MOU and regulatory requirements, promulgating amendments to EPA's UMTRCA regulations at 40 CFR part 192, subpart D, and revising the NRC regulations at 10 CFR part 40 to conform to EPA's revised UMTRCA regulations. Based on EPA's review, to date, of the regulatory program established by NRC under UMTRCA (including amended 10 CFR part 40, appendix A), EPA has determined that the timing and monitoring concerns are fully addressed consistent with EPA's UMTRCA standards, and the NRC criteria result in reclamation designs and schedules fully adequate to ensure compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). EPA today finds that NRC and the affected Agreement States are or will be implementing and enforcing, in significant part, the regulations

governing disposal of tailings and the license requirements (tailings closure plan (radon)) that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and a site-specific basis. The Agency intends "in significant part" to mean that NRC or an affected Agreement State is implementing and enforcing the regulatory and license requirements in a manner that EPA reasonably expected to not materially (i.e., more than de minimis)¹ interfere with compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

As announced in the February 7, 1994, proposal, EPA is taking today's action since NRC's regulations at 10 CFR part 40, appendix A, were effectively revised, as necessary and appropriate to implement the revisions to EPA's regulations at 40 CFR part 192, subpart D. As stated in the February 1994 proposal, EPA intended to take final action on the proposed rescission prior to the time compliance with the 20 pCi/m²-s flux standard is achieved at all sites.

5. Judicial or Administrative Challenges

Neither EPA nor any commenter is aware of any judicial or administrative challenge to these regulations that is pending. Thus, EPA is aware of no challenge which would present a significant risk of interference with the purposes and objectives of the MOU, as reflected in the regulatory changes.

B. Reconsideration Provisions

Under the Atomic Energy Act, NRC has the authority to waive, for reasons of practicability, the dual requirement of the MOU that compliance with the 20 pCi/m²-s flux standard occur as expeditiously as practicable considering technological feasibility. 42 U.S.C. 2114(c). NRC considers the term "practicability" to include certain economic considerations not contemplated by the requirement of the MOU that compliance occur as expeditiously as practicable considering technological feasibility. In promulgating subpart T, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. Thus, as a theoretical matter, EPA recognized in its December 1991 proposal that this waiver authority might be exercised in

¹ The phrase "de minimis" as used in this notice is not intended to be restricted to the meaning of section 112(g)(1)(A) of the Clean Air Act, as amended.

a manner not addressed in the MOU even after the UMTRCA regulations have been promulgated and each license amended, although EPA has no reason to believe such relaxation of restriction will actually occur. Nevertheless, EPA recognized that this authority would not exist under the CAA and subpart T and, thus, there was some concern over the potential for deviation from the agreements contained in the MOU.

1. December 31, 1991 Proposed Rule to Rescind subpart T

In response to the concern over the waiver authority in the Atomic Energy Act, and in order to ensure its exercise does not alter EPA's finding that the NRC regulatory program protects public health with an ample margin of safety, EPA announced in its December 31, 1991, proposal that certain conditions and grounds for reconsideration would be included in any final decision to rescind subpart T. In this way, EPA might base its rescission finding upon its view of the NRC regulatory program contemplated by the MOU at the time of taking final action, while also providing some assurance that EPA would revisit that finding should NRC or the affected Agreement States substantially deviate from that program. Thus, in December 1991, EPA proposed certain conditions and grounds for reconsideration, to provide assurance that any finding by the Agency that the NRC program is sufficient to justify rescission of subpart T under CAA section 112(d)(9) would be revisited if the NRC program is actually implemented in a manner inconsistent with that finding. The specific reconsideration options proposed by EPA were published at 56 FR 67565 (December 31, 1991).

2. Reconsideration Options

EPA has reviewed the various options for reconsideration proposed in December 1991 in light of the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. On February 7, 1994, EPA proposed an additional reconsideration option that is a combination of the options proposed in December 1991. It is in effect a hybrid of that December 1991 proposal. While EPA did not withdraw its prior reconsideration proposal and the reconsideration options contained therein, the additional reconsideration option proposed in February 1994 was preferred by EPA.

3. Reconsideration Provisions Adopted Today

EPA believes the following reconsideration provisions adopted

today, which include both programmatic and site-specific bases for reinstatement, represent a comprehensive approach under both the MOU and settlement agreement. The Agency notes that the 20 pCi/m²-s flux standard must be met by all sites as provided by 40 CFR part 192, subpart D. EPA does not intend to reconsider the decision to rescind subpart T for any site that is in fact meeting the 20 pCi/m²-s flux standard, absent other factors that would indicate the need for reinstatement. For example, EPA may initiate reconsideration under § 61.226 even if a site is meeting the 20 pCi/m²-s flux standard if there are factors which show that NRC or an Agreement State failed to implement and enforce in significant part, the applicable regulations, e.g., failure of that site to emplace a permanent radon barrier designed to meet the requirements of subpart D.

This action amends subpart T and establishes an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State provided certain conditions are met. Additionally, this action sets forth the procedures for EPA to act on a petition to reconsider rescission of subpart T which seeks such reinstatement. However, these provisions are not intended to be exclusive. EPA reserves the right to initiate reinstatement of subpart T if appropriate. Pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) interested persons may petition the EPA to initiate reinstatement of subpart T, in addition to petitions for reinstatement under today's procedures.

The reconsideration provisions set forth in § 61.226 establish procedures for persons to petition EPA for reconsideration of the rescission and seek reinstatement of subpart T and EPA's response to such petitions. Provisions for the substantive conditions for reconsideration of the rescission of this subpart and subsequent reinstatement for NRC-licensees are also included. Under these provisions, a person may petition the Administrator for reconsideration of the rescission and seek reinstatement of subpart T under § 61.226(a) which provides for programmatic and site-specific reinstatement. If reconsideration is initiated it must be conducted pursuant to notice and comment procedures. It is important that any alleged failures by NRC or an affected Agreement State to implement and enforce the regulations governing

uranium mill tailings or the applicable license requirements be addressed in a timely manner. These provisions are intended to ensure that persons may seek recourse from the Administrator if they are adversely affected by the failure of NRC or an affected Agreement State to implement and enforce, in significant part, on a programmatic and a site-specific basis the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC, requirements of the tailings closure plan, or license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. Thus, EPA is establishing a non-discretionary duty to take final action granting or denying an authorized petition for reconsideration of the rescission of subpart T within 300 days of receipt of the petition. If EPA grants such petition it would then proceed to initiate rulemaking to reinstate subpart T. The rulemaking to reinstate subpart T, however, is not subject to the 300-day time period. This schedule is intended to provide EPA and NRC adequate time to resolve any potential problems identified by a petition. Failure to meet this 300-day deadline for a decision on whether to initiate rulemaking or not could lead to a citizen suit action in a federal District Court under CAA section 304 for an order that EPA take final action on the petition. Review of that final response would be in a federal Circuit Court of Appeals under CAA section 307(b). If EPA grants such a petition and initiates rulemaking to reinstate subpart T, then final agency action would not occur until EPA had concluded such rulemaking. Consistent with the settlement agreement, EPA may propose to grant or deny the petition within 120 days of receipt, allow a comment period of at least 60 days, and take final action granting or denying the petition within 120 days of the close of the comment period.

Under today's procedures, EPA shall summarily dismiss without prejudice a § 61.226(b) petition to reconsider the rescission and seek reinstatement of subpart T on a programmatic basis, unless the petitioner demonstrates that it provided written notice of the alleged failure to NRC or an affected Agreement State at least 60 days before filing its petition with EPA. This notice to NRC must include a statement of the grounds for such a petition. This notice requirement may be satisfied, among other ways, by submissions or pleadings submitted to NRC during a proceeding conducted by NRC. The purpose of this

advance notice requirement is to provide NRC or an affected Agreement State with an opportunity to address the concerns raised by the potential petitioner. Additionally, EPA shall summarily dismiss without prejudice a § 61.226(b) petition to reconsider the rescission and seek reinstatement of subpart T on a site-specific basis, unless the petitioner demonstrates that it provided, at least 60 days before filing its petition with EPA, a written request to NRC or an affected Agreement State for enforcement or other relief, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m²-s flux standard. This provision is intended to provide NRC or an Agreement State with an opportunity to address the concerns raised by the potential petitioner through its standard enforcement mechanisms.

The Administrator may also initiate reconsideration of the rescission and reinstatement of subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA believes it is appropriate to do so. For example, EPA may initiate such reconsideration if it has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. Before the Administrator initiates reconsideration of the rescission and reinstatement of subpart T, EPA shall consult with NRC to address EPA's concerns. If the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

Upon completion of a reconsideration rulemaking, EPA may: (1) Reinstate subpart T on a programmatic basis if EPA determines, based on the record, that NRC has significantly failed to implement and enforce, in significant part, on a programmatic basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; (2) reinstate subpart T on a

site-specific basis if EPA determines, based on the record, that NRC or an affected Agreement State has significantly failed to implement and enforce, in significant part, on a site-specific basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or (3) issue a finding that NRC is implementing and enforcing on either a site-specific or programmatic basis the regulations and license requirements described above and that reinstatement of subpart T is not appropriate.

The regulations establish an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. The Administrator also shall reinstate subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Under today's action, EPA shall be required to reinstate subpart T only for the failures enumerated in the preceding sentence that may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at uranium mill tailings disposal sites. In rescinding subpart T, EPA intends "in significant part" to mean that EPA must find that NRC or an affected Agreement State is implementing and enforcing, on a programmatic and a site-specific basis: (1) The regulations governing the disposal of uranium mill tailings

promulgated by EPA and NRC consistent with the MOU and settlement agreement and (2) the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Reinstatement would require an EPA finding that NRC or an affected Agreement State has failed to implement and enforce in this manner.

IV. Discussion of Comments and Response to Comments From NPR

Public hearings on EPA's December 31, 1991, proposal to rescind subpart T (56 FR 67561) were held on January 15, 1992 in Washington, D.C. and on January 21-22, 1992 in Santa Fe, New Mexico. Representatives of the Nuclear Regulatory Commission (NRC), the American Mining Congress (AMC), the owners and operators of individual sites and the Southwest Research and Information Center (SWRIC) testified at these hearings. Written comments were also received from the Environmental Defense Fund (EDF), NRC, AMC, owners and operators of individual sites, the Department of Energy and the SWRIC.

In February 1993, an agreement was reached between EPA, EDF, NRDC, AMC, and individual uranium mill tailings disposal sites to settle pending litigation and administrative proceedings, avoid potential future litigation, and otherwise agree to a potential approach to regulation of NRC and Agreement State licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). NRC agreed in principle with the settlement agreement. The settlement agreement added comprehensive detail to, and thereby continued, the approach set forth in the MOU published with the 1991 proposal. (56 FR 67568, December 31, 1991).

Written comments in response to EPA's February 7, 1994 supplemental proposal were received from NRC, EDF, AMC, Homestake Mining Company, Rio Algom Mining Corp., ARCO and Envirocare of Utah, Inc.

Many of the parties who commented on the December 1991 proposal also signed the settlement agreement and commented on the February 1994 proposal. In certain cases, a party's

comments to the December 1991 proposal are inconsistent with and conflict with comments later submitted in response to the 1994 proposal. Given the intervening settlement agreement and the revisions to EPA's and NRC's UMTRCA regulations, EPA believes that the more recent comments submitted by a party, in response to the 1994 proposal, should be accorded more weight than comments previously submitted by that same party in 1991, where there is inconsistency between the comments.

In addition, EPA's review of the comments has been limited to the question of whether EPA should rescind subpart T. This rulemaking was not intended to reconsider and did not address whether EPA should have promulgated subpart T in 1989. EPA therefore rejected as irrelevant to this rulemaking, comments addressed to the validity or appropriateness of the promulgation of subpart T.

1. General

In response to the 1991 and 1994 Notices of Proposed Rulemaking (NPR), NRC, environmental and industry groups generally support EPA's proposal to rescind 40 CFR part 61, subpart T as applied to owners and operators of NRC and Agreement State licensed non-operational uranium mill tailings disposal sites. Various commenters to the 1994 proposal suggested specific revisions to the proposed regulatory text and preamble. The Agency has reviewed all comments and suggested revisions carefully. Revisions to the regulatory text and preamble have been made where deemed appropriate.

2. Request for Comments Contained in the 1994 NPR

In the February 1994 proposal, EPA requested comments on its proposed determination that the NRC regulatory program protects public health with an ample margin of safety, including comments on whether: (1) EPA has effectively promulgated appropriate revisions to 40 CFR part 192, subpart D; (2) NRC's regulations at 10 CFR part 40, appendix A either already adequately and appropriately implement the revisions to EPA's regulations, or may reasonably be expected to do so prior to rescission of subpart T; (3) the revision of NRC and affected Agreement State licenses reflect the new requirements of subpart D; and (4) any judicial or administrative challenge to EPA or NRC regulations is expected to present a significant risk of interference with full compliance with the MOU and the settlement agreement.

Several commenters responded to the Agency's request for comments. Commenters believed EPA's amendments to 40 CFR part 192, subpart D fulfill the intent of the settlement agreement with respect to actions required by EPA. However, certain commenters noted that the settlement agreement called for action by both EPA and NRC. The commenters universally agreed that based upon NRC's November 3, 1993 proposal, NRC may reasonably be expected to adequately and appropriately implement the Agency's amendments to 40 CFR part 192, subpart D. These commenters believe that when finalized, NRC's regulations at 10 CFR part 40, appendix A should adequately comply with the settlement agreement and conform to EPA's subpart D UMTRCA regulations.

Many commenters noted that NRC and the Agreement States have faithfully implemented their MOU commitment to complete review and approval by no later than September 1993 of detailed reclamation plans including schedules for emplacing an earthen cover on non-operational tailings impoundments to control emissions of radon-222 to 20 pCi/m²-s. See 56 FR 67568, December 31, 1991. Several commenters noted that although the license amendment for the Atlas site in Moab, Utah is not yet complete, that site represents a unique situation and should not affect EPA's decision to rescind subpart T.

No commenter was aware of any pending judicial or administrative challenge that would present a significant risk of interference with the MOU and the settlement agreement.

Additionally, EPA requested comments on the proposed reconsideration provisions included in a new § 81.226 added to subpart T. In particular EPA requested comments as to whether these provisions effectively implement the regulatory approach of the settlement agreement, especially the terms providing specific time periods for a reconsideration rulemaking. One commenter believed the criteria and procedures for reconsidering the decision to rescind subpart T were consistent with the terms of the settlement agreement. Several other commenters commented as to specific aspects of those provisions and suggested revisions to the regulatory language for consistency with the settlement agreement. Specific comments pertaining to the proposed provisions for reconsideration of the rescission and reinstatement of subpart T are addressed in Section 4 below.

There was widespread agreement among the commenters that the EPA and NRC regulatory and licensing framework that either has been, or is in the process of being, implemented will ensure that non-operational uranium mill tailings disposal sites will achieve the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

3. Rescission of Subpart T

3.1 Timing of Rescission

Comment: In response to the 1991 proposal, one commenter noted EPA should not rescind subpart T until the Agency is assured that the MOU between EPA, NRC and the affected Agreement States is implemented and EPA's amendments to its UMTRCA regulations at 40 CFR part 192, subpart D are complete.

Response: As stated in the preamble to the 1994 proposal and the final rule amending 40 CFR part 192, subpart D, EPA is now rescinding subpart T for NRC-licensed uranium mill tailings disposal sites due to the completion of the Agency's amendments to subpart D, completion of NRC conforming regulations, and completion by NRC and affected Agreement States of various license amendments containing schedules for emplacement of the permanent radon barrier. EPA believes it is appropriate to rescind subpart T pursuant to the authority of section 112(d)(9) of the CAA, as amended, since NRC has established a regulatory program to ensure that non-operational uranium mill tailings piles will be closed as expeditiously as practicable considering technological feasibility.

3.2 Section 112(d)(9) of the Clean Air Act, As Amended ("Simpson Amendment")

Comment: In response to the 1991 proposal, one commenter argued section 112(d)(9) of the CAA, as amended, applies prospectively and does not authorize EPA to rescind a previously promulgated standard.

Response: The Agency disagrees and believes that section 112(d)(9) of the CAA authorizes EPA to rescind previously promulgated regulations if certain determinations are made by EPA. Congress clearly intended to give the Agency the discretion to rescind certain previously promulgated regulations and thereby relieve affected facilities from the burdens associated with parallel regulation when the NRC regulatory program would protect public health with an ample margin of safety. See, e.g., 136 Cong. Rec. S 3797-99 (daily ed. April 3, 1990), reprinted in

4 A Legislative History of the Clean Air Act Amendments of 1990, at 7156-7162 (1993). ("Legislative History, CAAA 1990"). This Senate floor debate on Amendment No. 1457 to S. 1630 evidences a clear intention that section 112(d)(9) authorizes rescission of previously promulgated radionuclide NESHAPs. Senator Simpson, the sponsor of the amendment, stated that "[p]assage of this amendment will allow EPA to replace the emission standards issued by EPA in November 1989, for NRC-licensed facilities, including power plants, uranium fuel cycle facilities, and by-product facilities, if that agency concludes that the existing NRC regulatory program adequately protects public health." 4 Legislative History, CAAA 1990 at 7158. Also see 1 Legislative History, CAAA 1990 at 778 (1993) (statement by Senator Burdick during debate on the Conference Committee Report) ("It is clear that the existing regulatory program under the Atomic Energy Act protects the public health with an ample margin of safety. Under these circumstances, additional or dual regulation under the Clean Air Act does not make any sense.")

Additionally, in commenting on the 1994 proposal, this commenter expressed the belief that the 1994 proposal is consistent with the terms of the settlement agreement between EPA, EDF, NRDC, AMC and individual site owners and operators. The settlement agreement, as described in detail above, promotes the objectives of section 112(d)(9) of the CAA by establishing an agreed upon framework for reconsideration of rescinding subpart T and making minor modifications to the AEA regulatory program for closure of the uranium mill tailings disposal sites. Clearly, rescission of the previously promulgated subpart T was contemplated by the parties to the settlement agreement. This particular commenter and EPA were parties to that agreement. EPA continues to implement the terms of the settlement agreement, including today's action rescinding subpart T. Thus, EPA is rejecting the prior comment to the 1991 proposal.

Comment: In response to the 1991 proposal, a commenter suggested EPA publish its finding that the NRC regulatory program protects the public health with an ample margin of safety.

Response: Pursuant to the settlement agreement, EPA published and invited comment on its proposed determination that the NRC regulatory program protects public health with an ample margin of safety on February 7, 1994 (59 FR 5674). That determination is also contained in this action, which will be published in the Federal Register.

Comment: Commenters suggested in response to the 1991 proposal that EPA could not determine that the NRC regulatory program protects public health with an ample margin of safety so long as NRC retains the authority to waive standards and time schedules for compliance, and there are no provisions under the AEA for citizens' suits.

Response: The commenters suggest that the NRC regulatory program does not ensure that EPA's revised UMTRCA regulations (40 CFR part 192, subpart D) would apply, since NRC has the authority to grant waivers under the AEA due to cost or technological feasibility. EPA recognizes that the NRC has authority under the AEA to waive for economic reasons strict compliance with the requirement that sites meet the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). AEA section 84c., 42 USC 2114c. However, the full exercise of this authority is not contemplated by either the MOU or the settlement agreement, described above. If this waiver authority is used in a manner inconsistent with the purposes and objectives of the MOU and settlement agreement, today's action includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of subpart T.

The amendments to subpart T provide clear authority and procedures for EPA to revisit today's finding should NRC or the affected Agreement States deviate from the regulatory program in place in a manner which materially (i.e., more than de minimis) interferes with compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Additionally, EPA believes the actions taken to date by NRC, including the license amendments and the final amendments to the NRC conforming regulations, as described above, reflect the good faith effort on the part of NRC to implement the MOU. Thus, EPA believes under these circumstances NRC's authority to waive strict compliance with the flux standard and the time for compliance does not preclude EPA from finding NRC's regulatory program protects the public health with an ample margin of safety.

Further, the Agency believes that Congress was aware that the legislative authority under the CAA provided for citizen suits while the AEA did not contain such provisions. Congress clearly envisioned that circumstances might be such that EPA would make the finding required by the Simpson

Amendment. In making today's ample margin of safety determination, EPA considered whether NRC is implementing and enforcing, in significant part, the regulations governing disposal of tailings and the license requirements which establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and site-specific basis. UMTRCA gives NRC and the Agreement States the responsibility to implement and enforce regulations promulgated under UMTRCA. If, in the future, NRC or the Agreement States do not implement and enforce, in significant part, the regulations governing disposal of tailings and the license requirements which establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic or site-specific basis, reconsideration and reinstatement provisions adopted today allow EPA to reconsider its rescission of subpart T, and thus, possibly reinstate the CAA standards. The settlement agreement executed between EPA, EDF, NRDC and AMC which provided the regulatory approach for today's action had as an objective the rescission of subpart T. Moreover, NRC's final amendments to the conforming regulations also provide enhanced opportunities for public participation under certain circumstances.

3.3 Section 112(q)(3) of the Clean Air Act, As Amended

Comment: The comments to the 1991 proposal included a comment that the "Savings Provision" (section 112(q)(3)) of the CAA requires that subpart T remain in effect.

Response: Section 112(q)(3) provides . . . this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from . . . disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

EPA believes the plain language of section 112(q)(3) gives the Administrator the discretion to rescind subpart T pursuant to section 112(d)(9) or allow subpart T to remain in effect pursuant to section 112 as in effect prior to the CAAA of 1990. In this rulemaking, EPA acted to apply section 112 as modified by the 1990 amendments, and pursuant to section

112(d)(9) to decline to regulate "radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State)" if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, "that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health." This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety. Although the commenter suggests that section 112(q)(3) should cause the Administrator to not rescind subpart T, such an interpretation is not harmonious and is inconsistent with the intent of Congress in enacting the CAAA of 1990.

Additionally, EPA received comments from this commenter supporting the 1994 proposal, expressing the belief that the 1994 proposal is consistent with the terms of the settlement agreement. The settlement agreement promotes the objectives of section 112(d)(9) of the CAA as amended by establishing an agreed upon framework for consideration of the rescission of subpart T and minor modifications to the AEA regulatory program for closure of uranium mill tailings disposal sites. This commenter, together with EPA and others, was a party to that agreement, which clearly envisions rescission of subpart T.

Thus, EPA is rejecting this comment, since a plain reading of section 112(q)(3) authorizes EPA to exercise its discretion under section 112(d)(9) and as a party to the settlement agreement the commenter clearly supports the goal of the agreement that subpart T be rescinded.

3.3 Section 122(a) of the Clean Air Act, as Amended in 1977

Comment: The commenter asserts in response to the 1991 proposal that EPA should not rescind subpart T because such rescission is inconsistent with section 122(a) of the CAA of 1977. The commenter contends section 122(a) was not repealed by the 1990 amendments to the CAA and that it required the Agency to list radionuclides as a hazardous air pollutant if the Administrator found that public health was threatened due to air emissions of radionuclides.

Response: EPA disagrees with the commenter's interpretation that rescission of subpart T pursuant to section 112(d)(9) of the CAA is inconsistent with section 122(a) of the

CAA. On December 27, 1979, EPA listed radionuclides, including those defined by the AEA as byproduct material, as a Hazardous Air Pollutant pursuant to section 112(b)(1)(A) of the CAA as amended in 1977. (44 FR 76738). In that notice EPA stated that

[I]n accordance with the requirements of sections 122 and 112, the Agency finds that studies of the biological effects of ionizing radiation indicate that exposure to radionuclides increases the risk of human cancer and genetic damage. . . . Based on this information, the Administrator has concluded that emission of radionuclides may reasonably be anticipated to endanger public health, and that radionuclides constitute hazardous air pollutants within the meaning of the Clean Air Act.

Id. On April 6, 1983 (48 FR 15076) EPA announced proposed standards for four sources of emissions of radionuclides, and its decision to not regulate uranium mill tailings together with other sources. Under court order, EPA finalized the regulations proposed in 1983 on February 6, 1985. 50 FR 5190. See also *Sierra Club v. Ruckelshaus*, No. 84-0656 (U.S. District Court for the Northern District of California). On September 24, 1986, EPA promulgated a final rule regulating radon-222 emissions from licensed uranium mill processing sites by establishing work practices for new tailings. (51 FR 34056). On April 1, 1988, EPA requested a remand for this standard. On EPA's motion, the Court placed the uranium mill tailings NESHAPs on the same schedule as the other radionuclide NESHAPs to reconsider the standards in light of *Natural Resources Defense Council v. EPA*, 824 F.2d 1146 (D.C. Cir 1987) (*Vinyl Chloride*). EPA subsequently promulgated 40 CFR part 61, subpart T, the subject of today's action.

EPA believes section 122 of the CAA must be read consistent with and in harmony with the 1990 amendments to the CAA. EPA took action under section 122 when it listed radionuclides. EPA subsequently regulated radionuclides emissions under section 112. Section 112(d)(9) of the CAA authorizes EPA to now decline to regulate radionuclide emissions from any category or subcategory of facilities licensed by the NRC (or an Agreement State) if the Administrator determines, by rule, and after consultation with the NRC, that the regulatory program established by the NRC pursuant to the AEA for such category or subcategory provides an ample margin of safety to protect the public health. This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of

safety. While section 122 addresses whether radionuclides should be listed, section 112(d)(9) addresses a separate issue—whether EPA should continue to regulate or initiate regulation of radionuclide air emissions under section 112 based on the NRC regulatory program.

Although the commenter suggests EPA should not rescind subpart T based on section 122(a), EPA believes such a reading of sections 112(d)(9) and 122(a) is not harmonious and is inconsistent with the intent of Congress in enacting section 112(d)(9).

Additionally, EPA received comments from this particular commenter in response to the 1994 proposal expressing the belief that the 1994 proposal to rescind subpart T is consistent with the terms of the settlement agreement. The settlement agreement promotes the objectives of section 112(d)(9) of the CAA as amended through the rescission of subpart T and minor modifications to the AEA regulatory program for closure of the uranium mill tailings disposal sites. This commenter, together with EPA and others, was a party to that agreement. Through today's action rescinding subpart T, EPA is furthering the goal of the settlement agreement.

Thus, EPA is rejecting this comment, since a reading of section 122(a) apparently preventing such rescission is inconsistent with the intent of Congress in enacting section 112(d)(9), and as a party to the settlement agreement the commenter was aware of and supported the goal of the agreement that subpart T be rescinded.

4. Proposed Amendments to 40 CFR Part 61, Subpart T

4.1 General

Comment: The rationale for adding the definitions *residual radioactive material* and *tailings*, while deleting the definition of *uranium byproduct material* or *tailings* is not clear. The proposed definitions appear to apply to Title I sites, and significant problems might arise if these definitions were to be applied to Title II sites in the event of reinstatement of subpart T.

Response: § 61.220(a) as adopted today states that subpart T applies only to Title I sites except for the reconsideration and reinstatement procedures in § 61.226. The phrase "or uranium byproduct materials" was deleted to further clarify that subpart T applies to Title I sites. The phrases "residual radioactive materials" and "tailings" currently appear in § 61.220(a). EPA noted in describing DOE sites in the 1989 BID that the

tailings located at these sites contain residual radioactive materials, including traces of unrecovered uranium, various heavy metals and other elements.

Background Information Document: Risk Assessments; Environmental Impact Statement; NESHAPs for Radionuclides, Volume 2 at 8-2 (EPA/520/1-89-006-1, September 1989).

EPA believes it appropriate to define *residual radioactive material* and *tailings* for purposes of this subpart. The Agency proposed these definitions on December 31, 1991 and February 4, 1994. (56 FR 67561; 59 FR 5687). The proposed definitions for these terms were consistent with definitions contained in UMTRCA. 42 U.S.C. 7911, sections 101(7) and 101(8). The terms are defined in the Final Rule by expressly referencing UMTRCA, to ensure consistency with that Act. The Agency does not believe these definitions would be problematic if the Agency decided to reinstate subpart T, since EPA would amend subpart T at that time to apply to the Title II sites and to include appropriate definitions.

Comment: The provisions of subpart T, with the exception of § 61.226, should only apply to Title I sites and some apparent references to Title II sites remain.

Response: EPA is rescinding subpart T as applied to NRC or Agreement State licensed non-operational uranium mill tailings disposal sites, and thus, does not intend any provision of subpart T, excepting § 61.226 and applicable definitions, to apply to these sites. EPA has revised § 61.220(a) to reflect this intent.

Comment: Section 61.226(c)(2) as proposed suggests that no future action can be taken to resolve EPA's concerns after EPA notifies NRC of its intent to initiate a rulemaking to reinstate subpart T.

Response: EPA disagrees with the commenter's suggestion that no further action may be taken to resolve the Agency's then existing concerns after EPA notifies NRC of its intent to proceed with a rulemaking to reinstate subpart T. The purpose of consulting with NRC about the Agency's concerns prior to notifying NRC and the subsequent 60-day period is to provide EPA and NRC with an opportunity to address EPA's concerns prior to EPA actually initiating such a rulemaking. Additionally, EPA expects that the two agencies would continue consultations during the rulemaking process to attempt to resolve any remaining concerns. Section 61.226(c)(2) would not limit such continued consultations.

4.2. Provisions for Reconsideration of the Rescission and Reinstatement of Subpart T

Comment: Many commenters, although generally opposed to the idea of reinstatement of subpart T, favored including provisions for reconsideration and reinstatement of subpart T on either a site-specific or programmatic basis, as set forth in the Agency's 1991 proposal to rescind subpart T.

Response: EPA reviewed the various reconsideration options proposed in December 1991, taking into consideration the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. In its 1994 supplemental proposal, EPA proposed an additional reconsideration option that was a combination of the options originally proposed. EPA did not withdraw the original options, but instead announced the Agency's preference for provisions on reconsideration and reinstatement of subpart T on both programmatic and site-specific bases. The Agency has reviewed carefully all comments submitted on the proposed reconsideration provisions and has revised the regulatory text and preamble where deemed appropriate. The Agency believes the provisions for reconsideration and reinstatement of subpart T adopted today represent a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Comment: EPA received a variety of comments dealing with the consistency of the proposed regulations with the settlement agreement between EPA, EDF, NRDC, AMC, and individual site owners described above; to which NRC agreed in principle. These commenters suggested various minor revisions to the regulations.

Response: EPA has adopted certain comments and suggested minor language changes while rejecting others, depending on whether they effectively implement the goal of rescission of subpart T.

Comment: Several commenters contend the site-specific reconsideration and reinstatement options contained in the December 1991 proposal would unduly restrict NRC's waiver authority, since EPA proposed a non-discretionary duty to reinstate subpart T on a site-specific basis if NRC exercises its waiver authority.

Response: As described in the proposals, EPA was concerned over the potential for deviation from the agreements contained in the MOU and

the requirements of revised subpart D. In response, EPA proposed and is now adopting procedural and substantive provisions for site-specific and programmatic reconsideration and reinstatement if certain criteria are met. In promulgating subpart T, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. Thus, in evaluating NRC's regulatory program, EPA recognized in its December 1991 proposal that NRC's waiver authority under the AEA might be exercised in a manner not addressed in the MOU even after the revisions to 40 CFR part 192, subpart D and 10 CFR part 40, appendix A have been promulgated and the licenses amended. However, EPA has no reason to believe such relaxation of the standards will actually occur. EPA believes the provisions adopted today represent a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Additionally, in response to the 1994 proposal, EPA received subsequent comments from these commenters supporting the rescission of subpart T. Furthermore, these commenters supported the proposed reconsideration and reinstatement provisions with certain modifications. These commenters believe the 1994 proposal to rescind subpart T is consistent with the terms of the settlement agreement between EPA, EDF, NRDC, AMC and individual sites. Thus, based on the above reasons for adopting reconsideration and reinstatement provisions, and due to the inconsistency between the earlier comments received and the subsequent expressions of support for the rescission of subpart T, EPA is rejecting the earlier comments.

Comment: Many commenters to the 1991 proposal believe that reconsideration of the rescission of subpart T and subsequent reinstatement on a programmatic basis is inappropriate if one site fails to comply.

Response: Today's action sets forth provisions for the reconsideration of the rescission of subpart T and reinstatement of that subpart. The regulations adopted today include provisions for programmatic and site-specific reinstatement with separate but somewhat parallel criteria. At this time, EPA is not aware of a situation which would cause it to reinstate subpart T on a programmatic basis if one site fails to comply, and would not expect to reinstate subpart T on that basis. However, the Agency cannot predict all future circumstances, and cannot at this time preclude the possibility of such

reinstatement. EPA does, however, believe the criteria adopted today appropriately address both programmatic and site-specific reinstatement.

EPA rejects this comment for the above reasons, and because of the inconsistent responses to the 1991 and 1994 proposals received from the same commenters.

Comment: Some commenters assert, in response to the 1991 proposal that EPA lacks the authority to reinstate subpart T on a site-specific basis, since section 112(d)(9) is concerned only with NRC's regulatory program.

Response: EPA believes that section 112(d)(9) does not preclude site-specific reinstatement. Section 112(d)(9) of the CAA as amended authorizes EPA to decline to regulate radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. The text of this section does not appear to preclude reinstatement on a site-specific basis. Section 112(d)(9) allows EPA to categorize and subcategorize, and for any such category or subcategory determine whether the public health is protected with an ample margin of safety by the NRC regulatory program from a particular source of radionuclide emissions. EPA believes that under the appropriate circumstances, the Agency may want to specifically categorize sites. The CAA as amended does not appear to preclude such specific categories on its face.

EPA rejects this comment for the above reasons, and because of the contradictory and inconsistent nature of the comments received from the same commenters in response to the 1991 and 1994 proposals, and the commenters' support of EPA's 1994 proposal which contains provisions for site-specific reinstatement.

Comment: One commenter appears to recognize EPA's authority for site-specific reinstatement of subpart T but is opposed to EPA's exercise of such authority, and questions its appropriateness, since it appears to the commenter that NRC's existing inspection and enforcement programs address site-specific failures.

Response: This commenter does not oppose the proposed reinstatement

provisions and expresses the clear opinion that EPA committed in the settlement agreement to include provisions for site-specific reconsideration and reinstatement of subpart T. EPA anticipates that before initiating a rulemaking to reinstate subpart T on a site-specific basis, there would be extensive consultation with NRC. Based on the actions of NRC to date in implementing the terms of the MOU, EPA hopes that all concerns could be resolved. EPA is adopting the provisions for site-specific reconsideration and reinstatement as part of a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Comment: Some commenters contend that in reconsidering the rescission and reinstatement of subpart T on a programmatic basis, section 112(d)(9) requires EPA to determine whether public health is threatened by the failure of a particular site to meet the 20 pCi/m²-s flux standard.

Response: The Agency disagrees with the commenters' interpretation of section 112(d)(9) as applying to provisions for reinstatement. Section 112(d)(9) does not establish the criteria for reinstatement, rather it authorizes EPA to decline to regulate radionuclide emissions from NRC or Agreement State licensees if the Administrator determines, by rule, and after consultation with the NRC, that the NRC regulatory program protects the public health with an ample margin of safety. Under section 112(d)(9) EPA may rescind subpart T if EPA determines that the NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T in order to rescind subpart T. Section 112(d)(9) does not limit EPA's authority to reinstate subpart T. EPA believes the criteria adopted today appropriately address both programmatic and site-specific reinstatement.

Additionally, this comment was received in response to the 1991 proposal. EPA rejects this comment for the above reasons, and because of the inconsistent responses to the 1991 and 1994 proposals received from the same commenters.

Comment: Some commenters contend in response to the 1994 proposal that EPA should not treat reinstatement at the Administrator's initiative on the same terms as reinstatement based on a third party petition. These comments suggest revising the proposed regulations to reflect the differences

between the two, including adding a provision for a third possible result (i.e., a finding that NRC is in compliance).

Response: EPA disagrees with the commenters' suggestion that reinstatement at the Administrator's initiative should be treated differently from reinstatement based on a third party petition.

The commenters are basing their contentions on the terms of the settlement agreement which the Agency entered into with EDF, NRDC, AMC and individual sites in February 1993. That agreement adds comprehensive details to the regulatory approach of the MOU between EPA, NRC and the affected Agreement States. EPA has reviewed the terms of the settlement agreement pertaining to the reconsideration of rescission and reinstatement of subpart T. The settlement agreement specifies at paragraph III.e. that upon completion of a rulemaking reconsidering the rescission of subpart T, EPA may (1) reinstate subpart T on a programmatic basis if certain criteria are met; (2) reinstate subpart T on a site-specific basis if certain criteria are met; or (3) issue a finding that NRC is in compliance with certain criteria and that reinstatement of subpart T is not appropriate.

The Agency believes the criteria in § 61.226(a) for requiring reinstatement upon completion of a reconsideration rulemaking should apply whether the rulemaking is at the Administrator's initiative or based on a third party petition. These criteria are: (1) Failure by the NRC or an Agreement State on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements (i.e., contained in the license) establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or (2) failure by NRC or an affected Agreement State on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Additionally, EPA would not be required to reinstate subpart T under § 61.226(a) unless those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at uranium mill tailings disposal sites.

The commenters contend that the nature of the party initiating the reconsideration rulemaking should determine whether reinstatement is discretionary (for initiation by the Administrator) or mandatory (for a third party petition), apparently based on a desire to provide EPA with greater flexibility to address concerns over failures of NRC or an Agreement State to implement or enforce applicable requirements. The Agency believes that the nature of the initiating party properly may trigger different procedural requirements. For example, when a private party initiates the process by filing a petition, EPA has established a requirement that it take final action on such a petition within a set time period. However, EPA believes that the nature of the party initiating the process leading to a rulemaking is not relevant to deciding whether to reinstate, assuming the relevant criteria for reinstatement are met under either circumstance. EPA believes that if the Administrator determines, based on the record, that (1) NRC or an Agreement State failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard or (2) NRC or an affected Agreement State failed in significant part, on a site-specific basis, to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States, then there would be the same reason for the Agency to reinstate subpart T whether the process was initiated by a private petition or at EPA's own initiation. If the Agency makes the determination required to reinstate subpart T based on reconsideration of rescission at the Administrator's initiative and such reinstatement is considered discretionary, the Agency is not aware of circumstances which would lead the Agency not to reinstate subpart T. In any case, if the Administrator should make the determination in § 61.226(a) (1) or (2) but decide in her discretion not to reinstate subpart T in a proceeding initiated by the Administrator, then the Agency believes it would promptly receive third party petitions based on the finding made at the Administrator's initiative, and the Agency would then be obligated to

reinstate subpart T. Additionally, upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may in her discretion issue a finding that reinstatement of this subpart is not appropriate if the Administrator makes certain findings. However, the discretion to issue such a finding is not relevant to the situation where the Administrator has found that the criteria for reinstatement have already been met, since the two findings are mutually exclusive. Finally, the commenters apparently believe that reinstatement at the Administrator's initiative should be discretionary so that EPA and NRC can continue attempts to resolve concerns and thereby avoid the need to reinstate. EPA believes that such ongoing consultation is not precluded by the regulations adopted today, and EPA expects the agencies would continue consultations and make all possible efforts to resolve the concerns during the rulemaking process. The regulation does not establish a time limit for final agency action in this case, and the agency would have discretion to extend the rulemaking if appropriate to continue such inter-agency consultations.

EPA agrees with the commenters that the settlement agreement provides an additional possible result upon completion of a reconsideration rulemaking initiated by the Administrator, namely that the Agency may issue a finding that reinstatement is not appropriate if the Agency finds: (1) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or (2) NRC or an affected Agreement State are, in significant part, on a site-specific basis achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. EPA believes addition of this provision to the regulations will clarify the existence of this option and has revised § 61.226(a) of the reinstatement provisions to provide for this additional result.

Comment: One commenter asserts that EPA's characterization of its authority to reconsider rescission of subpart T in the preamble to the 1994 proposal appears overly broad and reinstatement should be clearly limited

to those conditions proposed in § 61.226(a).

Response: EPA believes that the provisions for reconsideration of rescission adopted in § 61.226 represent a comprehensive approach under both the MOU and the settlement agreement. The provisions include substantive and procedural provisions for reconsideration of rescission and the reinstatement of this subpart on a programmatic or site-specific basis. The provisions include the obligation to reinstate subpart T if certain conditions are met, procedures for reconsideration and provisions authorizing the Administrator to initiate reconsideration. Although the Agency does not intend to reconsider its decision to rescind subpart T for a site which is in fact meeting the 20 pCi/m²-s flux standard absent other factors that would indicate the need for reinstatement, the Agency recognizes that a situation may arise where reconsideration of rescission is nevertheless appropriate. For example, EPA might consider initiating reconsideration under § 61.226 where a site is meeting the 20 pCi/m²-s flux standard if there are factors which show that NRC or an Agreement State failed to implement and enforce in significant part, the applicable regulations, e.g., clear failure of that site to emplace the permanent radon barrier within the time periods established in implementing subpart D. EPA is not aware of circumstances under which EPA might reconsider rescission for a site that is meeting the 20 pCi/m²-s flux standard, other than those indicating that the milestone for emplacement of the permanent radon barrier has passed, the delay was not approved by NRC or an Agreement State and the licensee failed to emplace the permanent radon barrier, and there are indications that the licensee does not plan to emplace the barrier and NRC or an Agreement State does not plan to enforce this requirement. EPA does not envision such an unusual situation arising. EPA believes the actions taken to date by NRC, including the license amendments and the final amendments to the NRC conforming regulations, as described above, reflect the good faith effort on the part of NRC and the Agreement States to implement the MOU and EPA's subpart D regulations. However, the Agency is not now in the position to determine that there could be no circumstances which might indicate the need to reconsider the rescission of subpart T for a site that is in fact meeting the 20 pCi/m²-s flux standard.

Additionally, EPA reserves the right to initiate reinstatement of subpart T if

appropriate, since although the § 61.226 provisions adopted today establish an obligation for the Administrator to reinstate if certain conditions are met, they are not intended to be the exclusive basis for reinstatement. Under the regulations adopted today, EPA has the authority to reconsider the rescission of subpart T at the Administrator's initiative and upon the petition of a third party. The Agency is obligated to reinstate subpart T on a programmatic basis if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. Additionally, EPA is obligated to reinstate subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed in significant part on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. The obligation to reinstate subpart T is limited to those failures which may reasonably be anticipated to significantly interfere with timely emplacement of the permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard. At this time, EPA is not aware of circumstances where it would consider reinstating subpart T if the failure does not significantly interfere with emplacement of the required permanent radon barrier. However, EPA reserves the right to reconsider the rescission where the criteria of § 61.226(a) have not been met, under the Agency's authority to issue NESHAPs contained in section 112 of the CAA. For example, even if the NRC or an Agreement State is implementing and enforcing, in significant part, the applicable regulations and license amendments, the Agency may decide to reconsider the rescission if new information indicated that the public health is not protected with an ample margin of safety. The Agency cannot predict all future circumstances and cannot at this time preclude the possibility of such reconsideration and

possible reinstatement. Despite reserving this authority, the Agency believes this is a theoretical situation and has no current intention to act on this authority.

5. Miscellaneous

5.1. Monitoring

Comment: EPA must ensure that the single monitoring event currently required by subpart T would remain in effect if subpart T is reinstated, particularly in light of the recently proposed "enhanced monitoring" regulations.

Response: Subpart T currently requires monitoring to occur only once to demonstrate compliance with the 20 pCi/m²-s flux standard of § 61.222. However, EPA published a proposed Enhanced Monitoring Program on October 22, 1993, which would require owners and operators of sources subject to existing NESHAPs to perform enhanced monitoring at emissions units. (58 FR 54648). It appears that the proposal applies the enhanced monitoring requirements for hazardous air pollutants to all emissions units which would be required to obtain an operating permit. (58 FR 54651, October 22, 1993). Additionally, although asbestos demolition and renovation projects (subpart M) were exempted from the enhanced monitoring provisions, it does not appear subpart T would be exempted. The rationale for the proposed asbestos demolition exemption, that EPA was not requiring states to permit those sources and the permit program is the established method for implementing the enhanced monitoring program, does not appear to apply to uranium mill tailings disposal sites. It would be premature for EPA to determine today that in the event subpart T is reinstated for Title II sites, the proposed enhanced monitoring provisions would not apply.

5.2 Discussion of 40 CFR part 192, Subpart D Extension Provisions

Comment: EPA's discussion of the extension provisions contained in 40 CFR 192.32(a)(3)(ii), (iii) is confusing and should be revised to equally consider the possibility of extensions for factors beyond the control of the licensee.

Response: EPA believes its discussion of the extension provisions contained in the Agency's amendments to its UMTRCA regulations at 40 CFR 192.32(a)(3)(ii) and (iii) does not need further clarification. EPA disagrees with the commenter's claim that an extension based upon "factors beyond the control of the licensee" should be considered

equally with the delay provisions encompassed in EPA's UMTRCA regulations. 40 CFR 192.32(a)(3)(ii) and (iii) specifically provide that NRC may grant an extension on either one of two bases. However, an extension due to "factors beyond the control of the licensee" is implicit in the definition of "as expeditiously as practicable." The term "factors beyond the control of the licensee" would be one element for NRC to evaluate in reconsidering a prior decision establishing a date for emplacement of the permanent radon barrier that meets the definition of "as expeditiously as practicable." A change in any one of the factors considered in establishing a date that meets the "as expeditiously as practicable" standard would not automatically lead to an extension, rather NRC would need to evaluate all the relevant factors under § 192.32(a)(3)(i) before it could change a previously established milestone or date for emplacement of the permanent radon barrier.

5.3 Discussion of Amendment of NRC and Agreement State Licenses

Comment: There is some concern that EPA may be over scrutinizing the NRC license amendment process, particularly with respect to the Atlas site located in Moab, Utah.

Response: In order to determine that the NRC regulatory program protects the public health with an ample margin of safety and rescind subpart T, EPA must conclude, *inter alia* that NRC and the affected Agreement States are or will be implementing and enforcing the license requirements (tailings closure plan (radon)) that establish the milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility. The Agency is applying the same basic approach in reviewing all of the license amendments. Presently, Atlas is the only site where the site license has not yet been amended, but the tailings closure plan (radon) milestones are in jeopardy. There is a wealth of information for EPA to review due to the unique circumstances of this site.

EPA is interested in the Atlas site because the license amendment incorporating the reclamation plan has not yet been completed, and this may jeopardize the dates contained in the tailings closure plan (radon). The MOU established a target closure date of 1996. EPA recognizes that this is the only site for which a license amendment incorporating the reclamation plan has not been established, thereby possibly impacting the dates currently contained

in the approved tailings closure plan (radon) adopted pursuant to the MOU and EPA's revised subpart D regulations, and that the circumstances surrounding the delay are unique. EPA believes NRC, the affected Agreement States and the licensees have acted in good faith to amend the site licenses.

The Agency does not believe it is overly scrutinizing the license amendment process. The Agency believes its interest in the Atlas site reflects EPA's commitment to and review of the applicable criteria in finally determining that NRC and the affected Agreement States are or will be implementing and enforcing the license requirements (tailings closure plan (radon)) to achieve compliance with the 20 pCi/m²-s flux standard. EPA is merely reviewing current information and monitoring the progress of NRC in implementing the requirements of subpart D. The Agency has not suggested any course of action to NRC.

5.4 Public Participation

Comment: An industrial site, other than a uranium mill tailings disposal site, commented that publishing a notice in the Federal Register does not provide sufficient notice for citizens of communities where uranium mill tailings disposal sites are located.

Response: The EPA made every effort to notify the affected public of the proposed rulemaking action. EPA published a NPR on December 31, 1991, and a supplement to that proposal on February 7, 1994, in the Federal Register. There was a public comment period after each proposal; public hearings were held in Washington, DC and Santa Fe, NM after the 1991 proposal and no request for a hearing was received after the 1994 proposal. EPA believes it has afforded the public with full opportunity to participate in this proceeding, as well as satisfied all such requirements under Clean Air Act section 307.

V. Miscellaneous

A. Disposition of Pending Judicial Challenges and Petitions for Reconsideration

By taking today's action rescinding subpart T as applied to owners and operators of uranium mill tailings disposal sites regulated under Title II of UMTRCA, the stay of subpart T is no longer effective. Thus, the challenge to the stay of subpart T filed by EDF is moot, and EPA expects that the pending litigation will be promptly resolved by dismissal. Based on the terms of the settlement agreement between EDF, NRDC, AMC, individual sites and EPA

as described above, and based on today's rescission of subpart T, AMC's pending administrative petition for reconsideration of subpart T is denied as moot. Additionally, all other pending petitions for reconsideration of subpart T as applied to Title II sites are denied as moot under today's action.

B. Paperwork Reduction Act

There are no information collection requirements in this rule.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

This action is not a significant regulatory action as that term is defined in Executive Order 12866, since it will not result in an annual effect on the economy of \$100 million or another adverse economic impact; it does not create a serious inconsistency or interfere with another agency's action; it does not materially alter the budgetary impacts of entitlements, grants, user fees, etc.; and it does not raise novel legal or policy issues. Thus, EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the

effect of this rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Most firms that own uranium mill tailings piles are divisions or subsidiaries of major U.S. and international corporations. Many are parts of larger diversified mining firms which are engaged in a number of raw materials industries; the disposal of uranium mill tailings piles represents only a small portion of their overall operations. Others are owned by major oil companies and electric utilities which were engaged in horizontal and vertical integration, respectively, during the industry's growth phase in the 1960s and 1970s.

It was found in the 1989 rulemaking that there was no significant impact on small business entities. There has been no change in this, and no new tailings piles have been constructed since 1989. I certify that this final rule to rescind 40 CFR part 61, subpart T as applied to owners and operators of NRC licensed non-operational uranium mill tailings disposal sites, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

Dated: June 29, 1994.

Carol M. Browner,
Administrator.

Part 61 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

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

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.220 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 61.220 Designation of facilities.

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium

ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, except § 61.226 of this subpart which applies to owners and operators of all sites that are regulated under Title II of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) [Reserved]

3. Section 61.221 is amended by revising the introductory text, revising paragraphs (a) and (c), and by adding paragraphs (d) and (e) to read as follows:

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for the purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

(c) *Residual radioactive materials* shall have the same meaning as in section 101(7) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(7).

(d) *Tailings* shall have the same meaning as in section 101(8) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(8).

(e) *In significant part* means in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

4. Section 61.222 is amended by revising paragraph (b) to read as follows:

§ 61.222 Standard.

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for an owner or operator to complete disposal within that time, EPA shall, after consultation with the owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

5. Section 61.223 is amended by revising paragraph (b)(5) to read as follows:

§ 61.223 Compliance procedures.

(b) * * *
(5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See 18 U.S.C. 1001.

6. Section 61.226 is added to subpart T to read as follows:

§ 61.226 Reconsideration of rescission and reinstatement of this subpart.

(a) Reinstatement of this subpart upon completion of reconsideration of rescission.

(1) The Administrator shall reinstate 40 CFR part 61, subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has:

(i) Failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at the uranium mill tailings disposal site.

(2) The Administrator shall reinstate 40 CFR part 61 subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites that are

licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record:

(i) That NRC or an affected Agreement State has failed in significant part on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at the uranium mill tailings disposal site.

(3) Upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may issue a finding that reinstatement of this subpart is not appropriate if the Administrator finds:

(i) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or

(ii) NRC or an affected Agreement State are on a site-specific basis, in significant part, achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States.

(b) Procedures to Petition for Reconsideration of Rescission of this subpart.

(1) A person may petition the Administrator to reconsider the rescission and seek reinstatement of this subpart under § 61.226(a).

(2) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(1) (programmatic basis), without prejudice, unless the petitioner demonstrates that written notice of the alleged failure(s) was provided to NRC at least 60 days before filing the petition with EPA. This notification shall include a statement of the grounds for such a petition and this notice

requirement may be satisfied by, but is not limited to, submissions or pleadings submitted to NRC during a proceeding conducted by NRC.

(3) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(2) (site-specific basis), without prejudice, unless the petitioner demonstrates that a written request was made to NRC or an affected Agreement State for enforcement or other relief at least 60 days before filing its petition with EPA, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m²-s flux standard.

(4) Upon receipt of a petition under § 61.226(b)(1) that is not dismissed under § 61.226(b)(2) or (b)(3), EPA will propose to grant or deny an authorized petition to reconsider, take comments on the Agency's proposed action, and take final action granting or denying such petition to reconsider within 300 days of receipt.

(c) Reconsideration of Rescission of this Subpart Initiated by the Administrator.

(1) The Administrator may initiate reconsideration of the rescission and reinstatement of this subpart as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard.

(2) Before the Administrator initiates reconsideration of the rescission and reinstatement of this subpart under § 61.226(c)(1), EPA shall consult with NRC to address EPA's concerns and if the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

federal register

Friday
July 15, 1994

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET**Cumulative Report on Rescissions and Deferrals**

July 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in five special messages for FY 1994. These messages were transmitted to Congress on October 13,

November 1, and November 19, 1993; and on February 7, May 2, and June 8, 1994.

Rescissions (Attachments A and C)

As of July 1, 1994, 65 rescission proposals totaling \$3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in P.L. 103-211. A total of \$1,286.7 million of the rescissions proposed by the President was rescinded by that measure. There are no rescission proposals pending before the Congress. Attachment C shows the status of the FY rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1994, \$2,993.7 million in budget authority was being deferred from obligation. Attachment D shows

the status of each deferral reported during FY 1994.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

58 FR 54256, Wednesday, October 20, 1993
 58 FR 59517, Tuesday, November 9, 1993
 58 FR 63264, Tuesday, November 30, 1993
 59 FR 7122, Monday, February 14, 1994
 59 FR 24006, Monday, May 9, 1994
 59 FR 32068, Tuesday, June 21, 1994

Leon E. Panetta,

Director.

BILLING CODE 3110-01-M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

| | Amounts (In millions of dollars) |
|--|--|
| Rescissions proposed by the President..... | 3,172.2 |
| Rejected by the Congress..... | -1,885.5 |
| Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act..... | -1,286.7 |
| Currently before the Congress..... | 0.0 |

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

| | Amounts (In millions of dollars) |
|---|--|
| Deferrals proposed by the President..... | 8,625.8 |
| Routine Executive releases through July 1, 1994.... (OMB/Agency release of \$5,632.5 million, partially offset by cumulative positive adjustment of \$452 thousand.) | -5,632.1 |
| Overtured by the Congress..... | --- |
| Currently before the Congress..... | 2,993.7 |

ATTACHMENT C
 Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|-------------------|---------------------------------|-------------------|-----------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | |
| International Security Assistance | R94-1 | | 40,000 | 11-1-93 | | | | |
| Foreign military financing grants..... | R94-1A | | 25,562 | 2-7-94 | | | 65,562 | P.L. 103-211 |
| Economic support fund..... | R94-2 | | 90,000 | 11-1-93 | | | 61,350 | P.L. 103-211 |
| Military assistance..... | R94-38 | | 438 | 2-7-94 | | | 438 | P.L. 103-211 |
| Agency for International Development Development assistance fund..... | R94-3 | | 160,000 | 11-1-93 | | | 104,019 | P.L. 103-211 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Agricultural Research Service | R94-4 | | 16,233 | 11-1-93 | 16,233 | | | |
| Agricultural Research Service Buildings and facilities..... | R94-5 | | 8,460 | 11-1-93 | 8,460 | | | |
| Cooperative State Research Service | R94-6 | | 30,002 | 11-1-93 | 24,268 | | 5,734 | P.L. 103-211 |
| Cooperative State Research Service Buildings and facilities..... | R94-7 | | 34,000 | 11-1-93 | 31,103 | | 2,897 | P.L. 103-211 |
| Agricultural Stabilization and Conservation Service | R94-8 | | 12,167 | 11-1-93 | 12,167 | | | |
| Salaries and expenses..... | | | | | | | | |
| Soil Conservation Service | R94-9 | | 12,167 | 11-1-93 | 12,167 | | | |
| Conservation operations..... | | | | | | | | |
| Farmers Home Administration | R94-10 | | 12,167 | 11-1-93 | | | 12,167 | P.L. 103-211 |
| Salaries and expenses..... | | | | | | | | |

* Funds were never withheld from obligation.

ATTACHMENT C
 Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|--|-------------------|---------------------------------|-------------------|-------------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| Rural Development Administration and Farmers Home Administration | R94-41 | | 15,645 | 2-7-94 | | | 15,645 | P.L. 103-211 |
| Rural housing insurance fund program account | | | | | | | | |
| Agricultural credit insurance fund program account | R94-39 | | 5,094 | 2-7-94 | | | 5,094 | P.L. 103-211 |
| Rural Electrification Administration | | | | | | | | |
| Rural electrification and telephone loans program account | R94-11 R94-40 | | 6,445 5,688 | 11-1-93 2-7-94 | 6,445 2,383 | 3-1-94 3-1-94 | 3,305 | P.L. 103-211 |
| Food and Nutrition Service | | | | | | | | |
| Commodity supplemental food program | R94-12 | | 12,600 | 11-1-93 | 2,600 | 3-1-94 | 10,000 | P.L. 103-211 |
| Foreign Assistance Programs | | | | | | | | |
| Public Law 480 grants - Titles I (OFD), II, and III | R94-42 | | 49,600 | 2-7-94 | 20,000 | 4-29-94 | 29,600 | P.L. 103-211 |
| Public Law 480 program account | R94-43 | | 35,400 | 2-7-94 | 12,500 | 3-14-94 | 22,900 | P.L. 103-211 |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| National Oceanic and Atmospheric Administration | | | | | | | | |
| Operations, research, and facilities | R94-13 | | 6,000 | 11-1-93 | 6,000 | 3-1-94 | | |
| Construction | R94-14 | | 4,000 | 11-1-93 | 1,000 | 3-1-94 | 3,000 | P.L. 103-211 |
| International Trade Administration | | | | | | | | |
| Operations and administration | R94-15 | | 2,000 | 11-1-93 | | | 2,000 | P.L. 103-211 |
| DEPARTMENT OF DEFENSE | | | | | | | | |
| Procurement | | | | | | | | |
| Missile procurement, Army | R94-44 | | 48,000 | 2-7-94 | 48,000 | 3-24-94 | | |
| Aircraft procurement, Navy | R94-45 | | 51,700 | 2-7-94 | 41,700 | 3-17-94 | 10,000 | P.L. 103-211 |

* Funds were never withheld from obligation.

ATTACHMENT C
 Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|-------------------|---------------------------------|-------------------|-----------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| Shipbuilding and conversion, Navy Aircraft procurement, Air Force | R94-46 | | 50,000 | 2-7-94 | 50,000 | 3-25-94 | | |
| | R94-47 | | 105,600 | 2-7-94 | 92,800 | 3-30-94 | 12,800 | P.L. 103-211 |
| Research, Development, Test, and Evaluation Research, development, test, and evaluation, Defense-wide | R94-48 | | 50,000 | 2-7-94 | 40,000 | 3-26-94 | 10,000 | P.L. 103-211 |
| | | | | | | | | |
| Military Construction Military construction, Army Military construction, Air Force Military construction, Army Reserve Military construction, Naval Reserve Military construction, Air Force Reserve Military construction, Army National Guard | R94-16 | | 116,134 | 11-1-93 | 93,815 | 3-1-94 | 22,319 | P.L. 103-211 |
| | R94-17 | | 85,094 | 11-1-93 | 60,307 | 3-1-94 | 24,787 | P.L. 103-211 |
| | R94-18 | | 19,807 | 11-1-93 | 17,256 | 3-1-94 | 2,551 | P.L. 103-211 |
| | R94-19 | | 4,438 | 11-1-93 | 3,812 | 3-1-94 | 626 | P.L. 103-211 |
| | R94-20 | | 18,759 | 11-1-93 | 16,897 | 3-1-94 | 1,862 | P.L. 103-211 |
| | R94-21 | | 251,854 | 11-1-93 | 244,286 | 3-1-94 | 7,568 | P.L. 103-211 |
| | R94-22 | | 105,138 | 11-1-93 | 98,951 | 3-1-94 | 6,187 | P.L. 103-211 |
| | | | | | | | | |
| DEPARTMENT OF THE ARMY-CIVIL | | | | | | | | |
| Army Corps of Engineers General investigations Construction, general | R94-23 | | 24,970 | 11-1-93 | 24,970 | 3-1-94 | | |
| | R94-24 | | 97,319 | 11-1-93 | 97,319 | 3-1-94 | | |
| DEPARTMENT OF ENERGY | | | | | | | | |
| Energy Programs Energy supply, research and development activities | R94-25 | | 97,300 | 11-1-93 | 97,300 | 3-1-94 | | |
| | R94-49 | | 10,000 | 2-7-94 | | | 10,000 | P.L. 103-211 |
| Uranium supply and enrichment activities | R94-25 | | 42,000 | 11-1-93 | | | 42,000 | P.L. 103-211 |
| | | | | | | | | |

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|--|-------------------|---------------------------------|-------------------|-----------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | | | | |
| Housing Programs | R94-26 | | 180,000 | 11-1-93 | 180,000 | 3-1-94 | | |
| Annual contributions for assisted housing | | | | | | | | |
| Homeownership and opportunity for people everywhere grants (HOPE grants) | R94-50 | 66,000 | | 2-7-94 | | | 66,000 | P.L. 103-211 |
| DEPARTMENT OF INTERIOR | | | | | | | | |
| Bureau of Reclamation | R94-27 | | 16,000 | 11-1-93 | 16,000 | 3-4-94 | | |
| Construction | | | | | | | | |
| DEPARTMENT OF STATE | | | | | | | | |
| Administration of Foreign Affairs | R94-28 | | 600 | 11-1-93 | 600 | 2-28-94 | | |
| Salaries and expenses | | | | | | | | |
| Buying power maintenance | R94-51 | 8,800 | | 2-7-94 | | | 8,800 | P.L. 103-211 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | |
| Federal Aviation Administration | R94-29 | | 2,750 | 11-1-93 | 2,000 | 3-1-94 | | 750 P.L. 103-211 |
| Operations | | | | | | | | |
| Facilities and equipment | R94-30 | | 40,257 | 11-1-93 | | | 40,257 | P.L. 103-211 |
| Grants-in-aid for airports (Airport and airway trust fund) | | | | | | | | |
| | R94-56 | | 488,200 | 2-7-94 | | | 488,200 | P.L. 103-211 |
| Federal Transit Administration | R94-31 | | 52,037 | 11-1-93 | 51,228 | 3-1-94 | | 809 P.L. 103-211 |
| Discretionary grants | | | | | | | | |
| Federal Highway Administration | R94-32 | | 187,827 | 11-1-93 | 12,858 | 1-28-94 | | |
| Highway demonstration projects | | | | | | | | |
| | R94-32A | | -12,858 | 2-7-94 | 174,969 | 2-28-94 | | |

* Funds were never withheld from obligation.

ATTACHMENT C
 Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|--|-------------------|---------------------------------|-------------------|-----------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| Federal Railroad Administration | R94-55 | | 17,000 | 2-7-94 | | | 17,000 | P.L. 103-211 |
| Railroad research and development | | | | | | | | |
| Coast Guard | | | | | | | | |
| Operating expenses | R94-57 | | 5,000 | 2-7-94 | 5,000 | 4-18-94 | | |
| Acquisition, construction, and improvements | R94-58 | | 2,000 | 2-7-94 | 2,000 | 4-18-94 | | |
| Office of the Secretary | | | | | | | | |
| Rental payments | R94-59 | | 1,781 | 2-7-94 | | | 1,781 | P.L. 103-211 |
| Payments to air carriers (Airport and airway trust fund) | R94-60 | | 10,067 | 2-7-94 | | | 10,067 | P.L. 103-211 |
| DEPARTMENT OF THE TREASURY | | | | | | | | |
| Financial Management Service | | | | | | | | |
| Biomass energy development | R94-61 | | 16,275 | 2-7-94 | | | 16,275 | P.L. 103-211 |
| GENERAL SERVICES ADMINISTRATION | | | | | | | | |
| Public Buildings Service | | | | | | | | |
| Federal buildings fund | R94-33 | | 126,022 | 11-1-93 | 126,022 | 3-1-94 | | |
| | R94-33A | | 1,669 | 2-7-94 | 1,669 | 3-15-94 | | |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION | | | | | | | | |
| Research and development | R94-62 | | 88,000 | 2-7-94 | 25,000 | 2-29-94 | 63,000 | P.L. 103-211 |
| Space flight, control, and data communications | R94-63 | | 32,000 | 2-7-94 | | | 32,000 | P.L. 103-211 |
| Construction of facilities | R94-64 | | 25,000 | 2-7-94 | | | 25,000 | P.L. 103-211 |
| SMALL BUSINESS ADMINISTRATION | | | | | | | | |
| Salaries and expenses | R94-34 | | 13,100 | 11-1-93 | 13,100 | 3-1-94 | | |

ATTACHMENT C
 Status of FY 1994 Rescission Proposals - As of July 1, 1994
 (Amounts in thousands of dollars)

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress | | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|--|-------------------|---------------------------------|-------------------|-----------------|--|---------------------|------------------|----------------------|
| | | Less than 45 days | More than 45 days | | | | | |
| OTHER INDEPENDENT AGENCIES | | | | | | | | |
| Board for International Broadcasting Israel relay station..... | R94-65 | | 1,700 | 2-7-94 | | | 1,700 | P.L. 103-211 |
| National Science Foundation Academic research infrastructure..... | R94-66 | | 10,000 | 2-7-94 | 5,000 | 3-7-94 | 5,000 | P.L. 103-211 |
| Nuclear Regulatory Commission Salaries and expenses..... | R94-67 | | 12,700 | 2-7-94 | | | 12,700 | P.L. 103-211 |
| State Justice Institute Salaries and expenses..... | R94-35 | | 6,775 | 11-1-93 | | | | |
| United States Information Agency Salaries and expenses..... | R94-36 | | 3,000 | 11-1-93 | 1,000 | 3-1-94 | 2,000 | P.L. 103-211 |
| North/South Center..... | R94-37 | | 8,700 | 11-1-93 | 7,700 | 3-1-94 | 1,000 | P.L. 103-211 |
| TOTAL RESCISSIONS..... | | 0 | 3,172,183 | | 1,806,885 | | 1,286,750 | |

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of July 1, 1994
(Amounts in thousands of dollars)

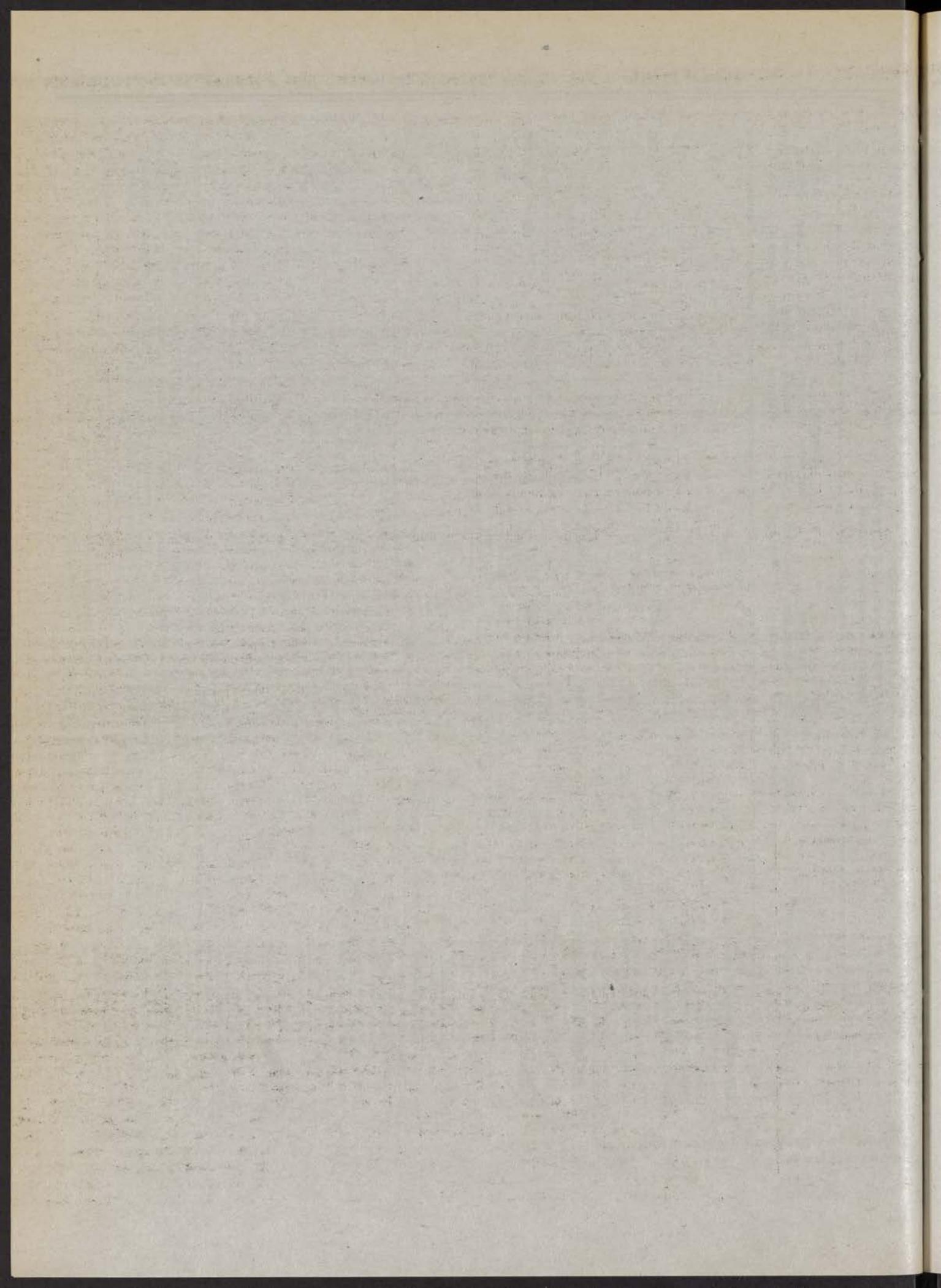
| Agency/Bureau/Account | Deferral Number | Amounts Transmitted | | Date of Message | Releases(-) | | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 7-1-94 |
|--|---------------------------|---------------------|-----------------------|--------------------------------|-----------------------|--------------------------|----------------------|----------------------------|------------------------------|
| | | Original Request | Subsequent Change (+) | | Cumulative OMB/Agency | Congressionally Required | | | |
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance Economic support fund..... | D94-1 D94-1A D94-1B | 394,175 | 1,164,562 23,725 | 10-13-93 11-19-93 2-7-94 | 758,890 | | | 452 | 824,025 |
| Foreign military financing grants..... | D94-9 | 3,137,279 | | 11-19-93 | 1,811,558 | | | | 1,325,721 |
| Foreign military financing program account..... | D94-10 | 46,530 | | 11-19-93 | 38,118 | | | | 8,412 |
| Agency for International Development Demobilization and transition fund..... | D94-2 | 8,000 | | 10-13-93 | | | | | 8,000 |
| International disaster assistance, executive..... | D94-11 | 118,059 | | 11-19-93 | 115,147 | | | | 2,912 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Forest Service Cooperative work..... | D94-3 D94-3A | 461,639 | 45,102 | 10-13-93 6-8-94 | | | | | 506,741 |
| Expenses, brush disposal..... | D94-4 | 40,195 | 8,230 | 10-13-93 6-8-94 | | | | | 48,425 |
| Timber salvage sales..... | D94-5 | 256,897 | | 10-13-93 | 52,483 | | | | 204,414 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Wildlife Conservation, Military Reservations Wildlife conservation, Defense..... | D94-6 | 1,852 | | 10-13-93 | 390 | | | | 1,462 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Social Security Administration Limitation on administrative expenses..... | D94-7 | 7,317 | 2 | 10-13-93 5-2-94 | | | | | 7,319 |

ATTACHMENT D
Status of FY 1994 Deferrals - As of July 1, 1994
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted | | Date of Message | Releases(-) | | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 7-1-94 |
|--|-----------------|---------------------|-----------------------|----------------------|-----------------------|--------------------------|----------------------|----------------------------|------------------------------|
| | | Original Request | Subsequent Change (+) | | Cumulative OMB/Agency | Congressionally Required | | | |
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund..... | D94-8 D94-8A | 27,100 | 49,261 | 10-13-93 11-19-93 | 20,061 | | | | 56,300 |
| GENERAL SERVICES ADMINISTRATION | | | | | | | | | |
| Public Buildings Service | | | | | | | | | |
| Public buildings fund..... | D94-12 | 2,835,860 | | 11-19-93 | 2,835,860 | | | | 0 |
| TOTAL, DEFERRALS..... | | 7,334,903 | 1,290,883 | | 5,632,506 | 0 | | 452 | 2,993,732 |

01-Jul-94

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Friday
July 15, 1994

FRIDAY
July 15, 1994

Part V

**Department of
Transportation**

Coast Guard

**33 CFR Part 1, et al.
National Vessel Traffic Services
Regulations; Final Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 26, 160, 161, 162, 164, and 165

[CGD 90-020]

RIN 2115-AD56

National Vessel Traffic Services Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Vessel Traffic Services (VTS) regulations to make participation in all VTSs mandatory. This rule also simplifies existing VTS regulations by amending Part 161 to incorporate standard national vessel traffic management rules applicable to all VTSs, vessel movement reporting requirements for certain vessels operating in the VTS areas, and geographic descriptions and local regulations pertaining to specific VTS areas. Additionally, the rule redesignates other regulations, not unique to VTS operations, into more appropriate parts within Title 33. This rulemaking does not significantly change Coast Guard VTS procedures or requirements. This final rule is intended to promote safe vessel movement by reducing the potential for collisions, rammings, and groundings and their attendant loss of lives, property and environmental harm.

EFFECTIVE DATE: This rule is effective on October 13, 1994.

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

FOR FURTHER INFORMATION CONTACT: Ms. Irene Hoffman, Project Manager, Vessel Traffic Services Division (G-NVT), at (202) 267-6277.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ms. Irene Hoffman, Project Manager, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 1, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "National Vessel Traffic Services Regulations" in the Federal Register (56 FR 36910). The Coast Guard received 29 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act (PTSA) and the Oil Pollution Act (OPA 90), the Secretary of Transportation may construct, operate, maintain, improve or expand VTSs in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to 33 U.S.C. 1230. The Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS.

Based on the comments received to the NPRM, the Coast Guard decided to simplify the VTS regulations in Part 161 by reorganizing them. As a result: (1) The National VTS Regulations (General Rules) are now contained in Subpart A; and (2) Vessel Movement Reporting System (VMRS) regulations are in Subpart B; (3) geographic descriptions and local regulations pertaining to VTS Areas, VTS Special Areas, the Cooperative Vessel Traffic Service (CVTS) Area, and Reporting Points are contained in Subpart C.

This final rule also redesignates certain VTS regulations currently in Part 161 into other parts of Subchapter P (Parts 26, 160, 162, 164, and 165). Certain operating requirements applicable to all vessels regardless of VTS participation that had been in Part 161, are now located in Part 165 of this chapter. Specifically, these amendments include operating requirements which are now redesignated as regulated navigation areas. Additionally, this rule amends certain vessel operating requirements to more clearly reflect actual operating procedures.

Discussion of Comments and Changes

Twenty-nine respondents to the NPRM provided over 150 separate comments on various aspects of the proposed regulations. Some issues were raised repeatedly. This section discusses the comments received as well as the Coast Guard's responses and changes to the rule. This discussion on the comments and changes is divided into five sections. These sections include: (1)

Broad VTS Issues; (2) Subpart A; (3) Subpart B; (4) Subpart C; and (5) Miscellaneous Rules.

(1) Broad VTS Issues

Some comments addressed general concerns that are noteworthy and relevant to VTS issues. These comments are discussed in the following sections.

A. Participation Requirements

Some comments expressed disapproval with making participation mandatory for certain vessels in existing voluntary systems, whereas other comments were in favor of mandatory participation and lauded the Coast Guard's efforts to standardize this practice.

This final rule changes the participation requirements in three "voluntary" VTS systems, and will affect future VTSs. It does not significantly change the existing standard operating procedures.

Marine accidents in recent years have underscored, often dramatically, the need for continuously improving navigation safety on our nation's waterways. They have heightened public awareness of the serious effects of collisions, rammings, and groundings. This heightened awareness and the importance of VTS participation was reaffirmed by Congress when it mandated such participation, in section 4107 of OPA 90, 33 U.S.C. 1223(a)(2). Additionally, documented incidents support the conclusion that mishaps have been avoided as a result of VTS participation.

B. Vessel Control

The issue of vessel control attracted the greatest number of comments. Comments expressed concern that the Coast Guard would exert direct control over vessel movements within a VTS area.

This final rule does not change the Coast Guard's authority or policy on vessel traffic management. Essentially, the objective of vessel traffic management is to minimize the risk of marine casualties (i.e., collisions, rammings, and groundings), and to facilitate commerce to the greatest extent practicable. The underlying authority for this is contained in the Ports and Waterways Safety Act of 1972 (PWSA), as amended. Title 33 U.S.C. 1223 of the PWSA allows for varying levels of vessel traffic management and control, depending upon the hazards present. The level of control to be exercised, including VTS measures and directions, is typically determined on a case-by-case basis and is directed at a

specific vessel or vessels in a specific situation.

The primary function of a VTS is to instill good order and predictability on a waterway. This is accomplished by coordinating vessel movements through the collection, verification, organization, and dissemination of information. When performing these functions, the VTS is not exerting vessel control or relieving the master of his or her responsibility to control vessel movement.

Furthermore, the master's responsibility is emphasized by specific language that is being added to § 161.12 (Vessel Operating Requirements) in this final rule. In effect, this section states that, subject to the exigencies of safe navigation, a VTS User shall comply with all measures established or directions issued by a VTS. If, due to the particular circumstances of a case, a measure or direction is issued by the VTS and a VTS User deems that it is unable to comply, the VTS User may deviate only to the extent necessary to avoid endangering persons, property or the environment. The deviation shall be reported to the VTS as soon as is practicable.

This final rule includes two delegation of authority provisions contained in § 1.01-30 (Captains of the Port) and § 160.5 (Delegations). These provisions define the relationship between the VTS and the Captain of the Port, and also assure that, when necessary, a VTS has the legal authority to establish VTS measures and vessel operating requirements to enhance vessel traffic management.

These provisions together with § 161.3 (Applicability), § 161.5 (Deviations from the Rules), § 161.10 (Services), § 161.11 (VTS Measures), and § 161.12 (Vessel Operating Requirements), balance the respective roles of the VTS and the vessel, owner, operator, charterer, master, or person directing the movement of the vessel.

The broad information sources of a VTS, coupled with the authority to represent the Captain of the Port and institute VTS measures, issue directions and implement vessel operating procedures will markedly enhance vessel traffic safety. With the collaboration of the marine community as contemplated by this final rule, the VTS's information resources will enhance the more limited, but more immediate information base of the master, pilot, or person directing the movement of the vessel. The determining factor is safe navigation, the ultimate responsibility for which always remains with the master.

C. VTS Ports and Waterways Criteria

Some comments questioned why VTSs are not being established in other specific waterways. This issue must be addressed in both an operational and an economic context. Vessel Traffic Services provide the most active form of vessel traffic management on the waterways. However, the cost and benefit of such services need to be weighed to determine if a VTS is the most effective management system or if other measures are more appropriate for a particular waterway.

Section 4107 of the Oil Pollution Act of 1990 mandated a study to determine and prioritize those ports in need of new, expanded or improved VTS systems based on certain risk factors. This study was completed in August 1991 and is known as the "Port Needs Study" (PNS). The PNS is in the docket and is available for review or copying where indicated under "ADDRESSES." The three-volume report and 20-page study overview are also available through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Tel: 1-800-533-6847. Reference: PB 92107 689 and PB 92107 697, respectively.

The PNS provides a cost-benefit analysis wherein the costs of establishing and operating a VTS in a port or waterway are compared to the potential benefits of avoided vessel casualties and the consequences of those casualties. It provides an economic framework necessary to evaluate the need for new or expanded VTSs in the U.S. Various ports reviewed in the study are currently under consideration for VTSs. The Coast Guard intends to establish VTSs and, in a separate rulemaking, make them mandatory in those ports which show a clear benefit from the presence of a VTS.

D. Training and Qualifications of VTS Watchstanders

Various comments expressed concern about the level of experience and expertise of VTS watchstanders. Some comments felt that broad seagoing experience was necessary to become a successful watchstander.

The Coast Guard recognizes that special and thorough training is required to qualify as a Vessel Traffic Center (VTC) watchstander or watch supervisor. Although broad seagoing experience is important, it is not necessarily the only indicator or predictor of VTC watchstander performance. Besides good seamanship skills, numerous other factors, such as communications skills, geographic familiarity, and regulatory knowledge

make for a competent watchstander. Coast Guard training and qualifications requirements for VTS watchstanders are aimed at ensuring that all of these elements are present.

The Coast Guard ensures that each trainee receives and successfully completes a thorough training and qualification program prior to assuming duties as a watchstander. This training program includes numerous ship rides to familiarize trainees with the VTS area and with local seamanship practices.

(2) General Rules; Subpart A

A. Purpose

Various comments expressed reservations about the responsibility of a VTS as opposed to the responsibility of a vessel. Section 161.1 clarifies the intent of the VTS rules and delineates the responsibilities of the VTS and those of the vessel, owner, operator, charterer, master, or person directing the movement of the vessel.

Additionally, § 161.1 (Vessel Traffic Services—General Rules), is being broadened to better describe the scope and purpose of the general VTS regulations.

B. Applicability

As a result of comments in general, Section 161.3 (Applicability) is being redefined and rewritten. Under this section, VTS measures and vessel operating procedures established in Subpart A could apply to any vessel in a VTS area as the VTS considers necessary for safe navigation.

However, a VTS measure would usually be temporary in nature, or would be specific to a particular vessel during a transit or part of a transit.

In the NPRM, the class of vessels to which VTS regulations would apply mirrored the radio carriage requirements of the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (the Act). In this final rule, the Coast Guard has established particular requirements, mainly reporting and communication provisions contained in the Vessel Movement Reporting Service (VMRS) section (Subpart B), that are applicable to certain vessels classified as VMRS Users. Additionally, certain vessels classified as VTS Users must comply with VHF-FM monitoring requirements. These requirements reflect a recent amendment to the Act.

C. Definitions

Several comments identified terms in the NPRM that either duplicated or were inconsistent with terms and definitions used in other parts of Title 33 of the Code of Federal Regulations (CFR). As a result, some terms used in the NPRM

have been either removed, clarified, or redesignated in Part 160 to ensure that defined terms convey the same meaning throughout Subchapter P (Parts 160-167).

A new term, "VMRS User", has been introduced and is defined as a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is required to participate in a VMRS within a VTS area. The term "VTS User" has also been added and is defined as a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is: (a) subject to the Vessel Bridge-to-Bridge Radiotelephone Act; or (b) required to participate in a VMRS within a VTS area (VMRS User). Additionally, the term "Commanding Officer, Vessel Traffic Service" has been added and defined.

D. Vessel Operation and VTS Directions

The Coast Guard received various comments which expressed reservations about the VTS's ability to direct vessel movement. Concerns were expressed about who would issue these directions and under what circumstances. The final rule delineates VTS authority which is derived from the Captain of the Port, as authorized by the Ports and Waterways Safety Act of 1972, as amended. Section 161.10 (Services) in conjunction with § 161.11 (VTS Measures) has been drafted to better define and address these concerns.

E. Authorization to Deviate From the Rules

The Coast Guard received comments concerning VTS rules and VTS directions and the procedures which must be followed to deviate from them. Section 161.5 is being amended to clarify procedures for obtaining authorization to deviate from these rules for a transit or for an extended period of time. It maintains the existing mechanism for obtaining advance approval to deviate from VTS measures or directions, however, the deviation requests for a transit or part of a transit need not be requested in writing. Additionally, § 161.21(b) (Sailing Plan Deviation Report) requires a vessel to report a deviation from any VTS issued measure.

Section 161.1(b) delineates the responsibility of the owner, operator, charterer, master or person directing the movement of the vessel. It states that compliance with these VTS rules or with a direction of the VTS is at all times contingent upon the exigencies of safe navigation.

F. Traffic Separation Scheme (TSS) Rules (International and Inland Rule 10)

The Coast Guard received two comments concerning TSS applicability and operating procedures. One comment was concerned with the joint use of TSSs by slower traffic, which can transit outside the TSS, and deep draft vessels which can only safely navigate within the TSSs.

Since the NPRM was published, the International Maritime Organization (IMO) has adopted two Coast Guard recommended Traffic Separation Schemes (TSS), located in COLREGS waters within Puget Sound and Prince William Sound VTS areas. COLREGS waters are those waters outside of established lines of demarcation upon which mariners shall comply with the International Regulations for the Prevention of Collisions at Sea, 1972 (72 COLREGS) 33 U.S.C. foll. 1602. Rules concerning the conduct of vessels operating within or near a TSS located in COLREGS waters, have been established and are internationally recognized under Rule 10 of COLREGS. As a result of the IMO adoption of these two TSSs and COLREGS Rule 10 applicability, VTS TSS operating rules are unnecessary. Therefore, the TSS descriptions, rules concerning the purpose of a TSS, and rules for vessel operation in the TSS which were proposed in the NPRM have been removed.

In addition, Rule 10 of the Inland Navigation Rules, applicable in Inland waters, was amended on October 5, 1992, by the Oceans Act of 1992, section 5206 of Public Law 102-587. These amendments changed Inland Rule 10 so as to mirror International Rule 10 of the 72 COLREGS with respect to the requirements imposed upon vessels using a traffic separation scheme. The San Francisco Bay Region vessel traffic routing measures located in inland waters (i.e., traffic lanes, separation zones, precautionary areas, standard route deviations, narrow channels and fairways), which were proposed in the NPRM, would conflict with the subsequently amended Inland Navigational Rule 10 and have therefore been omitted.

The Coast Guard recently modified the charted voluntary traffic routing measures in the San Francisco Bay Region to better conform to International Maritime Organization traffic routing standards. This action has effectively eliminated the need for the standard route deviations discussed in the NPRM. Additionally, due to the geographic constraints of San Francisco Bay, Inland Rule 10 would be unusually

restrictive for recreational and harbor tour boats. Therefore, to accommodate these restrictions for the San Francisco Bay Region routing measures, a regulated navigation area will be developed under a separate rulemaking.

G. Communications Rules

There were numerous comments concerning the communications rules delineated in the NPRM.

The timely exchange of information is critical to the success of any VTS, since the quality of service that a VTS provides is only as good as the information it receives. The mutual flow of communications provides necessary information with which to make sound and safe navigation decisions. On November 18, 1991, (56 FR 58292) as mandated by Section 4118 of the Oil Pollution Act of 1990 (OPA 90), the Coast Guard amended regulations in 33 CFR Part 26 (Vessel Bridge-to-Bridge Radiotelephone Regulations) to ensure vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (the Act) are capable of engaging in radio communications with the Coast Guard. This rulemaking incorporates the "Communications Rules," as proposed, into this part.

By revising and redesignating portions of the VTS Communication Rules into Part 26 of this chapter, the importance of VTS communications has not been diminished nor have VTS communications procedures been eliminated. The provisions governing the use of the radiotelephone for VTS are consistent with the provisions governing communications among vessels currently set forth in Part 26 of this chapter and Title 47 CFR (Federal Communications Commission).

By merging radiotelephone and VTS communication requirements into the same part of Title 33 of the CFR, needless duplication is avoided. However, Table 26.03(f), which contains VTS call signs, designated frequencies, monitoring areas and their operating procedures is also listed in Table 161.12(b) contained in Part 161, for ease of use.

The final rule requires VTS Users to maintain a listening watch (consistent with requirements set forth in 33 CFR 26.05(a)) on the VTS designated frequency while within a VTS area, regardless of the requirement to comply with VMRS reporting and communication provisions. This requirement ensures these vessels, namely power-driven vessels between 20 and 40 meters in length, dredges and floating plants will be cognizant of navigational and safety information provided by a VTS.

Nine comments expressed concern about the additional monitoring required for VTS Users and the inability to monitor two frequencies simultaneously. The VTS Regulations will not require any additional monitoring requirements. Presently, the Vessel Bridge-to-Bridge Radiotelephone and Federal Communications Commission (FCC) regulations contain the requirement that vessels subject to the Act must monitor two frequencies (i.e., the designated bridge-to-bridge frequency and the International Distress and Calling Channel; Channel 16). However, as stated in 47 CFR 80.148(b), a VHF watch on Channel 16 is not required on vessels subject to the Act and participating in a VTS system when the watch is maintained on both the bridge-to-bridge frequency and a separately assigned VTS frequency. As such, these regulations do not require any additional monitoring requirements.

One comment proposed that the VTS hail vessels on the designated Vessel Bridge-to-Bridge frequency (Channel 13) then shift to the VTS frequency, while another comment recommended that Channel 13 not be used at all by the VTS. The latter approach is more reasonable, since a dedicated VTS frequency ensures that Channel 13 is always monitored and remains available for bridge-to-bridge communications. However, when necessary, VTS may use Channel 13 as an alternate channel. Additionally, the Coast Guard recognizes that there are two exceptions to the dedicated VTS frequency rule: Prince William Sound, AK and Louisville, KY. In these areas, Channel 13 is used as the VTS frequency because the level of radiotelephone transmissions does not warrant a designated VTS frequency.

Concerns were also raised relative to the requirement that clear and unbroken English be spoken between the vessel and the VTS. The intent in proposing this language was to highlight the problems that a VTS encounters when communications are hampered by language difficulties. One comment stated that, while the English language is the international standard for navigation communication, attempting to define how that standard should be applied does not necessarily address the problem.

The Coast Guard agrees that communication is paramount in navigation safety. Communication denotes the exchange of information so that it is properly received and understood. Whether information has been properly received or understood is a subjective question for the individuals involved.

Therefore, the VTS frequency monitoring and reporting requirements (§ 161.12 and § 161.18) and the language requirements for individuals who are maintaining the listening watch (33 CFR 26.07), is being amended and clarified to require the VTS User, VMRS User, or the person maintaining the listening watch to be able to "communicate" in the English language, rather than "speak" in a clear, unbroken fashion.

(3) Vessel Movement Reporting System (VMRS); Subpart B

The format of this section is being revised from the NPRM and is now redesignated as Subpart B. The following sections address comments which were received and discuss changes that the Coast Guard determined were necessary to clarify and streamline reporting and communication requirements.

A. VMRS Users

Two comments suggested expanding the NPRM communications and reporting requirements to include vessels carrying six or more passengers for hire that are under 100 gross tons (T-boats), and all commercial vessels (e.g., fishing vessels). The Coast Guard agrees that vessels carrying passengers for hire require special consideration, and has broadened the proposed communications and reporting requirements to include all vessels certificated to carry 50 or more passengers, when engaged in trade.

However, the Coast Guard decided not to extend the reporting requirements now contained in the VMRS section (Subpart B) to all commercial vessels, including vessels carrying 1-49 passengers for hire. This was done primarily in an attempt to achieve an operational balance between being able to provide an effective VTS service, given equipment and resource constraints, and being overburdened with participants potentially undermining the overall efficiency of the VTS.

The class of vessels required to report under VMRS (i.e., VMRS Users) now extends to: (a) Power-driven vessels 40 meters or more in length, while navigating; (b) towing vessels 8 meters or more in length, while navigating; and (c) vessels certificated to carry 50 or more passengers for hire, when engaged in trade.

The class of towing vessels noted in the VMRS Users definition is synonymous with the Vessel Bridge-to-Bridge Radiotelephone Act requirements under 33 CFR 26.03(a)(3) (i.e., every towing vessel of over 26 feet in length, while navigating). In addition,

the definition of "towing vessel" in part 161 is limited to a commercial vessel actually engaged in towing another vessel astern, alongside, or by pushing ahead (33 CFR 26.02).

This change recognizes that monitoring the movement of, or obtaining information from, every vessel could pose a burden on mariners as well as on the VTS, and that this burden could jeopardize rather than enhance navigation safety.

B. Reporting Requirements

Various comments were concerned that some reporting requirements were unnecessary in certain operating areas. The Coast Guard agrees, but recognizes the vessel information considered necessary in each VTS area may vary. This rule establishes the minimum information required for effective vessel traffic management regardless of the area.

The VMRS is being consolidated into four reports (sailing plan, position, sailing plan deviation and final). The reports use common terminology and procedures.

Under VMRS, additional reporting information may be required, if considered necessary by the VTS. This additional information is consistent with the International Maritime Organization's (IMO) General Principles for Ship Reporting Systems (Resolution A.648(16)), the format of which has been included in this regulation in Table 161.18(a).

Some comments expressed concern that they would not have access to some of the information considered necessary by the VTS. The Coast Guard recognizes this concern. Nonetheless, it is the responsibility of the master or person in charge of the vessel to ensure any information considered necessary by the VTS is provided as required.

Some comments correctly noted that other reporting or notification requirements exist which duplicate information required to be provided to the VTS under its reporting provisions. The VTS's major role is to provide a service to waterborne traffic. As part of this service, the VTS should be the primary source of vessel traffic information, and correspondingly, the primary recipient of vessel movement reporting information required under Coast Guard reporting requirements. Therefore, in most cases or unless directed by the VTC, a VTS User will not be required to duplicate a report in Title 33, Chapter I, to another Coast Guard entity. However, there will not be a reporting exemption for written reports or other requirements set forth in Federal law or regulation.

C. Advance Reporting

There were no comments received on Advance Reporting. However, the Coast Guard has determined that it may be necessary, prior to entry into a VTS area, to require certain vessels to provide advance notification in order to facilitate vessel traffic management. This notification requirement, with some exemptions, has always existed for vessels over 1,600 gross tons bound for or departing from a port or place of the United States (Subpart C of Part 160).

Additionally, although VTS jurisdiction is limited to the navigable waters of the United States, in some VTS areas certain vessels will be encouraged or required, as a condition of port entry, to contact the VTS beyond the navigable waters in order to facilitate advance vessel traffic management and to enhance their transit through the area. Accordingly, this final rule clarifies this desire or need to receive such report(s).

D. Reporting Exemptions

One comment disagreed with exempting ferries from certain VTS reporting requirements. Various VTSs have devised unique reporting requirements for ferries in their operating areas. In some cases, this type of reporting is being expanded to include not only ferries but other vessels with repetitive operations in the area or which are escorting another vessel or assisting another vessel in maneuvering procedures. The operating pattern of these vessels in VTS areas is well known to each VTS.

Because the requirement for continuous position reporting by these vessels is superfluous, they have been granted certain reporting exemptions (Position and Final Reports). This abbreviated form of reporting does not preclude other VTS Users from obtaining information pertaining to the specific operating schedules of these vessels from the VTS, if desired.

In addition, in those VTS areas capable of receiving automated position reports via Automated Dependent Shipborne Surveillance Equipment (ADSSE), and where ADSSE is required, vessels equipped with an operating ADSSE will not be required to make voice radio position reports (§ 161.20(b)) at designated reporting points (§ 161.23(c)); unless directed by the VTC to do so.

(4) VTS Areas, the CVTS Area, VTS Special Areas and Reporting Points; Subpart C

The format of this subpart is being changed from the NPRM and the

existing rules. Subpart C now delineates each VTS Area, the CVTS Area and Reporting Points. Additionally, VTS Special Areas have been defined and identify unique areas located within VTS areas.

A. Cooperative Vessel Traffic Management System for the Juan de Fuca Region

The Coast Guard received no comments on this section. The operations of the Cooperative Vessel Traffic Management System (CVTMS) for the Juan de Fuca Region and the VTS Puget Sound have been interwoven to the extent that the operations and administration of both entities is, by and large, unnoticeable to the VTS User. In these revised regulations, the CVTMS and VTS Puget Sound regulations have been unified and are contained in Subparts A and B, and the VTS Puget Sound and CVTMS areas of responsibility are defined in Subpart C.

The CVTMS was renamed Cooperative Vessel Traffic Services (CVTS) which is divided into three sectors, managed by vessel traffic centers in Seattle, WA; Vancouver, BC, Canada; and Tofino, BC, Canada. Additionally, the area of surveillance was extended to the high seas to take advantage of the capability of one of the CVTS centers. However, the area of VTS jurisdiction is limited to the navigable waters of each country.

Future cooperative agreements, similar to the CVTS, are envisioned between the United States and Canada. For that reason, the concept of a cooperative vessel traffic service is being defined in § 161.2.

B. VTS Special Areas

In these newly defined areas, VTS Special Area Operating Requirements are imposed in addition to the general Vessel Operating Requirements. These requirements are delineated in § 161.13.

The Coast Guard recognizes that an operational balance between safety and efficiency may be difficult to achieve in certain waterways, enclosed systems in particular (i.e., rivers, channels, etc.), which impose a unique set of circumstances (e.g., bridge openings, restricted channels, etc.) on vessels. VTS Special Areas have been created to address these unique operating areas. In these areas, applicability may be expanded to include other vessels outside of those defined as VMRS Users.

C. Mississippi River Regulated Navigation Area

One comment suggested that portions of this part of the regulation seemed to regulate access and would be better

suited for Part 165 of this chapter. The rules concerning the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, which were once administered by VTS New Orleans (since disestablished) are now under the authority of the Commander, Eighth Coast Guard District. Because these local rules regulate access to a defined area and do not involve interaction with a VTS, they have been appropriately redesignated into Part 165 of this chapter as a regulated navigation area.

D. Reporting Points

Various comments expressed concern or noted errors to some of the established reporting points. Permanent (applicable at all times and to all VMRS Users) reporting points have been corrected and designated in Subpart C.

Additionally, as stated in § 161.11 (VTS Measures), a VTS may establish temporary reporting points, applicable to certain vessels at certain times. Notice of these temporary reporting points, if established, may be published in the Local Notice to Mariners, general broadcast and/or VTS User's Manual.

(5) Miscellaneous Rules

A. Automated Dependent Surveillance (ADS) System

Under a separate rulemaking, on July 17, 1992, the Coast Guard enacted an additional navigation equipment carriage requirement in Prince William Sound for Automated Dependent Surveillance Shipborne Equipment (ADSSE) (§ 161.376).

The compliance date for this equipment is July 1, 1994. Although this rule, as currently enacted, only applies to the Prince William Sound VTS area, the Coast Guard foresees that this may become a widespread equipment carriage requirement. Therefore, the Coast Guard has decided to divide the rule into two sections: (a) a navigation equipment rule (§ 164.43); and (b) a vessel operating rule for Prince William Sound (§ 165.1704). VTS Reporting Exemptions for vessels equipped with an operating ADSSE are set forth in § 161.23(c).

The navigational equipment rule in § 164.43 is appropriately redesignated since ADSSE is an additional electronic navigational equipment requirement similar to equipment already required in 33 CFR Part 164 (e.g., automatic radar plotting aids (ARPA), electronic position fixing devices, etc.). In addition, since ADSSE currently applies only to tank vessels of 20,000 deadweight tons or more transiting Prince William Sound, the carriage

requirement is being incorporated into the Prince William Sound vessel operating requirements (§ 165.1704). The "Incorporation by Reference" section (§ 161.109) associated with this rule has been redesignated as § 164.03(b)(2).

B. Implementation: Familiarization Period

An education program on mandatory participation and reporting requirements in VTSs currently operating as "voluntary systems" in San Francisco, Houston/Galveston, and Louisville will be instituted over a 90-day period. This period of familiarization will run concurrently with the 90-day effective date period of this rule.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

Assessment

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This rule prescribes certain radiotelephone communications. The provisions of this final rule primarily address listening watches to ensure that VTS Users maintain effective communications within the VTS area. It may, in isolated instances, require that outdated equipment be modified in order to facilitate monitoring of the proper frequencies. However, it would

only affect a small number of vessel owners or operators. Any additional costs would be minor, especially in comparison to increased vessel safety, and corresponding commercial benefits, which results from monitoring the VTS frequency. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Portions of this final rule contain collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has given 33 CFR 161 a blanket approval. The part is 33 CFR Part 161 and the corresponding OMB approval number is OMB Control Number 2115-0540. New information collection requirements have been added for VTSs in San Francisco, Houston/Galveston and Louisville, but will also be covered by the blanket approval.

The reports required by this rule are considered to be operational communications, transitory in nature, and therefore do not constitute the collection of information under the Paperwork Reduction Act.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These VTS operating procedures are a matter for which regulations should be developed on the national level, to avoid unreasonably burdensome variances and confusion in applicability and operating requirements. These regulations which provide uniform VTS operating requirements are intended to preempt States from adopting similar requirements.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This regulatory action requires vessels to comply with VTS measures. While the Coast Guard recognizes that this rule will have a

positive effect on the environment by minimizing the risk of environmental harm resulting from collisions, groundings, and rammings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegation (government agencies), Freedom of Information, Penalties.

33 CFR Part 26

Communications Equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Incorporation by reference.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 1, 26, 160, 161, 162, 164, and 165, as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 49 U.S.C. 322; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.45(b), 1.46; section 1.01-70 also issued under the authority of E.O. 12316, 46 FR 42237.

2. In § 1.01-30, paragraph (b) is added to read as follows:

§ 1.01-30 Captains of the Port.

* * * * *

(b) Subject to the supervision of the cognizant Captain of the Port and District Commander, Commanding Officers, Vessel Traffic Services, are delegated authority under the Ports and Waterways Safety Act to discharge the duties of the Captain of the Port that involve directing the operation, movement, and anchoring of vessels within a Vessel Traffic Service area, including management of vessel traffic within anchorages, regulated navigation areas and safety zones, and to enforce Vessel Traffic Service and ports and waterways safety regulations. This authority may be redelegated.

* * * * *

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

3. The authority citation for part 26 is amended to read as follows:

Authority: 33 U.S.C. 1201-1208; 49 CFR 1.46. Sections 26.04 and 26.09 also issued

under Sec. 4118, Pub. L. 101-380, 104 Stat. 523 (33 U.S.C. § 1203 note).

4. In § 26.02, the following definitions are added to read as follows:

§ 26.02 Definitions.

* * * * *

Vessel Traffic Services (VTS) means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or VTS Area means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

5. In § 26.03, paragraph (f) is added to read as follows.

§ 26.03 Radiotelephone required.

* * * * *

(f) In addition to the radiotelephone required by paragraph (b) of this section, each vessel described in paragraph (a) of this section while transiting any waters within a Vessel Traffic Service Area, must have on board a radiotelephone capable of transmitting and receiving on the VTS designated frequency in Table 26.03(f) (VTS Call Signs, Designated Frequencies, and Monitoring Areas).

Note: A single VHF-FM radio capable of scanning or sequential monitoring (often referred to as "dual watch" capability) will not meet the requirements for two radios.

TABLE 26.03(f).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

| Vessel traffic services ¹ Call Sign | Designated frequency ² (channel designation) | Monitoring area |
|--|---|---|
| New York: New York Traffic ³ . | 156.700 MHz (Ch. 14) | The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of a line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The Waters of the Upper New York Bay, south of 40°42.40' N. (Brooklyn Bridge) and 40°43.70' N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25' N. (Arthur Kill Railroad Bridge), and south of 40°41.95' N. (Lehigh Valley Draw Bridge); and the Kill Van Kull. |
| | 156.550 MHz (Ch. 11) | The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to Ambrose Channel Lighted Gong Buoy #9 thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #9, thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Lighted Gong Buoys #1 and #2). |
| | 156.600 MHz (Ch. 12) | Each vessel at anchor within the above areas. |
| Houston ³ | | The navigable waters north of 29° N., west of 94°20' W., south of 29°49' N., and east of 95°20' W.: |
| Houston Traffic. | 156.550MHz (Ch.11) | The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (20°43.37' N., 95°01.27' W.). |
| | 156.600 MHz (Ch. 12) | The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37' N., 95°01.27' W.). |
| Berwick Bay: Berwick Traffic. | 156.550 MHz (Ch. 11) | The navigable waters south of 29°45' N., west of 91°10' W., north of 29°37' N., and east of 91°18' W. |
| St. Marys River: Soo Control | 156.600 MHz (Ch. 12) | The navigable waters of the St. Marys River between 45°57' N. (De Tour Reef Light) and 46°38.7' N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16' N. and 46°01.57' N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay). |
| San Francisco ³ San Francisco Off-shore Vessel Movement Reporting Service. | 156.600 MHz (Ch. 12) | The waters within a 38 Nautical mile radius of Mount Tamalpais (37°55.8' N., 122°34.6' W.) excluding the San Francisco Offshore Precautionary Area. |

TABLE 26.03(f).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

| Vessel traffic services ¹ Call Sign | Designated frequency ² (channel designation) | Monitoring area |
|--|---|---|
| San Francisco Traffic. Puget Sound ⁴ Seattle Traffic ⁵ . | 156.700 MHz (Ch. 14) | The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City. |
| | 156.700 MHz (Ch. 14) | The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline. |
| | 156.250 MHz (Ch. 5A) | The navigable waters of the Strait of Juan de Fuca east of 124°40' W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52' W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island North of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline. |
| Tofino Traffic ⁶ . | 156.725 MHz (Ch. 74) | The waters west of 124°40' W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48° N., and east of 127° W. |
| Vancouver Traffic. | 156.550 MHz (Ch. 11) | The navigable waters of the Strait of Georgia west of 122°52' W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait. |
| Prince William Sound ⁷ Valdez Traffic. | 156.650 MHz (Ch. 13) | The navigable waters south of 61°05' N., east of 147°20' W., north of 60° N., and west of 146°30' W.; and, all navigable waters in Port Valdez. |
| Louisville ⁷ Louisville Traffic. | 156.650 MHz (Ch. 13) | The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above. |

NOTES:

¹ VTS regulations are denoted in 33 CFR Part 161. All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

² In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

³ Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

⁴ A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

⁵ Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

⁶ A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

⁷ The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by § 26.05 of this chapter is not limited to the monitoring area.

6. In § 26.04, paragraph (e) is added to read as follows:

§ 26.04 Use of the designated frequency.

(e) On those navigable waters of the United States within a VTS area, the designated VTS frequency is the designated frequency required to be monitored in accordance with § 26.05.

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

7. Section 26.07 is revised to read as follows:

§ 26.07 Communications.

No person may use the services of, and no person may serve as a person required to maintain a listening watch under section 5 of the Act, 33 U.S.C. 1204, unless the person can communicate in the English language.

PART 160—PORTS AND WATERWAYS SAFETY: GENERAL

8. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

9. Section 160.3 is revised to read as follows:

§ 160.3 Definitions.

For the purposes of this subchapter: *Bulk* means material in any quantity that is shipped, stored, or handled

without the benefit of package, label, mark or count and carried in integral or fixed independent tanks.

Captain of the Port means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in part 3 of this chapter.

Commandant means the Commandant of the United States Coast Guard.

Commanding Officer, Vessel Traffic Services means the Coast Guard officer designated by the Commandant to command a Vessel Traffic Service (VTS) as described in part 161 of this chapter.

Deviation means any departure from any rule in this subchapter.

District Commander means the Coast Guard officer designated by the Commandant to command a Coast

Guard District as described in part 3 of this chapter.

ETA means estimated time of arrival.

Length of Tow means, when towing with a hawser, the length in feet from the stern of the towing vessel to the stern of the last vessel in tow. When pushing ahead or towing alongside, length of tow means the tandem length in feet of the vessels in tow excluding the length of the towing vessel.

Person means an individual, firm, corporation, association, partnership, or governmental entity.

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, and any other commonwealth, territory, or possession of the United States.

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

Tank Vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Vehicle means every type of conveyance capable of being used as a means of transportation on land.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Vessel Traffic Services (VTS) means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or VTS Area means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

VTS Special Area means a waterway within a VTS area in which special operating requirements apply.

10. In § 160.5, paragraph (d) is added to read as follows:

§ 160.5 Delegations.

* * * * *

(d) Subject to the supervision of the cognizant Captain of the Port and District Commander, Commanding Officers, Vessel Traffic Services are delegated authority under 33 CFR 1.01-30 to discharge the duties of the Captain of the Port that involve directing the operation, movement, and anchorage of vessels within a Vessel Traffic Service area including management of vessel traffic within anchorages, regulated navigation areas and safety zones, and to enforce Vessel Traffic Service and ports and waterways safety regulations. This authority may be exercised by Vessel Traffic Center personnel. The Vessel Traffic Center may, within the Vessel Traffic Service area, provide information, make recommendations, or, to a vessel required under Part 161 of this chapter to participate in a Vessel Traffic Service, issue an order, including an order to operate or anchor as directed; require the vessel to comply with orders issued; specify times of entry, movement or departure; restrict operations as necessary for safe operation under the circumstances; or take other action necessary for control of the vessel and the safety of the port or of the marine environment.

PART 161—[AMENDED]

11. Section 161.402 is redesignated as § 165.810 and the heading is revised to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

12. Part 161 is revised to read as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

Subpart A—Vessel Traffic Services

General Rules

Sec.

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- 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region.
- 161.60 Vessel Traffic Service Prince William Sound.

Authority: 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

Subpart A—Vessel Traffic Services

General Rules

§ 161.1 Purpose and Intent.

(a) The purpose of this part is to promulgate regulations implementing and enforcing certain sections of the Ports and Waterways Safety Act (PWSA) setting up a national system of Vessel Traffic Services that will enhance navigation, vessel safety, and marine environmental protection, and promote safe vessel movement by reducing the potential for collisions, ramblings, and groundings, and the loss of lives and property associated with these incidents within VTS areas established hereunder.

(b) Vessel Traffic Services provide the mariner with information related to the safe navigation of a waterway. This information, coupled with the mariner's compliance with the provisions set forth in this part, enhances the safe routing of vessels through congested waterways or waterways of particular hazard. Under certain circumstances, a VTS may issue directions to control the movement of vessels in order to minimize the risk of collision between vessels, or damage to property or the environment.

(c) The owner, operator, charterer, master, or person directing the movement of a vessel remains at all times responsible for the manner in which the vessel is operated and maneuvered, and is responsible for the safe navigation of the vessel under all circumstances. Compliance with these rules or with a direction of the VTS is at all times contingent upon the exigencies of safe navigation.

(d) Nothing in this part is intended to relieve any vessel, owner, operator, charterer, master, or person directing the movement of a vessel from the consequences of any neglect to comply

with this part or any other applicable law or regulation (e.g., the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules) or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

§ 161.2 Definitions.

For the purposes of this part:

Cooperative Vessel Traffic Services (CVTS) means the system of vessel traffic management established and jointly operated by the United States and Canada within adjoining waters. In addition, CVTS facilitates traffic movement and anchorages, avoids jurisdictional disputes, and renders assistance in emergencies in adjoining United States and Canadian waters.

Hazardous Vessel Operating Condition means any condition related to a vessel's ability to safely navigate or maneuver, and includes, but is not limited to:

(1) The absence or malfunction of vessel operating equipment, such as propulsion machinery, steering gear, radar system, gyrocompass, depth sounding device, automatic radar plotting aid (ARPA), radiotelephone, automated dependent surveillance equipment, navigational lighting, sound signaling devices or similar equipment.

(2) Any condition on board the vessel likely to impair navigation, such as lack of current nautical charts and publications, personnel shortage, or similar condition.

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo arrangement, trim, loaded condition, underkeel clearance, speed, or similar characteristics.

Precautionary Area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic may be recommended.

Towing Vessel means any commercial vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

Vessel Movement Reporting System (VMRS) is a system used to manage and track vessel movements within a VTS area. This is accomplished by a vessel providing information under established procedures as set forth in this part, or as directed by the VTS.

Vessel Movement Reporting System (VMRS) User means a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is required to participate in a VMRS within a VTS area. VMRS participation is required for:

(1) Every power-driven vessel of 40 meters (approximately 131 feet) or more in length, while navigating;

(2) Every towing vessel of 8 meters (approximately 26 feet) or more in length, while navigating; or

(3) Every vessel certificated to carry 50 or more passengers for hire, when engaged in trade.

Vessel Traffic Center (VTC) means the shore-based facility that operates the vessel traffic service for the Vessel Traffic Service area or sector within such an area.

Vessel Traffic Services (VTS) means a service implemented by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or VTS Area means the geographical area encompassing a specific VTS area of service. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

VTS Special Area means a waterway within a VTS area in which special operating requirements apply.

VTS User means a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is:

(a) Subject to the Vessel Bridge-to-Bridge Radiotelephone Act; or

(b) Required to participate in a VMRS within a VTS area (VMRS User).

VTS User's Manual means the manual established and distributed by the VTS to provide the mariner with a description of the services offered and rules in force for that VTS. Additionally, the manual may include chartlets showing the area and sector boundaries, general navigational information about the area, and procedures, radio frequencies, reporting provisions and other information which may assist the mariner while in the VTS area.

§ 161.3 Applicability.

The provisions of this subpart shall apply to each VTS User and may also apply to any vessel while underway or at anchor in the navigable waters of the United States within a VTS area, to the extent the VTS considers necessary.

§ 161.4 Requirement to carry the rules.

Each VTS User shall carry on board and maintain for ready reference a copy of these rules.

Note: These rules are contained in the applicable U.S. Coast Pilot, the VTS User's Manual which may be obtained by contacting the appropriate VTS, and periodically published in the Local Notice to Mariners. The VTS User's Manual and the World VTS Guide, an International Maritime Organization (IMO) recognized publication, contain additional information which may assist the prudent mariner while in the appropriate VTS area.

§ 161.5 Deviations from the rules.

(a) Requests to deviate from any provision in this part, either for an extended period of time or if anticipated before the start of a transit, must be submitted in writing to the appropriate District Commander. Upon receipt of the written request, the District Commander may authorize a deviation if it is determined that such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances. An application for an authorized deviation must state the need and fully describe the proposed alternative to the required measure.

(b) Requests to deviate from any provision in this part due to circumstances that develop during a transit or immediately preceding a transit, may be made verbally to the appropriate VTS Commanding Officer. Requests to deviate shall be made as far in advance as practicable. Upon receipt of the request, the VTS Commanding Officer may authorize a deviation if it is determined that, based on vessel handling characteristics, traffic density, radar contacts, environmental conditions and other relevant information, such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

Services, VTS Measures, and Operating Requirements

§ 161.10 Services.

To enhance navigation and vessel safety, and to protect the marine environment, a VTS may issue advisories, or respond to vessel requests for information, on reported conditions within the VTS area, such as:

- (a) Hazardous conditions or circumstances;
- (b) Vessel congestion;
- (c) Traffic density;
- (d) Environmental conditions;

- (e) Aids to navigation status;
 (f) Anticipated vessel encounters;
 (g) Another vessel's name, type, position, hazardous vessel operating conditions, if applicable, and intended navigation movements, as reported;
 (h) Temporary measures in effect;
 (i) A description of local harbor operations and conditions, such as ferry routes, dredging, and so forth;
 (j) Anchorage availability; or
 (k) Other information or special circumstances.

§ 161.11 VTS measures.

(a) A VTS may issue measures or directions to enhance navigation and vessel safety and to protect the marine environment, such as, but not limited to:

- (1) Designating temporary reporting points and procedures;

- (2) Imposing vessel operating requirements; or
 (3) Establishing vessel traffic routing schemes.

(b) During conditions of vessel congestion, restricted visibility, adverse weather, or other hazardous circumstances, a VTS may control, supervise, or otherwise manage traffic, by specifying times of entry, movement, or departure to, from, or within a VTS area.

§ 161.12 Vessel operating requirements.

(a) Subject to the exigencies of safe navigation, a VTS User shall comply with all measures established or directions issued by a VTS.

- (1) If, in a specific circumstance, a VTS User is unable to safely comply with a measure or direction issued by the VTS, the VTS User may deviate only to the extent necessary to avoid

endangering persons, property or the environment. The deviation shall be reported to the VTS as soon as is practicable.

(b) When not exchanging communications, a VTS User must maintain a listening watch as required by § 26.04(e) of this chapter on the VTS frequency designated in Table 161.12(b) (VTS Call Signs, Designated Frequencies, and Monitoring Areas). In addition, the VTS User must respond promptly when hailed and communicate in the English language

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

| Vessel traffic services call sign | Designated frequency ¹ (channel designation) | Monitoring area |
|--|--|---|
| New York: New York Traffic ² | 156.700 MHz (Ch. 14) ... 156.550 MHz (Ch. 11) ... 156.600 MHz (Ch. 12) ... | The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of a line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The waters of the Upper New York Bay, south of 40°42.40'N. (Brooklyn Bridge) and 40°43.70'N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25'N. (Arthur Kill Railroad Bridge), and south of 40°41.95'N. (Lehigh Valley Draw Bridge); and the Kill Van Kull. The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to Ambrose Channel Lighted Gong Buoy #9 thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #9, thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Lighted Gong Buoys #1 and #2). Each vessel at anchor within the above areas. |
| Houston ² Houston Traffic | 156.550 MHz (Ch. 11) ... 156.600 MHz (Ch. 12) ... | The navigable waters north of 29°N., west of 94°20'W., south of 29°49'N., and east of 95°20'W.: The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.). The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.). |
| Berwick Bay: Berwick Traffic | 156.550 MHz (Ch. 11) ... | The navigable waters south of 20°45'N., west of 91°10'W., north of 29°37'N., and east of 91°18'W. |
| St. Marys River: Soo Control | 156.600 MHz (Ch. 12) ... | The navigable waters of the St. Marys River between 45°57'N. (De Tour Reef Light) and 46°38.7'N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16'N. and 46°01.57'N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay). |
| San Francisco: ² San Francisco Offshore Vessel Movement Reporting Service. San Francisco Traffic .. | 156.600 MHz (Ch. 12) ... 156.700 MHz (Ch. 14) ... | The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8'N., 122°34.6'W.) excluding the San Francisco Offshore Precautionary Area. The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City. |
| Puget Sound: ³ Seattle Traffic ⁴ | 156.700 MHz (Ch. 14) ... | The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline. |

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

| Vessel traffic services call sign | Designated frequency ¹ (channel designation) | Monitoring area |
|--|---|---|
| | 156.250 MHz (Ch. 5A) ... | The navigable waters of the Strait of Juan de Fuca east of 124°40'W, excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52'W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline. |
| Tofino Traffic ⁵ | 156.725 MHz (Ch. 74) ... | The waters west of 124°40'W, within 50 nautical miles of the coast of Vancouver Island including the waters north of 48°N., and east of 127°W. |
| Vancouver Traffic | 156.550 MHz (Ch. 11) ... | The navigable waters of the Strait of Georgia west of 122°52'W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait. |
| Prince William Sound: ⁶ Valdez Traffic | 156.650 MHz (Ch. 13) ... | The navigable waters south of 61°05'N., east of 147°20'W., north of 60°N., and west of 148°30'W.; and, all navigable waters in Port Valdez. |
| Louisville: ⁶ Louisville Traffic | 156.650 MHz (Ch. 13) ... | The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above. |

Notes:

¹ In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

² Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

³ A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

⁴ Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

⁵ A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

⁶ The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by §26.05 of this chapter is not limited to the monitoring area.

(c) As soon as is practicable, a VTS User shall notify the VTS of any of the following:

- (1) A marine casualty as defined in 46 CFR 4.05-1;
- (2) Involvement in the ramming of a fixed or floating object;
- (3) A pollution incident as defined in §151.15 of this chapter;
- (4) A defect or discrepancy in an aid to navigation;
- (5) A hazardous condition as defined in §160.203 of this chapter;
- (6) Improper operation of vessel equipment required by Part 164 of this chapter;
- (7) A situation involving hazardous materials for which a report is required by 49 CFR 176.48; and
- (8) A hazardous vessel operating condition as defined in §161.2.

§161.13 VTS Special Area Operating Requirements.

The following operating requirements apply within a VTS Special Area:

- (a) A VTS User shall, if towing astern, do so with as short a hawser as safety and good seamanship permits.

(b) A VMRS User shall: (1) Not enter or get underway in the area without prior approval of the VTS;

(2) Not enter a VTS Special Area if a hazardous vessel operating condition or circumstance exists;

(3) Not meet, cross, or overtake any other VMRS User in the area without prior approval of the VTS; and

(4) Before meeting, crossing, or overtaking any other VMRS User in the area, communicate on the designated vessel bridge-to-bridge radiotelephone frequency, intended navigation movements, and any other information necessary in order to make safe passing arrangements. This requirement does not relieve a vessel of any duty prescribed by the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules.

Subpart B—Vessel Movement Reporting System

§161.15 Purpose and intent.

(a) A Vessel Movement Reporting System (VMRS) is a system used to manage and track vessel movements

within a VTS area. This is accomplished by requiring that vessels provide information under established procedures as set forth in this part, or as directed by the VTS.

(b) To avoid imposing an undue reporting burden or unduly congesting radiotelephone frequencies, reports shall be limited to information which is essential to achieve the objectives of the VMRS. These reports are consolidated into four reports (sailing plan, position, sailing plan deviation and final).

§161.16 Applicability.

The provisions of this subpart shall apply to the following VMRS Users:

- (a) Every power-driven vessel of 40 meters (approximately 131 feet) or more in length, while navigating;
- (b) Every towing vessel of 8 meters (approximately 26 feet) or more in length, while navigating; or
- (c) Every vessel certificated to carry 50 or more passengers for hire, when engaged in trade.

§161.17 Definitions.

As used in this subpart: *Published* means available in a widely-distributed

and publicly available medium (e.g., VTS User's Manual, ferry schedule, Notice to Mariners).

§ 161.18 Reporting requirements.
(a) A VTS may: (1) Direct a vessel to provide any of the information set forth

in Table 161.18(a) (IMO Standard Ship Reporting System);

TABLE 161.18(a).—THE IMO STANDARD SHIP REPORTING SYSTEM

| | | | |
|---|----------|---|---|
| A | ALPHA | Ship | Name, call sign or ship station identity, and flag. |
| B | BRAVO | Dates and time of event | A 6 digit group giving day of month (first two digits), hours and minutes (last four digits). If other than UTC state time zone used. |
| C | CHARLIE | Position | A 4 digit group giving latitude in degrees and minutes suffixed with N (north) or S (south) and a 5 digit group giving longitude in degrees and minutes suffixed with E (east) or W (west); or. |
| D | DELTA | Position | True bearing (first 3 digits) and distance (state distance) in nautical miles from a clearly identified landmark (state landmark). |
| E | ECHO | True course | A 3 digit group. |
| F | FOXTROT | Speed in knots and tenths of knots | A 3 digit group. |
| G | GOLF | Port of Departure | Name of last port of call. |
| H | HOTEL | Date, time and point of entry system. | Entry time expressed as in (B) and into the entry position expressed as in (C) or (D). |
| I | INDIA | Destination and expected time of arrival. | Name of port and date time group expressed as in (B). |
| J | JULIET | Pilot | State whether a deep sea or local pilot is on board. |
| K | KILO | Date, time and point of exit from system. | Exit time expressed as in (B) and exit position expressed as in (C) or (D). |
| L | LIMA | Route information | Intended track. |
| M | MIKE | Radio | State in full names of communications stations/frequencies guarded. |
| N | NOVEMBER | Time of next report | Date time group expressed as in (B). |
| O | OSCAR | Maximum present static draught in meters. | 4 digit group giving meters and centimeters. |
| P | PAPA | Cargo on board | Cargo and brief details of any dangerous cargoes as well as harmful substances and gases that could endanger persons or the environment. |
| Q | QUEBEC | Defects, damage, deficiencies or limitations. | Brief detail of defects, damage, deficiencies or other limitations. |
| R | ROMEO | Description of pollution or dangerous goods lost. | Brief details of type of pollution (oil, chemicals, etc) or dangerous goods lost overboard; position expressed as in (C) or (D). |
| S | SIERRA | Weather conditions | Brief details of weather and sea conditions prevailing. |
| T | TANGO | Ship's representative and/or owner. | Details of name and particulars of ship's representative and/or owner for provision of information. |
| U | UNIFORM | Ship size and type | Details of length, breadth, tonnage, and type, etc., as required. |
| V | VICTOR | Medical personnel | Doctor, physician's assistant, nurse, no medic. |
| W | WHISKEY | Total number of persons on board. | State number. |
| X | XRAY | Miscellaneous | Any other information as appropriate. [i.e., a detailed description of a planned operation, which may include: its duration; effective area; any restrictions to navigation; notification procedures for approaching vessels; in addition, for a towing operation: configuration, length of the tow, available horsepower, etc.; for a dredge or floating plant: configuration of pipeline, mooring configuration, number of assist vessels, etc.]. |

(2) Establish other means of reporting for those vessels unable to report on the designated frequency; or

(3) Require reports from a vessel in sufficient time to allow advance vessel traffic planning.

(b) All reports required by this part shall be made as soon as is practicable on the frequency designated in Table 161.12(b) (VTS Call Signs, Designated Frequencies, and Monitoring Areas).

(c) When not exchanging communications, a VMRS User must maintain a listening watch as described in § 26.04(e) of this chapter on the frequency designated in Table 161.12(b) (VTS Call Signs, Designated

Frequencies, and Monitoring Areas). In addition, the VMRS User must respond promptly when hailed and communicate in the English language.

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

(d) When reports required by this part include time information, such information shall be given using the local time zone in effect and the 24-hour military clock system.

§ 161.19 Sailing Plan (SP).

Unless otherwise stated, at least 15 minutes before navigating a VTS area, a vessel must report the:

- Vessel name and type;
- Position;
- Destination and ETA;
- Intended route;
- Time and point of entry; and
- Dangerous cargo on board or in its tow, as defined in § 160.203 of this chapter, and other required information as set out in § 160.211 and § 160.213 of this chapter, if applicable.

§ 161.20 Position Report (PR).

A vessel must report its name and position:

- (a) Upon point of entry into a VTS area;
- (b) At designated reporting points as set forth in subpart C; or
- (c) When directed by the VTC.

Note: Notice of temporary reporting points, if established, may be published via Local Notices to Mariners, general broadcast or the VTS User's Manual.

§ 161.21 Sailing Plan Deviation Report (DR).

- A vessel must report:
- (a) When its ETA to a destination varies significantly from a previously reported ETA;
 - (b) Any intention to deviate from a VTS issued measure or vessel traffic routing system; or
 - (c) Any significant deviation from previously reported information.

§ 161.22 Final Report (FR).

- A vessel must report its name and position:
- (a) On arrival at its destination; or
 - (b) When leaving a VTS area.

§ 161.23 Reporting exemptions.

- (a) Unless otherwise directed, the following vessels are exempted from providing Position and Final Reports due to the nature of their operation:
 - (1) Vessels on a published schedule and route;
 - (2) Vessels operating within an area of a radius of three nautical miles or less; or
 - (3) Vessels escorting another vessel or assisting another vessel in maneuvering procedures.
- (b) A vessel described in paragraph (a) of this section must:
 - (1) Provide a Sailing Plan at least 5 minutes but not more than 15 minutes before navigating within the VTS area; and
 - (2) If it departs from its promulgated schedule by more than 15 minutes or changes its limited operating area, make

the established VMRS reports, or report as directed.

(c) In those VTS areas capable of receiving automated position reports from Automated Dependent Surveillance Shipborne Equipment (ADSSE) as required by § 164.43 of this chapter and where ADSSE is required, vessels equipped with an operating ADSSE are not required to make voice radio position reports at designated reporting points as required by § 161.20(b) of this part, unless otherwise directed by the VTC.

- (1) Whenever an ADSSE becomes non-operational as defined in § 164.43(c) of this chapter, before entering or while underway in a VTS area, a vessel must:
 - (i) Notify the VTC;
 - (ii) Make voice radio position reports at designated reporting points as required by § 161.20(b) of this part;
 - (iii) Make other voice radio reports as directed; and
 - (iv) Restore the ADSSE to operating condition as soon as possible.

(2) Whenever an ADSSE becomes non-operational due to a loss of position correction information (i.e., the U.S. Coast Guard differential global positioning system (dGPS) cannot provide the required error correction messages) a vessel must:

- (i) Make required voice radio position reports at designated reporting points required by § 161.20(b) of this part; and
- (ii) Make other voice radio reports as directed.

Note: Regulations pertaining to ADSSE required capabilities are set forth in § 164.43 of this chapter.

Subpart C—Vessel Traffic Service Areas, Cooperative Vessel Traffic Service Area, Vessel Traffic Service Special Areas and Reporting Points.

Note: All geographic coordinates contained in part 161 (latitude and longitude) are

expressed in North American Datum of 1983 (NAD 83).

§ 161.25 Vessel Traffic Service New York.

The VTS area consists of the waters of the Lower New York Bay bounded to the east by a line drawn from Norton Point to Breezy Point, then south to the entrance buoys at Ambrose, Sandy Hook and Swash Channels, and to the west by a line drawn in the Raritan Bay from Great Kills Light on Staten Island to Point Comfort in New Jersey. In addition, VTS New York encompasses the Upper New York Bay waters to the west, including the Kill Van Kull south to the AK Railroad Bridge and Newark Bay north to the Lehigh Valley Draw Bridge, and in the Hudson River, north to a line drawn east-west from the Holland Tunnel ventilator shaft at 40-43.7' N., 74-01.6' W., and east to the Brooklyn Bridge.

§ 161.30 Vessel Traffic Service Louisville.

The VTS area consists of the navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at 13.0 feet or above.

§ 161.35 Vessel Traffic Service Houston/Galveston.

- (a) The VTS area consists of the following major waterways and portions of connecting waterways: Galveston Bay Entrance Channel; Outer Bar Channel; Inner Bar Channel; Bolivar Roads Channel; Galveston Channel; Gulf ICW and Galveston-Freeport Cut-Off from Mile 346 to Mile 352; Texas City Channel; Texas City Turning Basin; Texas City Canal Channel; Texas City Canal Turning Basin; Houston Ship Channel; Bayport Channel; Bayport Turning Basin; Houston Turning Basin; and the following precautionary areas associated with these waterways.
 - (b) Precautionary Areas.

| Precautionary area name | Radius (yds.) | Center point | |
|-----------------------------|---------------|--------------|-------------|
| | | Latitude | Longitude |
| Bolivar Roads | 4000 | 29-20.90' N | 94-47.00' W |
| Red Fish Bar | 4000 | 29-29.80' N | 94-51.90' W |
| Bayport Channel | 4000 | 29-36.70' N | 94-57.20' W |
| Morgans Point | 2000 | 29-41.00' N | 94-59.00' W |
| Upper San Jacinto Bay | 1000 | 29-42.33' N | 95-01.08' W |
| Baytown | 1000 | 29-43.57' N | 95-01.40' W |
| Lynchburg | 1000 | 29-45.78' N | 95-04.80' W |
| Carpenter Bayou | 1000 | 29-45.28' N | 95-05.60' W |
| Jacintoport | 1000 | 29-44.82' N | 95-06.02' W |
| Greens Bayou | 1000 | 29-44.78' N | 95-10.16' W |
| Hunting Bayou | 1000 | 29-44.33' N | 95-12.10' W |
| Sims Bayou | 1000 | 29-43.11' N | 95-14.35' W |
| Brady Island | 1000 | 29-43.53' N | 95-16.35' W |
| Buffalo Bayou | 1000 | 29-44.98' N | 95-17.32' W |

Note: Each Precautionary Area encompasses a circular area of the radius denoted.

(c) Reporting Points.

| Designator | Geographic name | Geographic description | Latitude Longitude | Notes |
|------------|--|--|----------------------------|--|
| 1 | Galveston Bay Entrance Channel. | Galveston Bay Entrance Bay Lighted Buoy (LB) "GB". | 29-18.25' N 94-37.60' W | |
| 2 | Galveston Bay Entrance Channel. | Galveston Bay Entrance Channel LB 11 and 12. | 29-20.63' N 94-44.62' W | |
| E | Bolivar Land Cut | Mile 349 Intracoastal Waterway (ICW). | 29-22.48' N 94-46.91' W | Tows entering HSC also report at HSC LB 25 & 26. |
| W | Pelican Cut | Mile 351 Intracoastal Waterway (ICW). | 29-21.40' N 94-48.42' W | Tows entering HSC also report at HSC LB 25 & 26. |
| GCG | Galveston Harbor | USCG Base. At the entrance to Galveston Harbor. | 29-20.00' N 94-46.50' W | |
| T | Texas City Channel | Texas City Channel LB 12 | 29-22.40' N 94-50.90' W | |
| X | Houston Ship Channel ICW Intersection. | Houston Ship Channel (HSC) LB 25 and 26. | 29-22.08' N 94-48.13' W | Tows entering HSC from ICW or Texas Cut Only |
| 3 | Lower Galveston Bay | Houston Ship Channel LB 31 and 32. | 29-23.40' N 94-48.80' W | |
| 4 | Red Fish Reef | Red Fish Bar Lt. 1 and 2 | 29-30.46' N 94-52.58' W | |
| P | Bayport Ship Channel | Bayport Ship Channel Lt. 7 and 8. | 29-36.82' N 94-59.81' W | Report at the North Land Cut |
| 4A | Upper Galveston Bay | HSC Buoys 69 and 70 | 29-34.67' N 94-55.81' W | Tows only |
| 5 | Morgan's Point | Barbour's Cut | 29-41.00' N 94-58.93' W | Abeam Barbour's Cut |
| 6 | Exxon | Baytown Bend | 29-43.22' N 95-01.27' W | |
| 7 | Lynchburg | Ferry crossing | 29-45.78' N 95-04.77' W | |
| 8 | Shell Oil | Boggy Bayou | 29-44.06' N 95-07.95' W | |
| 9 | Greens Bayou | Greens Bayou | 29-44.78' N 95-10.11' W | |
| 10 | Hess Turning Basin | Hunting Bayou Turning Basin | 29-44.21' N 95-12.23' W | |
| 11 | Lyondell Turning Basin | Sims Bayou Turning Basin | 29-43.20' N 95-14.35' W | |
| 12 | I-610 Bridge | I-610 Bridge | 29-43.50' N 95-15.98' W | |
| 13 | Houston Turning Basin | Buffalo Bayou | 29-45.00' N 95-17.30' W | |

§ 161.40 Vessel Traffic Service Berwick Bay.

(a) The VTS area consists of the navigable waters of the following segments of waterways: the Intracoastal Waterway (ICW) Morgan City to Port Allen Alternate Route from Mile Marker 0 to Mile Marker 5; the ICW from Mile

Marker 93 west of Harvey Lock (WHL) to Mile Marker 102 WHL; the Atchafalaya River Route from Mile Marker 113 to Mile Marker 122; from Bayou Shaffer Junction (ICW Mile Marker 94.5 WHL) south one statute mile along Bayou Shaffer; and from

Berwick Lock northwest one statute mile along the Lower Atchafalaya River.

(b) VTS Special Area. The Berwick Bay VTS Special Area consists of those waters within a 1000 yard radius of the Southern Pacific Railroad Bridge located at Mile .03 MC/PA.

(c) Reporting Points.

| Designator | Geographic name | Geographic description | Latitude Longitude | Notes |
|------------|--------------------------------|--|----------------------------|-------------------------|
| 1 | Stouts Pass | Stouts Point Light "1" Mile 113-Atchafalaya River. | 29-43'47" N 91-13'25" W | |
| 2 | Berwick Lock | Mile 1.9 MC/PA | 29-43'10" N 91-13'28" W | If transiting the Lock. |
| 3 | Conrad's Point Junction | Buoy "1" Mile 1.5 MC/PA | 29-42'32" N 91-13'14" W | |
| 4 | Swift Ships Flat Lake Junction | Mile 3 MC/PA | 29-43'26" N 91-12'22" W | |

| Designator | Geographic name | Geographic description | Latitude Longitude | Notes |
|------------|-------------------------------|---|----------------------------|-------|
| 5 | South Pacific Railroad Bridge | Mile 0.3 MC/PA | 29-41'34" N 91-12'44" W | |
| 6 | 20 Grant Point Junction | Bayou Boeuf-Atchafalaya R. Mile 95.5 ICW. | 29-41'18" N 91-12'36" W | |
| 7 | ICW | Overhead Power Cable Mile 96.5 ICW. | 29-40'43" N 91-13'18" W | |
| 8 | Wax Bayou Junction | Light "A" Mile 98.2W ICW | 29-39'29" N 91-14'46" W | |
| 9 | Shaffer Junction | ICW-Bayou Shaffer Mile 94.5 ICW. | 29-41'10" N 91-11'38" W | |

§ 161.45 Vessel Traffic Service St. Marys River.

(a) The VTS area consists of the navigable waters of the St. Marys River

and lower Whitefish Bay from 45-57' N. (De Tour Reef Light) to the south, to 46-38.7' N. (Ile Parisienne Light) to the north, except the waters of the St. Marys

Falls Canal, and to the east along a line from La Pointe to Sims Point, within Potagannissing Bay and Worsley Bay.
(b) Reporting Points.

| Designator | Geographic name | Geographic description | Latitude Longitude | Notes |
|------------|-------------------------|------------------------|--------------------------|-----------------|
| 1 | Ile Parisienne | Ile Parisienne Light | 46-37.3' N 84-45.9' W | Downbound only. |
| 2 | Gros Cap Reef | Gros Cap Reefs Light | 46-30.6' N 84-45.9' W | Upbound only. |
| 3 | Round Island | Round Island Light 32 | 46-26.9' N 84-31.7' W | |
| 4 | Pointe Louise | Pointe Louise Light | 46-27.8' N 84-45.9' W | |
| 5 | Clear of Locks | East End of Locks | 46-30.1' N 84-45.9' W | Downbound only. |
| 6 | Clear of Locks | West End of Locks | 46-30.1' N 84-22.8' W | Upbound |
| 7 | Mission Point | Light 99 | 46-29.2' N 84-18.1' W | |
| 8 | Six Mile Point | Six Mile Point | 46-26.1' N 84-12.4' W | |
| 9 | Nine Mile Point | Light 80 | 46-23.5' N 84-14.1' W | |
| 10 | West Neebish Channel | Light 29 | 46-16.9' N 84-12.5' W | Downbound only. |
| 11 | Munuscong Lake Junction | Lighted Junction Buoy | 46-10.8' N 84-05.6' W | |
| 12 | De Tour Reef | De Tour Reef Light | 46-56.9' N 83-53.7' W | |

§ 161.50 Vessel Traffic Service San Francisco.

(a) The VTS area consists of all the navigable waters of San Francisco Bay Region south of the Mare Island Causeway Bridge and the Petaluma River Entrance Lights "1" and "2" and north of Redwood City; its seaward approaches within a 38 nautical mile radius of Mount Tamalpais (37-55.8' N., 122-34.6' W.); and its navigable tributaries as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River.

§ 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region.

The Vessel Traffic Service Puget Sound area consists of the navigable waters of the United States bounded by a line drawn from the Washington State coastline at 48-23'08" N., 124-43'37" W. on Cape Flattery to the Cape Flattery Light at 48-23'30" N., 124-44'12" W. on Tatoosh Island, due west to the U.S. Territorial Sea Boundary; thence northward along the U.S. Territorial Sea Boundary to its intersection with the U.S./Canada International Boundary; thence east along the U.S./Canada International Boundary through the waters known as the Strait of Juan de

Fuca, Haro Strait, Boundary Pass, and the Strait of Georgia to the Washington State coastline at 49-00'06" N., 122-45'18" W. (International Boundary Range C Rear Light). This area includes: Puget Sound, Hood Canal, Possession Sound, the San Juan Island Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, the U.S. waters of the Strait of Juan de Fuca and the Strait of Georgia, and all waters adjacent to the above.

(b) Vessel Traffic Service Puget Sound participates in a U.S./Canadian Cooperative Vessel Traffic Service (CVTS) to jointly manage vessel traffic in the Juan de Fuca Region. The CVTS for the Juan de Fuca Region consists of

all waters of the Strait of Juan de Fuca and its offshore approaches, southern Georgia Strait, the Gulf and San Juan Archipelagos, Rosario Strait, Boundary Pass and Haro Strait, bounded on the northwest by 48-35'45" N.; and on the southwest by 48-23'30" N.; and on the west by the rhumb line joining 48-35'45" N., 124-47'30" W. with 48-23'30" N., 124-48'37" W.; and on the northeast in the Strait of Georgia, by a line drawn along 49-N. from Vancouver Island to Semiahmoo Bay; and on the southeast, by a line drawn from McCurdy Point on the Quimper Peninsula to Point Partridge on Whidbey Island. Canadian and United States Vessel Traffic Centers (Tofino, B.C., Canada, Vancouver, BC, Canada and Seattle, WA) manage traffic within the CVTS area irrespective of the International Boundary.

(c) VTS Special Areas. (1) The Rosario Strait VTS Special Area consists of those waters bounded to the south by the center of Precautionary Area "RB" (a circular area of 2,500 yards radius centered at 48-26'24" N., 122-45'12" W.), and to the north by the center of Precautionary Area "C" (a circular area of 2,500 yards radius centered at 48-40'34" N., 122-42'44" W.; Lighted Buoy "C"); and

Note: The center of precautionary area "RB" is not marked by a buoy. All precautionary areas are depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts.

(2) The Guemes Channel VTS Special Area consists of those waters bounded to the west by Shannon Point on Fidalgo

Island and to the east by Southeast Point on Guemes Island.

(d) Additional VTS Special Area Operating Requirements. The following additional requirements are applicable in the Rosario Strait and Guemes Channel VTS Special Areas:

(1) A vessel engaged in towing shall not impede the passage of a vessel of 40,000 dead weight tons or more.

(2) A vessel of less than 40,000 dead weight tons is exempt from the provision set forth in § 161.13(b)(1) of this part.

(3) A vessel of less than 100 meters in length is exempt from the provisions set forth in § 161.13(b)(3) of this part.

Approval will not be granted for:

(i) A vessel of 100 meters or more in length to meet or overtake; or cross or operate within 2,000 yards (except when crossing astern) of a vessel of 40,000 dead weight tons or more; or

(ii) A vessel of 40,000 dead weight tons or more to meet or overtake; or cross or operate within 2,000 yards (except when crossing astern) of a vessel of 100 meters or more in length.

(e) Reporting Point. Inbound vessels in the Strait of Juan de Fuca upon crossing 124-W.

§ 161.60 Vessel Traffic Service Prince William Sound.

(a) The VTS area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146-30' W. and 147-20' W. and includes Valdez Arm, Valdez Narrows and Port Valdez.

(b) The Valdez Narrows VTS Special Area consists of those waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307- True from Tongue Point at 61-02'06" N., 146-40' W.; and southwest of a line bearing 307- True from Entrance Island Light at 61-05'06" N., 146-36'42" W.

(c) Additional VTS Special Area Operating Requirements. The following additional requirements are applicable in the Valdez Narrows VTS Special Area:

(1) No VMRS User shall proceed north of 61-N. without prior approval of the VTS.

(2) Approval to enter this area will not be granted to a VMRS User when a tank vessel of 20,000 dead weight tons or more is navigating therein. A VMRS User that is northbound and intends to navigate the VTS Special Area shall remain south of 61-N. until the tank vessel has exited the area.

(3) When hazardous ice conditions exist, as determined by the VTS, the VTS Special Area will be extended south to a line from 60-50'02" N., 147-03'42" W.; to 60-49'05" N., 146-58'49" W. Additionally, a VMRS User proceeding northbound shall not navigate north of 60-40' N., without prior approval of the VTS.

(4) Subparagraph (c)(3) of this section does not apply to:

(i) A vessel of 1,600 gross tons or less;

(ii) A vessel escort; or

(iii) A public vessel of the Alaska Marine Highway system.

(d) Reporting Points.

| Designator | Geographic name | Geographic description | Latitude/longitude | Notes |
|------------|-------------------|--------------------------------------|-----------------------------|------------------|
| 1A | Cape Hinchinbrook | Cape Hinchinbrook | 60-16'18" N 146-45'30" W | Northbound Only. |
| 1B | Schooner Rock | Schooner Rock | 60-18'42" N 146-51'36" W | Southbound Only. |
| 2A | Naked Island | Naked Island | 60-40'00" N 147-01'24" W | Northbound Only. |
| 2B | Naked Island | Naked Island | 60-40'00" N 147-05'00" W | Southbound Only. |
| 3A | Bligh Reef | Bligh Reef Light (Pilot Embark) | 60-50'36" N 146-57'30" W | Northbound Only. |
| 3B | Bligh Reef | Bligh Reef Light (Pilot Dis-embark). | 60-51'00" N 147-01'24" W | Southbound Only. |
| 4A | Rocky Point | Rocky Point | 60-57'48" N 146-48'00" W | Northbound Only. |

| Designator | Geographic name | Geographic description | Latitude/longitude | Notes |
|------------|-----------------|------------------------|-----------------------------|------------------|
| 4B | Rocky Point | Rocky Point | 60-57'48" N 146-51'00" W | Southbound Only. |
| 5 | Entrance Island | Entrance Island Light | 61-05'24" N 146-37'30" W | |

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

13. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

14. Section 162.100 is added to read as follows:

§ 162.100 Ohio River at Louisville, KY.

(a) *Emergency Mooring Buoys.* The U.S. Army Corp of Engineers has established four pairs of emergency mooring bouys. Each buoy is 10 feet in diameter with retro-reflective sides. The two buoys which comprise each pair are 585 feet apart and are located approximately at:

(1) Indiana Bank—Mile 582.3 (near 18 Mile Island);

(2) Six Mile Island—Mile 597.5;

(3) Six Mile Island—Mile 598.2; and

(4) Kentucky Bank—Mile 599.8 (Cox's Park).

Note: All buoys, except those at Six Mile Island—Mile 598.2, are removed between May 1 and September 30. Due to the close proximity of the municipal water intakes, mooring of tank vessels laden with petroleum products or hazardous materials is not authorized on the Kentucky Bank, Mile 599.8 (Cox's Park).

(b) *The regulations.* A vessel must not use the emergency mooring buoys that have been established by the U.S. Army Corps of Engineers, unless specifically authorized. The Captain of the Port, upon request, may authorize the use of the emergency mooring buoys by downbound towing vessels that are awaiting Vessel Traffic Center approval to proceed.

15. Section 162.117 is added to read as follows:

§ 162.117 St. Marys River, Sault Ste. Marie, Michigan.

(a) *The area.* The waters of the St. Marys River and lower Whitefish Bay from 45-57' N. (De Tour Reef Light) to the south, to 46-38.7' N. (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Canal, and to the east along a line from La Pointe to Sims Point, within Potagannissing Bay and Worsley Bay.

(b) *Definitions.* As used in this section:

Two-way route means a directional route within defined limits inside which two-way traffic is established, and which is intended to improve safety in waters where navigation is difficult.

Two-way traffic means that traffic flow is permitted in opposing directions, but a vessel may not meet, cross, nor overtake any other vessel in such a manner that it would be abreast of more than one other vessel within the defined limits of a waterway.

(c) *Anchoring Restrictions.* A vessel must not anchor:

(1) Within the waters between Brush Point and the waterworks intake crib off Big Point southward of the Point Aux Pins range; or

(2) Within .2 nautical miles of the intake crib off Big Point.

(d) *Traffic Rules.* (1) A vessel must proceed only in the established direction of traffic flow in the following waters:

(i) West Neebish Channel from Buoy "53" to Buoy "1"—downbound traffic only;

(ii) Pipe Island Course from Sweets Point to Watson Reefs Light—downbound traffic only.

(iii) Middle Neebish Channel from Buoy "2" to Buoy "76"—upbound traffic only; and

(iv) Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins from Watson Reefs Light to Sweets Point—upbound traffic only.

(2) A vessel 350 feet or more in length must not overtake or approach within .2 nautical miles of another vessel proceeding in the same direction in the following waterways:

(i) West Neebish Channel between Nine Mile Point and Munuscong Lake Junction Lighted Bell Buoy;

(ii) Middle Neebish Channel between Munuscong Lake Junction Lighted Bell Buoy and Nine Mile Point; and

(iii) Little Rapids Cut from Six Mile Point to Buoy "102".

(3) When two-way traffic is authorized in Middle Neebish Channel, a vessel 350 feet or more in length must not meet, cross, or overtake another vessel at:

(i) Johnson Point from Buoy "18" to Buoy "22";

(ii) Mirre Point from Buoy "26" to Buoy "28"; or

(iii) Stribling Point from Buoy "39" to Buoy "43".

(4) Paragraph (d)(2) of this section does not apply to a vessel navigating through an ice field.

(e) *Winter Navigation.* During the winter navigation season, the following waterways are normally closed:

(1) West Neebish Channel, from Buoy "53" to Buoy "1";

(2) Pipe Island Passage to the east of Pipe Island Shoal; and

(3) North of Pipe Island Twins, from Watson Reef Light to Sweets Point.

(f) *Alternate Winter Navigation Routes.* (1) When West Neebish Channel is closed, Middle Neebish Channel (from Buoy "2" to Buoy "76") will be open either as a two-way route or an alternating one way traffic lane.

(i) When Middle Neebish Channel is a two-way route:

(A) An upbound vessel must use the easterly 197 feet of the channel.

However, a vessel of draft 20 feet or more must not proceed prior to Vessel Traffic Center approval; and

(B) A downbound vessel must use the westerly 295 feet of the channel.

(ii) When Middle Neebish Channel is an alternating one-way traffic lane. A vessel must use the westerly 295 feet of the channel in the established direction of traffic flow.

(2) When Pipe Island Passage is closed, Pipe Island Course is a two-way route.

Note: The Vessel Traffic Service closes or opens these channels as ice conditions require after giving due consideration to the protection of the marine environment, waterway improvements, aids to navigation, the need for cross channel traffic (e.g., ferries), the availability of icebreakers, and the safety of the island residents who, in the course of their daily business, must use naturally formed ice bridges for transportation to and from the mainland. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these channels, interested parties including both shipping entities and island residents, will be given at least 72 hours notice by the Coast Guard.

(g) *Speed Rules.* (1) The following speed limits indicate speed over the ground. Vessels must adhere to the following speed limits:

| Maximum speed limit between | Mph | Kts |
|--|-----|------|
| De Tour Reef Light and Sweets Point Light | 14 | 12.2 |
| Round Island Light and Point Aux Frenes Light "21" | 14 | 12.2 |
| Munuscong Lake Lighted Buoy "8" and Everens Point | 12 | 10.4 |
| Everens Point and Reed Point | 9 | 7.8 |
| Reed Point and Lake Nicolet Lighted Buoy "62" | 10 | 8.7 |
| Lake Nicolet Lighted Buoy "62" and Lake Nicolet Light "80" | 12 | 10.4 |
| Lake Nicolet Light "80" and Winter Point (West Neebish Channel) | 10 | 8.7 |
| Lake Nicolet Light "80" and Six Mile Point Range Rear Light | 10 | 8.7 |
| Six Mile Point Range Rear Light and lower limit of the St. Marys Falls Canal | | |
| Upbound | 8 | 7.0 |
| Downbound | 10 | 8.7 |
| Upper limit of the St. Marys Falls Canal and Point Aux Pins Main Light | 12 | 10.4 |

Note: A vessel must not navigate any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots).

(2) Temporary speed limit regulations may be established by Vessel Traffic Service St. Marys River. Notice of the temporary speed limits and their effective dates and termination are published in the **Federal Register** and Local Notice to Mariners. These temporary speed limits, if imposed, will normally be placed in effect and terminated during the winter navigation season.

(h) **Towing Requirement.** A towing vessel must: (1) Maintain positive control of its tow south of Gros Cap Reef Light;

(2) Not impede the passage of any other vessel;

(3) Not tow a vessel of 200 feet or less in length with a tow line longer than 250 feet; and

(4) Not tow a vessel of 200 feet or more in length with a tow line longer than the length of the towed vessel plus 50 feet.

PART 164—NAVIGATION SAFETY REGULATIONS

16. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502 sec. 4114(a), Public Law 101-380, 104 Stat. 517 (46 U.S.C. 3703

note). Sec. 164.61 also issued under 46 U.S.C. 6101.

17. Section 164.03 is revised to read as follows:

§ 164.03 Incorporation by Reference.

- (a) * * *
- (b) The materials approved for incorporation by reference in this part and the sections affected are:
- Radio Technical Commission For Maritime Services (RTCM)*, 655 Fifteenth St., N.W., Suite 300, Washington, D.C. 20005
- Minimum Performance Standards (MPS) Marine Loran C Receiving Equipment, RTCM Paper 12-78/DO-100, 1977-164.41
- RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, RTCM Paper 134-89/SC 104-68, 1990-164.43

18. Section 164.43 is added to read as follows:

§ 164.43 Automated Dependent Surveillance Shipborne Equipment.

(a) Each vessel required to provide automated position reports to a Vessel Traffic Service (VTS) must do so by an installed Automated Dependent Surveillance Shipborne Equipment (ADSSE) system consisting of a:

(1) Twelve-channel all-in-view Differential Global Positioning System (dGPS) receiver;

(2) Marine band Non-Directional Beacon receiver capable of receiving dGPS error correction messages;

(3) VHF-FM transceiver capable of Digital Selective Calling (DSC) on the designated DSC frequency; and

(4) Control unit.

(b) An ADSSE must have the following capabilities:

(1) Use dGPS to sense the position of the vessel and determine the time of the position using Universal Coordinated Time (UTC);

(2) Fully use the broadcast type 1, 2, 3, 5, 6, 7, 9, and 16 messages, as specified in RTCM Recommended Standards for Differential NAVSTAR GPS Service in determining the required information;

(3) Achieve a position error which is less than ten meters (32.8 feet) 2 distance root mean square (2 drms) from the true North American Datum of 1983 (NAD 83) in the position information transmitted to a VTS;

(4) Achieve a course error of less than 0.5 degrees from true course over ground in the course information transmitted to a VTS;

(5) Achieve a speed error of less than 0.05 knots from true speed over ground in the speed information transmitted to a VTS;

(6) Receive and comply with commands broadcast from a VTS as DSC messages on the designated DSC frequency;

(7) Receive and comply with RTCM messages broadcast as minimum shift keying modulated medium frequency signals in the marine radiobeacon band, and supply the messages to the dGPS receiver;

(8) Transmit the vessel's position, tagged with the UTC at position solution, course over ground, speed over ground, and Lloyd's identification number to a VTS;

(9) Display a visual alarm to indicate to shipboard personnel when a failure to receive or utilize the RTCM messages occurs;

(10) Display a separate visual alarm which is triggered by a VTS utilizing a DSC message to indicate to shipboard personnel that the U.S. Coast Guard dGPS system cannot provide the required error correction messages; and

(11) Display two RTCM type 16 messages, one of which must display the position error in the position error broadcast.

(c) An ADSSE is considered non-operational if it fails to meet the requirements of paragraph (b) of this section.

Note: Vessel Traffic Service (VTS) areas and operating procedures are set forth in Part 161 of this chapter.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

19. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and, 160.5; 49 CFR 1.46.

Subpart F—[Amended]

20. Section 165.809 is added to read as follows:

§ 165.809 Mississippi River, LA.

(a) **Purpose and Applicability.** Section 165.810 prescribes rules for vessel operation in the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, to assist in the prevention of collisions and groundings and to protect the navigable waters of the Mississippi River from environmental harm resulting from those incidents.

21. Section 165.811 is added to read as follows:

§ 165.811 Atchafalaya River, Berwick Bay, LA-regulated navigation area.

(a) The following is a regulated navigation area: the waters of the Atchafalaya River in Berwick Bay

bounded on the northside from 2,000 yards north of the U.S. 90 Highway Bridge and on the southside from 4,000 yards south of the Southern Pacific Railroad (SPRR) Bridge.

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.40 of this chapter establishes a VTS Special Area for waters within a 1000 yard radius of the SPRR Bridge.

(c) When the Morgan City River gauge reads 3.0 feet or above mean sea level, in addition to the requirements set forth in § 161.13 of this chapter, the

requirements of paragraph (d) and (e) of this section apply to a towing vessel which will navigate:

(1) under the lift span of the SPRR Bridge; or

(2) through the navigational opening of the U.S. 90 Highway Bridge; or

(3) through the navigational opening of the Highway 182 Bridge.

(d) *Towing requirements.* (1) Towing on a hawser is not authorized, except that one self-propelled vessel may tow one other vessel without barges upbound;

(2) A towing vessel and barges must be arranged in tandem, except that one vessel may tow one other vessel alongside;

(3) Length of tow must not exceed 1,180 feet; and

(4) Tows with a box end in the lead must not exceed 400 feet in length.

Note: The variation in the draft and the beam of the barges in a multi-berge tow should be minimized in order to avoid unnecessary strain on coupling wires.

(e) *Horsepower Requirement.* (1) The following requirements apply to a towing vessel of 3,000 hp or less:

MINIMUM AVAILABLE HORSEPOWER REQUIREMENT

[The greater value listed.]

| Direction of tow | Daytime (sunrise to sunset) | Nighttime (sunset to sunrise) |
|------------------|--|-------------------------------------|
| Upbound | 400hp or (Length of tow—300ft) × 3 | 600hp or (Length of tow—200ft) × 3. |
| Downbound ... | 600hp or (Length of tow—200ft) × 3 | 600hp or (Length of tow) × 3. |

Note: A 5% variance from the available horsepower is authorized.

(2) All tows carrying cargoes of particular hazard as defined in § 160.203 of this chapter must have available horsepower of at least 600 hp or three times the length of tow, whichever is greater.

(f) *Notice of Requirements.* Notice that these rules are anticipated to be put into effect, or are in effect, will be given by:

(1) Marine information broadcasts;

(2) Notices to mariners;

(3) Vessel Traffic Center advisories or upon vessel information request; and

(4) Visual displays on top of the SPRR Bridge, consisting of:

(i) Two vertically arranged red balls by day; or

(ii) Two horizontally arranged flashing white lights by night.

Note: Visual displays are not shown during precautionary periods (when the Morgan City River Gauge reads 2.5 feet above mean sea level). However, precautionary notices will be issued via marine notice to mariners, notice to mariners, VTC advisories or vessel information requests, when water level remains at or above 2.5 feet. Visual displays are Class I, private aids to navigation maintained by SPRR Bridge.

22. Section 165.1303 is added to read as follows:

§ 165.1303 Puget Sound and adjacent waters, WA-regulated navigation area.

(a) The following is a regulated navigation area: the waters of the United States east of a line extending from Discovery Island Light to New Dungeness Light and all points in the Puget Sound area north and south of these lights.

(b) *Regulations.* (1) Tank vessel navigation restrictions: Tank vessels larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in the regulated navigation area.

(2) A vessel in a precautionary area which is depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts, except precautionary area "RB" (a circular area of 2,500 yards radius centered at 48-26'24" N., 122-45'12" W.), must keep the center of the precautionary area to port.

Note: The center of precautionary area "RB" is not marked by a buoy.

23. Section 165.1704 is added to read as follows:

§ 165.1704 Prince William Sound, Alaska-regulated navigation area.

(a) The following is a regulated navigation area: The navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146-30' W. and 147-20' W. and includes Valdez Arm, Valdez Narrows, and Port Valdez.

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.60 of this chapter establishes a VTS Special Area for the waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307- True from Tongue Point at 61-02'06" N., 146-40' W.; and southwest of a line bearing 307- True

from Entrance Island Light at 61-05'06" N., 146-36'42" W.

(c) *Regulations.* In addition to the requirements set forth in § 161.13 and § 161.60(c) of this chapter, a tank vessel of 20,000 deadweight tons or more that intends to navigate within the regulated navigation area must:

(1) Report compliance with part 164 of this chapter, to the Vessel Traffic Center (VTC);

(2) Have at least two radiotelephones capable of operating on the designated VTS frequency, one of which is capable of battery operation;

(3) When steady wind conditions in the VTS Special Area or Port Valdez exceed, or are anticipated to exceed 40 knots, proceed as directed by the VTC (entry into the VTS Special Area and Port Valdez is prohibited);

(4) When steady wind conditions, at the designated anchorage (Knowles Head), in Prince William Sound exceed:

(i) 40 knots: not anchor within Prince William Sound, or if at anchor, must strictly adhere to § 164.19 of this chapter, including maintaining a constant bridge watch and placing the entire main propulsion system on immediate standby;

(ii) 45 knots or any dragging of the anchor occurs: weigh anchor and proceed as directed by the VTC;

(5) When transiting the VTS Special Area, limit speed to 12 knots;

(6) If laden and intending to navigate the VTS Special Area, limit speed to 12 knots except between Middle Rock and Potato Point where the speed limit shall be 6 knots; and

(7) Not later than July 1, 1994, have an operating Automated Dependent Surveillance Shipborne Equipment (ADSSE) system installed.

(i) The designated digital selective calling frequency (DSC) in Prince William Sound is 156.525MHz (VHF Channel 70).

(ii) ADSSE equipped vessels will not be required to make voice radio position reports at designated reporting points required by § 161.20(b), unless otherwise directed by the VTC.

(iii) Whenever a vessel's ADSSE becomes non-operational, as defined in § 164.43(c) of this chapter, before entering or while underway in the VTS area, a vessel must:

(A) Notify the VTC;

(B) Make the required voice radio position reports as set forth in § 161.60 and required by § 161.20(b) of this chapter;

(C) Make other voice radio reports as required by the VTS; and

(D) Restore the ADSSE to operating condition as soon as possible.

(iv) Whenever a vessel's ADSSE becomes non-operational due to a loss of position correction information (i.e., the U.S. Coast Guard dGPS system cannot provide the required error correction messages) a vessel must:

(A) Make the required voice radio position reports as set forth in § 161.60 and required by § 161.20(b) of this chapter; and

(B) Make other voice radio reports as required by the VTS.

(v) Whenever a vessel's ADSSE becomes non-operational before getting underway in the VTS area, permission to get underway must be obtained from the VTC.

Note: Regulations pertaining to Automated Dependent Surveillance Shipborne Equipment (ADSSE) required capabilities are set forth in Part 164 of this chapter.

Dated: June 24, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterways Services.
[FR Doc. 94-17138 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-14-P

Friday
July 15, 1994

REGISTRATION

Part VI

**Department of
Transportation**

Federal Highway Administration

49 CFR Part 383

Commercial Driver Physical Fitness as
Part of the Commercial Driver's License
Process; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC-93-23]

RIN 2125-AD20

Commercial Driver Physical Fitness as Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is requesting comments on whether to include the certification of fitness to operate a commercial motor vehicle (CMV) in the commercial driver's license (CDL) process. Incorporating the commercial driver fitness determination into State-administered CDL procedures may allow elimination of the requirement that CMV drivers carry a separate medical certificate. The two systems were initially developed separately with one being a motor carrier-based medical qualification program and the other a State licensing program. However, the FHWA believes that logically the two systems should be merged in order for the States to make the medical fitness determination at the time the license is being issued. Thus, the CDL would be evidence that the CMV driver is physically fit as well as operationally qualified to operate CMVs safely. This notice also requests comments concerning whether such a process could be implemented nationwide.

DATES: Comments must be received on or before November 14, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-93-23, Room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Standards, (202) 366-4001, or Mrs. Allison Smith, Office of Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m.

e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation has the authority to establish standards for physical fitness that must be met by drivers in interstate commerce. 49 U.S.C. 3102 and 49 U.S.C. app. 2505. This authority is delegated to the Federal Highway Administrator. 49 CFR 1.48. The Federal Motor Carrier Safety Regulations (FMCSRs) set forth, in 49 CFR 391.11, the fitness standards that drivers must meet to be qualified to drive a CMV in interstate commerce. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides, in section 12005(a)(8)(49 U.S.C. app. 2704(a)(8)), that Federal standards may be promulgated to require issuance of a certification of fitness to operate a CMV to each person who passes a CDL test and may require such person to have a copy of such certification in his or her possession whenever operating a commercial motor vehicle.

Currently, 49 CFR 391.45 requires that commercial drivers be medically examined and certified as physically qualified once every two years in order to operate in interstate commerce. If the driver meets the physical qualification standards set forth in 49 CFR 391.41, the medical examiner then issues a medical certificate which indicates physical fitness to drive (49 CFR 391.43). Drivers must carry this certificate while driving (49 CFR 391.41(a)) and employers must maintain a copy in the drivers' qualification file (49 CFR 391.51(b)(1)). Enforcement is primarily through roadside inspections of vehicles and drivers or through Federal or State safety compliance reviews of the motor carriers.

In addition, 49 CFR 383.71(a) requires that during the CDL application process a person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR 391, shall certify that he/she meets the qualification requirements contained in Part 391 of that title. In practice, some States rely solely on the driver certification while others also require drivers who certify that they meet the qualification requirements of Part 391 to produce the required medical certificate in order to be issued a CDL. Before issuing the CDL, a few States also review the medical "long form" that the medical examiner completes to assure that the standards are met. It is possible, now that all licensing agencies are linked electronically, that medical status

information could, as part of the driver record, be shared and checked among States in the CDL process.

Driver Medical Qualifications as Part of CDL

There are several benefits to merging the motor carrier-based medical qualification program with the State licensing program. First, the driver will no longer be required to carry a medical certificate since the possession of a CDL will be evidence of a driver's fitness to operate a CMV. Secondly, the motor carrier will have no need to maintain driver medical qualification files.

There are specific benefits for State licensing agencies when the two systems are merged together. The FHWA believes that a single, State-run system would be better able to identify unqualified drivers operating without medical cards or with forged cards. The current Federal medical qualification program does not provide an opportunity for a routine independent review by a medical professional of each medical examiner's certification that a driver is qualified under the FMCSRs. Currently, only a driver's employer is required to ensure that the driver holds a valid medical card. To the extent that the State-run medical qualification programs would review doctors' determinations of physical fitness or more effectively ensure that every driver does carry a valid medical card, these systems are better suited to prevent unqualified drivers from operating commercial motor vehicles. Forty-seven States already review the medical fitness of their intrastate drivers through medical advisory boards or other medical review processes. Medical advisory boards advise State licensing agencies on the medical standards for drivers and they review individual cases, as part of the evaluation of drivers who have been identified as having a medical condition that may impair safe driving. The FHWA believes that these States would be able to integrate interstate commercial drivers into their existing medical review programs with little difficulty.

Recognizing the advantages of linking the demonstration of physical fitness with licensing through 49 U.S.C. app. 2704(a)(8), the FHWA has contracted with the Association for the Advancement of Automotive Medicine (AAAM) and American Association of Motor Vehicle Administrators (AAMVA) to explore the options for turning the medical qualification responsibility over to the States. The goal of this research contract is to explore processes States could use to develop and pilot test programs that

merge the medical qualification into the CDL process. The contractor was requested to:

(1) Look at existing State medical review programs to determine what infrastructure already exists;

(2) Work with a committee of States to develop standards for State medical review programs and prototype programs to be tested in a pilot program; and

(3) Work with the States and the FHWA to oversee and assess the pilots.

Members of the committee of States for this effort are: Arizona, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, South Dakota, Texas, Utah, and Wyoming. Four of these States—Arizona, Indiana, North Carolina, and Utah—have developed prototype medical review programs and are now conducting pilot tests. Two States, Alabama and Missouri, not members of the original committee of States, also have pilot tests in place.

Under these pilot tests, the State licensing officials require drivers to show proof that they meet the FHWA medical standards in order to receive a new CDL or to renew an existing CDL. While each pilot test is somewhat different, all include the requirement that each driver submit a medical form signed by a medical examiner that shows specifically that the driver meets each of the medical standards included in 49 CFR 391.41.

Each of these pilot tests will run for a year. When all are completed the contractor will compile the data and evaluate each of the pilot tests to determine the feasibility of State implementation. The FHWA expects to learn from these pilot tests what types of administrative methods and procedures would work best to enable State licensing entities to incorporate driver medical fitness determinations into the CDL process. The pilot test results will also provide needed information about the size and nature of the problem of licensing drivers who may not meet the existing standards.

Other FHWA Activities Related to Driver Medical Fitness

The FHWA has several other ongoing activities that address the many issues related to determining driver fitness, which are summarized below.

Interstate Medical Waiver Program

Drivers who do not meet the current vision standards but who do meet specific preconditions and agree to comply with certain reporting requirements are participating in a waiver program which allows them to

operate in interstate commerce for at least the duration of the program. 57 FR 31458, July 16, 1992. A similar waiver program for insulin-using diabetic drivers was initiated on July 29, 1993 (58 FR 40690). Waiver programs for hearing deficient drivers and those who have a history of epilepsy are also under consideration. Under these waiver programs, which will each last for approximately three years, studies would be undertaken to compare the experience of the group of commercial drivers who do not meet current medical standards with that of a control group of CMV operators who meet the Federal medical qualification standards. The studies will explore the potential causative relationship between driving with specific disabilities and accident and traffic violation experience.

The FHWA plans to use the data collected from these waiver programs to assist it in making decisions about how or whether existing regulations should be amended to accommodate more individualized driver qualification determinations and to incorporate them into the CDL process.

Motor Carrier Safety Assistance Program (MCSAP) Policy

In another initiative, the FHWA issued an interim final rule, Motor Carrier Safety Assistance Program; Extension of Compliance Date, postponing the deadline in Appendix C to Part 350 regarding compatible physical qualifications (49 CFR 391.41) for CMV drivers in intrastate commerce. 58 FR 40599, July 29, 1993. Under this rule, the States will be able to continue to exempt intrastate drivers from the physical qualification requirements for an additional three years. Additionally, the FHWA is encouraging States to consider developing physical qualification waiver programs that are compatible with the FHWA's program. In the future, intrastate waivers may also be incorporated into the CDL process.

Update of Forms and Materials

The FHWA is also developing guideline materials for medical examiners who certify the medical fitness of commercial drivers. These materials will include updated physical examination and certification forms, and accompanying materials to provide technical and educational assistance to the certifying health care professional. Such materials may be used as part of the programs which State licensing entities would administer in the future within the CDL process.

International Medical Fitness

Canada and Mexico currently certify the medical fitness of commercial drivers in conjunction with the driver's licensing process. The Canadian Provinces utilize the minimum medical qualifications set forth in the Canadian "National Safety Code for Motor Carriers" to assure that each driver is fit. Mexican drivers are medically examined before issuance of a Licencia Federal de Conductor and every two years thereafter in order to maintain this license.

Questions for Comment

In this rulemaking, the FHWA is considering requiring the State licensing entities to verify that CMV drivers who are subject to the physical qualification standards set forth in 49 CFR 391.41 meet those standards in order to receive and retain a CDL. State implementation of this requirement would then be necessary for a State to avoid the loss of a percentage of highway funds for noncompliance.

The FHWA is soliciting comments that, together with the information gained from the pilot projects, will assist the FHWA in developing a proposal that could form the basis of a notice of proposed rulemaking. For this purpose, information in the following areas is requested.

1. Could State licensing programs be used to provide an effective means to verify compliance with the physical qualification standards set forth in 49 CFR 391.41? If so, how should this be accomplished? Given the fact that physical fitness is an appropriate licensing issue pertaining to CDL applicants, should States be required to examine or verify physical qualifications at the time of licensing? Should that verification involve more than inspection of a medical certificate? Should States be required to track a driver's physical qualification status as part of the licensing record?

2. Do State licensing authorities currently possess sufficient authority and resources to determine medical qualifications if that function is required as an element of CDL procedures? If the FHWA determines, as a result of the waiver programs now in progress, that certain persons with disabilities may be allowed to drive in interstate commerce, are the States able to make the required individual driver qualification determinations for CDL applicants in interstate as well as intrastate commerce?

3. What are the most efficient ways to deal with the differences between the two-year medical certification and the

CDL renewal terms? What is the most appropriate interval for medical recertification? Should there be shorter intervals for certain drivers, such as older drivers or ones with physical disabilities or medical conditions that may be progressive? What data is available to support your position or to otherwise assist in determining the appropriate medical recertification interval? Are there obstacles to making the licensing and medical certification intervals the same?

4. Should medical examiners be required to be qualified and certified to perform driver examinations? What is the most efficient means to qualify and certify medical examiners? What are the cost considerations? Should there be a national network of medical examiners?

5. If the CDL cannot serve the function of the current medical certificate, should drivers continue to carry a separate document to show physical fitness? Would an adaptation of the Mexican or Canadian systems work, in which the medical certificate is part of the license but must be revalidated periodically?

6. How much variation among State programs is reasonable? For example, should all States be required to use one approved medical form?

7. Should all States be required to participate in a medical examination or verification program for CDL applicants? If so, when should such participation be required?

8. What should be the role of those who employ or use motor carriers in such a system?

9. What State and industry efficiencies are envisioned with such a medical examination or verification program; for example, reduced paperwork (driver qualification file) for carriers or reduced time being spent by State offices to check medical cards?

10. How should drivers who are required to meet the physical qualifications standards but who do not need CDLs be handled? Should State licensing authorities be responsible for assuring that these drivers meet the appropriate standards?

Commenters are not limited to responding to the above questions. Commenters may submit any facts or views consistent with the intent of this notice.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material. We are considering conducting this rulemaking using the regulatory negotiation process.

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

The action being considered by the FHWA in this document would incorporate the commercial driver physical fitness determination into the State-administered CDL licensing process. The FHWA has determined that the proposed action, if implemented, would be a "significant regulatory action" under Executive Order 12866 and a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in this action. The potential economic impact of this proposed rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not yet been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency will evaluate the effects of this proposal on small entities. Following the agency's evaluation, the FHWA will certify whether this proposed action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine whether it has

sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements relating to the medical certification requirement and commercial driver's licensing process have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2125-0080 and 2125-0542, respectively.

National Environmental Policy Act

The agency will analyze this action for the purpose of the National Environmental Policy Act of 1969 to determine whether this action will have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Driver qualifications, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(49 U.S.C. App. 2505; 49 CFR 1.48.)

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94-17175 Filed 7-14-94; 8:45 am]

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Friday
July 15, 1994

REGISTRATION
PART 32
FEDERAL REGISTER

Part VII

**Department of the
Interior**

50 CFR part 32

**Addition of Two National Wildlife Refuges
to the List of Open Areas for Hunting
and Pertinent Refuge-Specific
Regulations; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AC58

Addition of Two National Wildlife Refuges to the List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations; Closure of Two National Wildlife Refuges to Big Game Hunting and Sport Fishing, Respectively

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add two national wildlife refuges (NWR(s)) to the list of areas open for migratory game bird hunting, upland game hunting, and/or big game hunting and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource. In addition, two national wildlife refuges will be closed to big game hunting and sport fishing, respectively.

DATES: Comments may be submitted on or before September 13, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703-358-1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This

rulemaking proposes to open two refuges to hunting. The hunting programs included in this openings document have refuge-specific hunting regulations which are included in this rulemaking.

In addition, two refuges now open will be closed to big game hunting and sport fishing, respectively. Big game hunting, specifically deer hunting, will not be permitted at Columbia National Wildlife Refuge in Washington State. This decision was prompted by monitoring of the species, habitat status, and Service and public safety and health concerns. The refuge will be appropriately posted for this closure. Sport fishing will not be permitted at Delevan National Wildlife Refuge in California. This decision was prompted by a request by the Maxwell Irrigation District to close the area to fishing since chain, locks, and tension rods on their water control were cut, apparently to gain access across one of the drain canals. In addition to this concern, the refuge made the determination that the fishery resource was not of high-quality and the water quality in the drain canal was questionable. The area has a few regular anglers, but it is estimated that only 25 anglers would be significantly impacted by this closure.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority

to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Openings Packages

In preparation for these openings, the refuge units have included in their "openings packages" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI), or an Environmental Impact Statement and Record of Decision; a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations, as provided herein. From a review of the totality of these documents, and for each refuge unit specifically, the Secretary determines that the opening of the areas to hunting are compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSA and the RRA, the Secretary has also determined that these openings for hunting are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting programs will be generally within State and Federal (migratory game bird) regulatory frameworks. A brief description of the hunting programs follows:

1. Rydell National Wildlife Refuge

The Service proposes to open Rydell National Wildlife Refuge to the hunting of white-tailed deer. Rydell was established in 1992 to preserve and enhance important wildlife habitat in western Minnesota and provide a regional wildlife and fish management education center. The 2,120-acre refuge is located in Grove Park and Woodside Townships in Polk County, just south of U.S. Highway 2 between the communities of Mentor and Erskine, Minnesota. The refuge is situated in the Prairie Pothole Region of western Minnesota between the flat Red River

Valley flood plain on the west and the rolling hardwood forest and lake region on the east. The refuge is administered as a unit of the Detroit Lakes Wetland Management District (DLWMD). The DLWMD, which has its headquarters near Detroit Lakes, Minnesota, also currently administers 155 Waterfowl Production Areas, 322 perpetual wetland easements and 14 Farmers' Home Administration (FmHA) Conservation Easements in the five northwestern Minnesota counties of Becker, Clay, Mahanomen, Norman and Polk. Diverse habitat on the refuge attracts an impressive variety and abundance of wildlife. Besides a large white-tailed deer population, refuge habitat is used by both dabbling and diver waterfowl species, moose, mink, ruffed grouse, cormorants, herons, rabbits, raccoon, otter, beaver, muskrat, various hawk and owl species, and more than 100 neotropical, water and other migratory bird species.

Opening the refuge to the hunting of white-tailed deer has been found to be compatible in a separate compatibility determination. This finding was based on findings that (1) hunting is widely recognized by wildlife managers as an integral part of a comprehensive wildlife conservation management plan; (2) the deer population of the refuge and surrounding area has become so large that habitat damage and excessive crop depredation is occurring; (3) reducing the deer population would improve the health and condition of the deer herd, eliminate the damaging effects of overpopulation on refuge habitat and reduce the depredation damage caused by deer on crops that surround the refuge; and (4) deer hunting would provide wildlife-oriented recreational opportunities in an area of Minnesota where hunting and fishing are important recreational activities.

Historically, this area of Minnesota has attracted large numbers of deer, especially in winter, because both prairie and woodland habitat were available. Over the past 25 years, the previous owner actively encouraged deer to use the area by planting many acres of lure crops, limiting hunting pressure and providing a high degree of protection for the deer herd. Because of this, the deer population has increased and been concentrated in the relatively small refuge area. Today, the refuge and surrounding area host a white-tailed deer population of about 300 during the spring and fall and up to 500 in the winter. Preliminary surveys indicate that winter densities range from 18 to 20 deer per square mile of the total land area of the refuge and 100 deer per square mile of forested habitat in the 27

square-mile area that includes and surrounds the refuge. A large proportion of these deer use the three square-mile area of the refuge extensively throughout the year. The refuge winter deer population is estimated at 60 to 70 deer per square mile of the total land area of the refuge and more than 200 per square mile of forested habitat. Overpopulation by deer is evident by the presence of browse lines in the refuge woodlands. The goal of the proposed hunt is to lower the deer population to within the statewide density range (1-15 per square mile of the total land area and 5-80 per square mile of forested habitat). Field studies would be conducted to monitor habitat conditions and population dynamics to determine what the appropriate deer population should be for the refuge and surrounding area.

The Special Permit Area (SPA) would be hunted during the State's 4A and 4B firearms seasons. The SPA covers approximately 2,000 acres, excluding refuge facilities and occupied building sites. About 1,200 acres of the SPA are deemed huntable during a normal hunting season. Initially, until the herd is reduced and under control, only antlerless deer would be taken. As many as 60 permits would be issued for the two-day 4A season and up to 80 permits would be issued for the four-day 4B season. The maximum hunter density would be one hunter per 15 acres. Hunter and Service personnel safety would determine the actual number of permits that are issued each season.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the proposed hunt. The refuge is in the breeding range of bald eagles. Eagles also use the refuge regularly for feeding; however, they would have migrated south by the time the firearms deer season opened in November. The refuge is in the peripheral range of the gray wolf; however, no wolves have ever been seen on the refuge. The tight controls of the hunt would make the chance illegal take of a gray wolf unlikely. While western prairie fringed orchids have been found in Polk County, no populations have been identified on the refuge. Even if such a population were discovered, they would be dormant during the hunting season. The proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was conducted and a Finding of No Significant Impact (FONSI) was made

regarding the proposed hunt. Detroit Lakes Wetland Management District and refuge staff, along with input from local Minnesota Department of Natural Resources representatives, were primarily responsible for the development of the alternatives reviewed in making the FONSI conclusion. Refuge objectives and Service concerns guided the process. Public needs and expectations were also taken into consideration during the development of the alternatives.

The annual cost of this hunting program would be approximately \$3,000. Within the annual DLWMD budget of \$676,000, the necessary funds would be available for the development, operation and maintenance of this program pursuant to the Refuge Recreation Act.

2. Ohio River Islands National Wildlife Refuge

The Service proposes to open Ohio River Islands National Wildlife Refuge to the hunting of migratory game birds, upland game hunting, and big game hunting. Established in 1990, the refuge became the first national wildlife refuge in West Virginia. The refuge consists of 9 islands in the Ohio River. The acquisition boundary stretches 362 river miles from Shippingport, Pennsylvania to Manchester, Ohio and includes four states (Pennsylvania, Ohio, West Virginia and Kentucky). The refuge was established under the authority of the Fish and Wildlife Act of 1956. The refuge's primary purpose is for the development, advancement, management, conservation, and protection of fish and wildlife resources. This purpose was further defined by the objectives stated in the refuge's management plan to include (1) the management and protection of wildlife habitat, (2) the management and protection of wildlife populations, and (3) to allow appropriate public uses including, but not limited to, hunting, fishing, trapping, wildlife observation and environmental education.

Twenty species of waterfowl have been recorded using the islands and associated riverine habitats of the Ohio River. The majority of these waterfowl are migratory, using the river and island habitats as feeding and resting areas. More than 5,800 individual waterfowl were observed using the islands during the 165 island visits from February 1992 to September 1993. The take of migratory game birds will include waterfowl, coots, gallinules, rails, snipe, woodcock and mourning dove. Seasons on the refuge will coincide with the appropriate State seasons. The take of all other migratory birds will be

prohibited. The proposed migratory game bird hunting program will currently encompass 7 islands and 429 acres. Aside from woodcock hunting, all migratory game bird hunting will, in reality, occur only on the shoreline perimeter of the islands, which constitutes approximately 80 acres (15% of the current refuge acreage).

Cottontail rabbits and fox squirrels are present on the Ohio River islands, with current numbers variable depending on specific islands and their habitats. Much of the island habitats have succeeded beyond the early to late oldfield habitats preferred by cottontail rabbits, and food available for fox squirrels is limited mostly to soft mast. However, it is felt that these species are present in huntable populations. The refuge season for these species will coincide with the appropriate State seasons. Method of take will be restricted to shotgun only for safety reasons. The take of all other upland game, including turkey, grouse, pheasant, and quail, will be prohibited.

White-tailed deer are found in varying numbers on the Ohio River Islands. The size and habitat conditions on each island are different and deer utilization reflects this. Deer move freely from the mainland to the islands, depending on surrounding public use pressures, season, etc., tying island deer densities to surrounding deer populations. Deer hunting is proposed for the refuge within the framework of applicable State regulation. Method of take will be restricted to archery only for safety reasons and season lengths will correspond to State archery deer seasons.

A separate compatibility determination was made for the proposed hunt, and the proposed recreational hunts were found to be compatible. The hunt programs must be monitored and adjusted as necessary to reduce or eliminate adverse impacts to the refuge resources and refuge operations.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the proposed hunt. The listed species considered in this evaluation are pink mucket pearly mussel, fanshell mussel, bald eagle and peregrine falcon. The pink mucket pearly mussel and fanshell mussel occur on sand and gravel substrate found on the river bottom. Hunting on the island terrestrial habitats and from boats around the island perimeters will not impact these mussels or freshwater mussel habitat. Areas having concentrated eagle use will be zoned to prohibit hunting. The peregrine falcon is a rare visitor to the Ohio River Valley, and hunting activity is not expected to

have any impact on this species. Accordingly, it was concluded that the proposed hunt is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

An environmental assessment was developed pursuant to the National Environmental Policy Act (NEPA) and a Finding of No Significant Impact (FONSI) was made with respect to the proposed hunts. During the planning stages of developing the hunt proposal, the refuge was in direct contact with a variety of government agencies, conservation organizations, landowners, and interested members of the public. Alternatives were developed that highlighted all concerns and the alternative for safe management of a hunting program was deemed appropriate. In December 1993, the refuge announced the availability of the environmental assessment to the general public. Public comment was solicited through news releases, radio interviews, writing to area conservation organizations, and contacting individuals who had expressed an interest in the hunting program. The conclusion of the environmental assessment stated that hunting pressure is expected to be low and wildlife disturbance should be minimal. Hunting conditions will be monitored, however, and appropriate actions taken if necessary to protect the biological resources of the refuge.

In addition to staff expenses, estimated at \$4,616, the refuge will incur costs for signs, vehicle maintenance, leaflet printing, and miscellaneous supplies at an estimated annual cost of \$1,500. These cost estimates bring the total cost for the hunt program to approximately \$6,000. Therefore, it is determined that funds are available for the development, operation and maintenance of this proposed program pursuant to the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these openings. Based upon the Environmental Assessments, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rydell National Wildlife Refuge" under the State of Minnesota and "Ohio River Islands National Wildlife Refuge" under the State of West Virginia.

3. Section 32.24 *California* is amended by revising paragraph D. of Delevan National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

* * * * *

D. Sport Fishing. [Reserved.]

* * * * *

4. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Rydell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt white-tailed deer in the Special Permit Area of the refuge.

2. Hunting in the Special Permit Area is permitted with firearms only.

3. Antlerless deer only may be taken in the Special Permit Area.

4. Construction or use of permanent blinds, permanent platforms, or permanent ladders is prohibited. Portable stands are permitted but must be removed from the refuge at the end of each day's hunt.

5. Deer taken from the Special Permit Area must be taken to the refuge check station.

D. Sport Fishing. [Reserved.]

* * * * *

5. Section 32.67 *Washington* is amended by revising paragraph C. of Columbia National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

* * * * *

C. Big Game Hunting. [Reserved.]

* * * * *

6. Section 32.68 *West Virginia* is revised to read as follows:

§ 32.68 West Virginia.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is

permitted on designated areas of the refuge subject to the following condition: Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The take of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Baiting for deer on refuge lands is prohibited.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

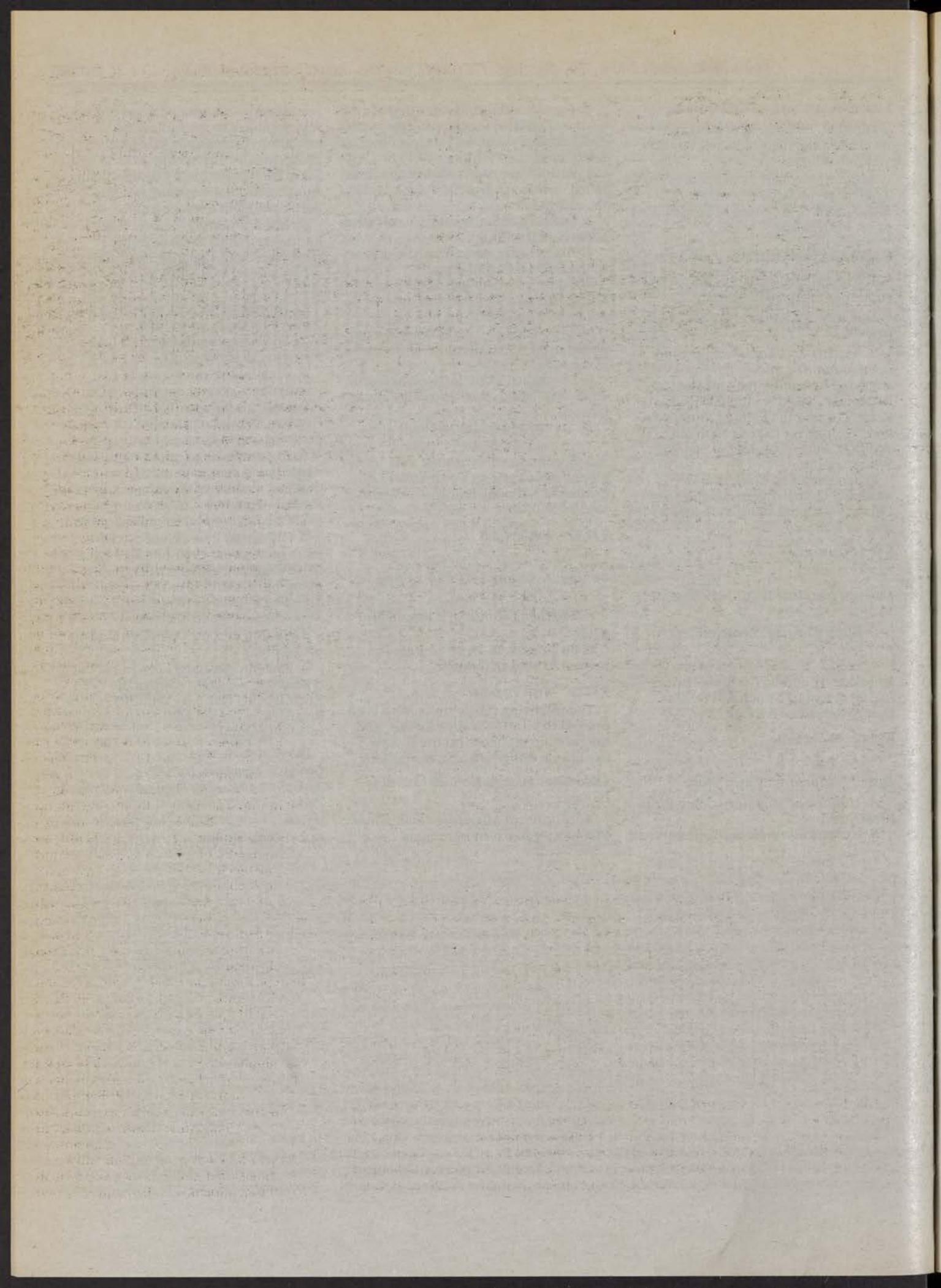
Dated: June 10, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-17267 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-55-P



Federal Register

Friday
July 15, 1994

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Addition of Rock Lake National Wildlife
Refuge to the List of Open Areas for
Hunting in North Dakota; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AC60

Addition of Rock Lake National Wildlife Refuge to the List of Open Areas for Hunting in North Dakota

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add Rock Lake National Wildlife Refuge to the list of areas open for big game hunting in North Dakota along with pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before September 13, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703-358-1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Rock Lake National Wildlife Refuge to deer hunting. The hunt will be in accordance with State regulations pertaining to archery and firearms deer hunting, and as illustrated in the North Dakota Hunting Guide (1993).

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; and a letter of concurrence from the affected States. From a review of the totality of these documents, the Secretary has determined that the opening of the Rock Lake National Wildlife Refuge to deer hunting is

compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSA and the RRA, the Secretary has also determined that this opening for deer hunting is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Rock Lake National Wildlife Refuge

Rock Lake National Wildlife Refuge (NWR) is a 5,587 acre easement refuge located in Towner County, North Dakota. The refuge was established in 1939 by an Executive Order as a refuge and breeding ground for migratory birds and other wildlife. The refuge is administered by the Service's Devils Lake Wetland Management District, located in Devils Lake, North Dakota. Rock Lake NWR occupies lands that were formed by glacial activity several million years ago. The glacial drift moraine running through North Dakota is characterized by rolling grasslands interspersed with small closed basins. Devils Lake is typical of this area. Principal wildlife found on Rock Lake NWR includes geese, ducks, various non-game bird species, white-tailed deer, muskrat, mink and fox. Bald eagles, whooping cranes, and peregrine falcons use the area on an occasional basis.

Since hunting has been prohibited on Rock Lake NWR, deer from the surrounding area are drawn to the refuge during the State firearms deer season. Unfortunately, following the close of the deer season they do not return to the areas from which they came until the following spring. Heightened winter deer concentrations are destructive to refuge habitat and lead to serious depredation problems on neighboring private lands, particularly during severe winters. This refuge is the only large closed-to-hunting area for many miles.

The primary objective of this hunt is to reduce the degradation of habitat used by nesting waterfowl and other wildlife, migratory wildlife, rare and endangered wildlife, and native (resident) wildlife. The proposed hunt would also reduce depredation problems on privately owned land, redistribute deer, improve the health of the herd, reduce the risk of deer/vehicle collisions, and provide recreational opportunities. A designated area of the refuge would be opened to deer hunting only during the State firearms deer season and archery hunting would be open from the opening of the firearms

season until the close of the State archery season. All state regulations pertaining to archery and firearms deer hunting would apply. Deer hunting would be monitored by refuge officers and State game wardens. Hunter numbers, number of deer taken, and refuge deer populations would be monitored. The refuge will be open to all holders of a North Dakota 2E deer hunting permit and all those with a valid North Dakota deer archery permit. The Service projects that 100-150 deer hunting visits will occur each year. If excessive harvest or winter mortality problems are evident, alternative management would be proposed.

Opening the refuge to the hunting of deer has been found to be compatible in a separate compatibility determination. This determination noted also that most migratory birds will have migrated south prior to the opening of the State deer hunting season. A Section 7 evaluation pursuant to the Endangered Species Act was conducted and it was determined that the proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. All neighbors and farm operators in the local area were contacted about the proposed action and they concurred with the proposed hunt. The environmental assessment was prepared by the Devils Lake Wetland Management district and Wetland Habitat Office, Bismarck, North Dakota, and with the assistance of the North Dakota Game and Fish Department. As the deer hunt will be monitored cooperatively by refuge personnel and State game wardens, no special funding will be required to monitor and control the hunt. Refuge monitoring would be a collateral duty of certain refuge personnel. No special refuge permits will be required. Therefore, the Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget

under 44 U.S.C. 3501 et seq. and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with

respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rock Lake National Wildlife Refuge" under the state of North Dakota.

3. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Rock Lake National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Rock Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* [Reserved.]

B. *Upland Game Hunting.* [Reserved.]

C. *Big Game Hunting.* The refuge is open to the hunting of deer only during the State firearms deer season. Archery hunting is open from the opening of the firearms season until the close of the State archery season. All State regulations pertaining to archery and firearms deer hunting apply.

D. *Sport Fishing.* [Reserved.]

* * * * *

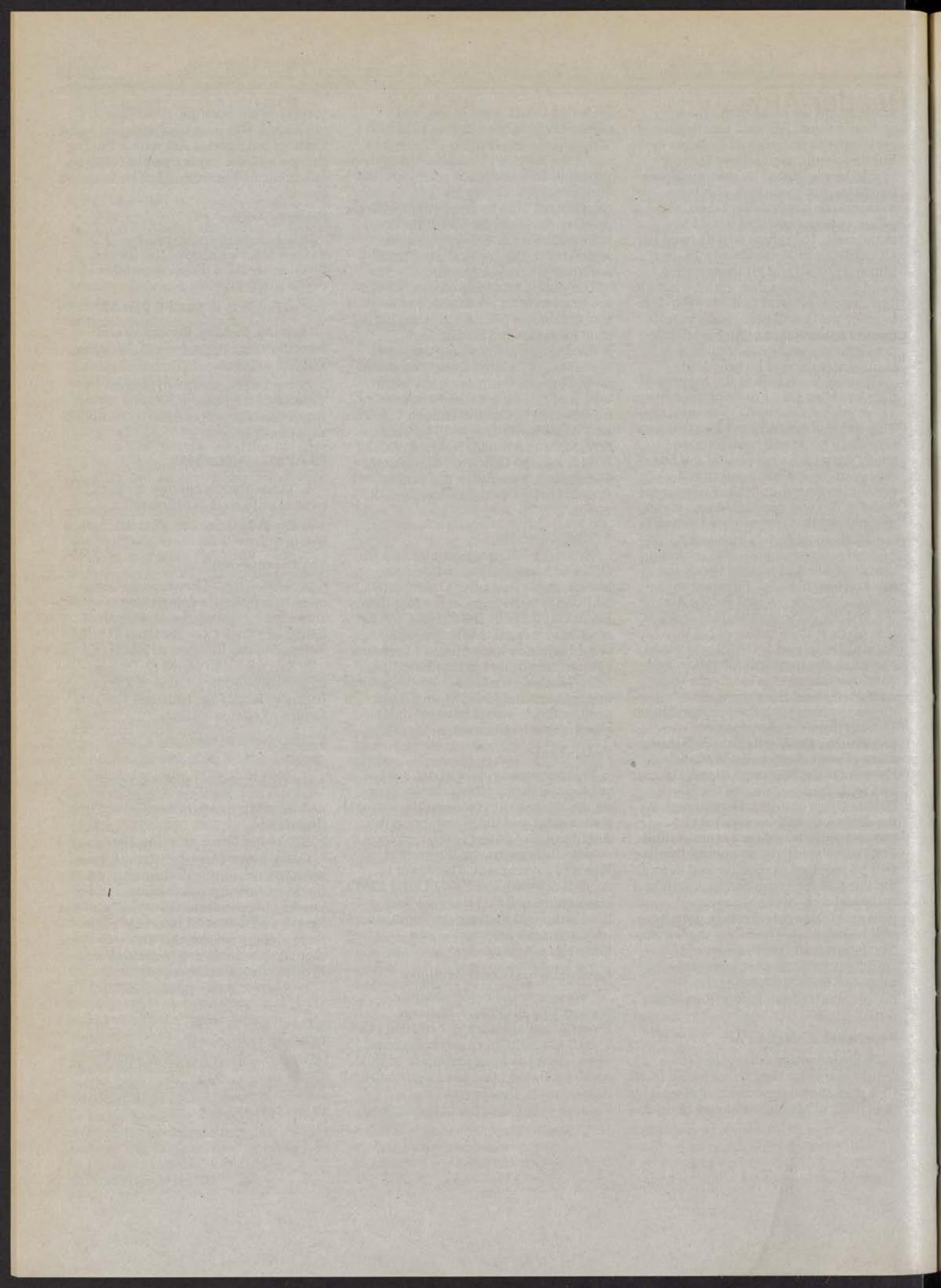
Dated: June 27, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-17268 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-55-P



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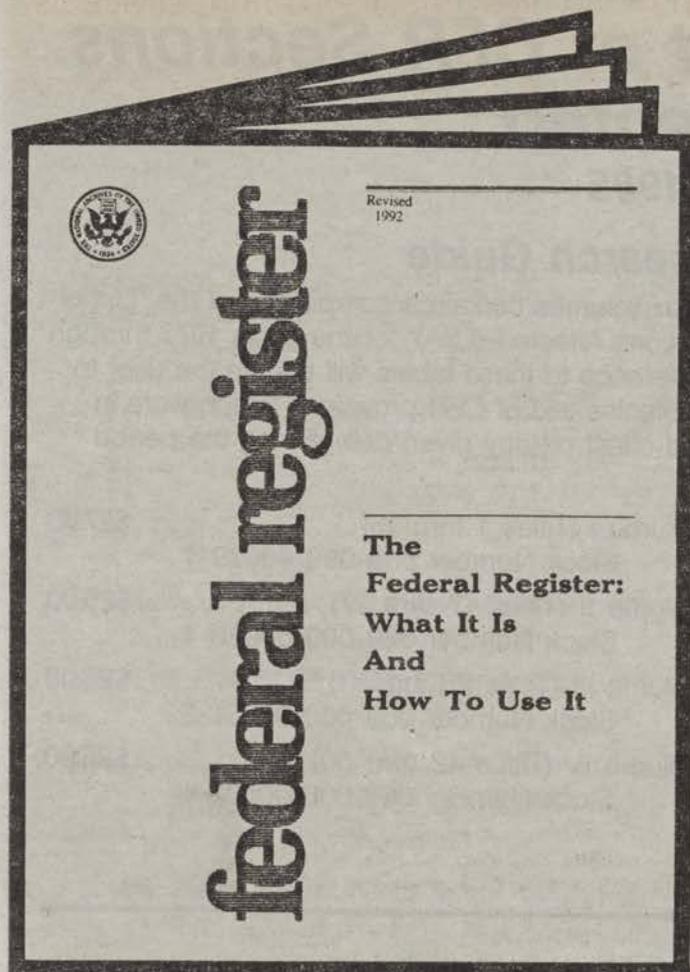
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