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Federal Register

Tuesday
July 26, 1994

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Vol. 59 No. 142
Pages 37929-38098

Tuesday
July 26, 1994

Federal Register

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



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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street
NW, Washington, DC (3 blocks north of
Union Station Metro)

RESERVATIONS: 202-523-4538



Contents

Federal Register

Vol. 59, No. 142

Tuesday, July 26, 1994

Agriculture Department

See Animal and Plant Health Inspection Service

NOTICES

1995 Farm Bill; food safety and quality; hearings, 37961

Air Force Department

PROPOSED RULES

Organization and mission:

Personnel review boards; correction of military records, 37953-37956

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine, domestic:

Oriental fruit fly, 37929-37930

Antitrust Division

NOTICES

National cooperative research notifications:

Healthcare Open Systems and Trials Corp., 37992

Army Department

NOTICES

Environmental statements; availability, etc.:

Schofield Barracks and Wheeler Army Airfield, HI; wastewater effluent disposal system, 37972-37973

Patent licenses; non-exclusive, exclusive, or partially exclusive:

Applied Research Associates, Inc., 37973

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Bonneville Power Administration

NOTICES

Floodplain and wetlands protection; environmental review determinations; availability, etc.:

Burlington Bottoms Wildlife Mitigation Project, OR, 37976

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities under OMB review, 37961

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Oman, 37970-37971

Export visa requirements; certification, waivers, etc.:

Lebanon, 37971-37972

Customs Service

NOTICES

Meetings:

Automated Export System (AES), 38033

Defense Department

See Air Force Department

See Army Department

Education Department

NOTICES

Agency information collection activities under OMB review, 37973-37974

Grants and cooperative agreements; availability, etc.:

Empowerment zone and enterprise community program, 38082-38083

Individuals with disabilities—

Vocational and transitional rehabilitation services, special projects and demonstrations; and projects with industry, 38086-38089

Special education and rehabilitative services:

Blind vending facilities; arbitration panel decisions under Randolph-Sheppard Act, 37974-37975

Employment and Training Administration

NOTICES

Adjustment assistance:

D&I Sportswear et al., 37992-37993

Electronix Servicer, 37993

Fort Vancouver Plywood Co., 37993-

GenCorp Automotive et al., 37993-37994

General Tire & Rubber Co., 37994-37995

Parker Hannifan et al., 37995

Pennzoil Sulphur Co., 37996

Western Geophysical Co., 37997

Adjustment assistance and NAFTA transitional adjustment assistance:

Rowe International, Inc., et al., 37996-37997

Energy Department

See Bonneville Power Administration

See Federal Energy Regulatory Commission

NOTICES

Grant and cooperative agreement awards:

Foster-Pegg, Richard W., 37975

Jarvis Christian College, 37975-37976

Natural gas exportation and importation:

Brooklyn Union Gas Co. et al., 37976-37977

Consumers Power Co., 37977

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:

Michigan, 37944-37947

Ohio, 37947-37949

Air quality implementation plans; approval and promulgation; various States; designation of areas:

Tennessee, 37939-37944

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

Michigan, 37956

Ohio, 37956-37957

Air quality implementation plans; approval and promulgation; various States; designation of areas:

Tennessee, 37957

Clean Air Act:

State operating permits programs—

Hawaii, 37957-37960

NOTICES

Drinking water:

- Public water supply supervision program—
- Guam, 37982-37983
- Northern Mariana Islands, 37983
- Palau, 37983-37984
- Samoa, 37984

Executive Office of the President

See Management and Budget Office

Federal Aviation Administration**RULES**

Airworthiness directives:

- Aerostar, 37932-37933
- Boeing, 37933-37935

NOTICES

Airport noise compatibility program:

- Noise exposure map—
- Friedman Memorial Airport, ID, 38023
- Glendale Municipal Airport, AZ, 38023-38034

Meetings:

- Aviation Rulemaking Advisory Committee, 38024-38025

Federal Deposit Insurance Corporation**NOTICES**

Financial institutions in receivership; insufficiency of assets to satisfy all claims; determinations, 37984-37985

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

- El Cayman et al., 37977-37978

Environmental statements; availability, etc.:

- Northwest Pipeline Corp., 37978-37979
- STS Hydropower, Ltd., et al., 37979

Natural gas certificate filings:

- Florida Gas Transmission Co. et al., 37979-37980

Applications, hearings, determinations, etc.:

- Carolina Power & Light Co., 37980
- Midwest Power Systems Inc., 37980-37981
- OkTex Pipeline Co., 37981
- Public Service Electric & Gas Co., 37981
- Tennessee Gas Pipeline Co., 37981-37982
- Transcontinental Gas Pipe Line Corp., 37982
- Williams Natural Gas Co., 37982

Federal Highway Administration**RULES**

Engineering and traffic operations:

- Bridges, structures, and hydraulics—
- Erosion and sediment control guidelines; Federal-aid highway construction projects, 37935-37939

NOTICES

Meetings:

- National Recreational Trails Advisory Committees, 38025

Federal Procurement Policy Office**NOTICES**

Acquisition regulations:

- Board of Directors; FAR rewrite; implementation, 38003

Federal Reserve System**RULES**

Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):

Loans to holding companies and affiliates

Correction, 37930-37931

NOTICES*Applications, hearings, determinations, etc.*

- Amcore Financial, Inc., 37985
- Commerce Bancorp, Inc., et al., 37985
- INTRUST Financial Corp., 37985-37986
- St. Francis Capital Corp. et al.; correction, 37986

Financial Management Service

See Fiscal Service

Fiscal Service**NOTICES**

Surety companies acceptable on Federal bonds:

- Insurance Co. of Evanston, 38033-38034
- Reliance National Insurance Co. of New York, 38034

Health and Human Services Department

See National Institutes of Health

See Public Health Service

Health Resources and Services Administration

See Public Health Service

Housing and Urban Development Department**NOTICES**

Grants and cooperative agreements; availability, etc.:

- Public and Indian housing—
- Tenant opportunities program, 37987-37988

Indian Affairs Bureau**NOTICES**

Committees; establishment, renewal, termination, etc.:

- Educate America Act—Goals 2000 Panel, 38098

Interior Department

See Indian Affairs Bureau

See Land Management Bureau

See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**NOTICES**

Taxable substances, imported:

- Dimethyl-2,6-naphthalene dicarboxylate, 38034
- Phosphorous trichloride, etc., 38034-38035

International Trade Administration**NOTICES**

Antidumping:

- Carbon steel butt-weld pipe fittings from—
- France et al., 37961-37962
- Oil country tubular goods from—
- Argentina et al., 37962-37965
- Saccharin from—
- China and Korea, 37969
- Silicomanganese from—
- Ukraine, 37969-37970

Countervailing duties:

- Oil country tubular goods from—
- Austria and Italy, 37965-37969

Interstate Commerce Commission**NOTICES**

Rail carriers:

- Waybill data; release for use, 37991

Railroad operation, acquisition, construction, etc.:

- Tarantula Corp., 37990

Railroad services abandonment:

- Norfolk Southern Railway Co., 37990

Justice Department

See Antitrust Division

NOTICES

Pollution control; consent judgments:

Aerodynamic Plating Co., Inc., 37991

All American Pipeline Co., 37991-37992

Labor Department

See Employment and Training Administration

See Occupational Safety and Health Administration

NOTICES

Meetings:

Future of Worker-Management Relations Commission,

37995-37996

Land Management Bureau**NOTICES**

Agency information collection activities under OMB

review, 37988

Closure of public lands:

Utah, 37988

Environmental statements; availability, etc.:

Twin Creeks Mine project, NV, 37988-37989

Realty actions; sales, leases, etc.:

Oregon, 37989

Survey plat filings:

Arkansas, 37989-37990

Management and Budget Office

See Federal Procurement Policy Office

NOTICES

North American industry classification system; standard

industrial classification replacement, 38092-38096

National Aeronautics and Space Administration**NOTICES**

Agency information collection activities under OMB

review, 38001-38002

National Archives and Records Administration**NOTICES**

Agency records schedules; availability, 38001

National Foundation on the Arts and the Humanities**NOTICES**

Meetings:

Museum Advisory Panel, 38002

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:

Rollover prevention; consumer information

Correction, 38038

NOTICES

Meetings:

Vehicle safety information for consumers, 38025-38028

Motor vehicle safety standards:

Nonconforming vehicles—

Importation eligibility; determinations, 38028

National Institutes of Health**NOTICES**

Meetings:

Total hip replacement; consensus development conference, 37986

National Labor Relations Board**NOTICES**

Meetings; Sunshine Act, 38037

National Oceanic and Atmospheric Administration**NOTICES**

Permits:

Endangered and threatened species, 37970

National Transportation Safety Board**NOTICES**

Excavation damage prevention; workshop, 38003

Nuclear Regulatory Commission**PROPOSED RULES**

Rulemaking petitions:

American Medical Association, 37950-37951

NOTICES

Meetings; Sunshine Act, 38037

Senior Executive Service:

Performance Review Board; membership, 38002

Applications, hearings, determinations, etc.:

Georgia Power Co., 38002-38003

Occupational Safety and Health Administration**PROPOSED RULES**

Construction safety and health standards:

Steel Erection Negotiated Rulemaking Advisory Committee—

Meetings, 37951-37952

NOTICES

Nationally recognized testing laboratories, etc.:

Entela, Inc., 37997-38001

Office of Management and Budget

See Management and Budget Office

Public Health Service

See National Institutes of Health

NOTICES

Organization, functions, and authority delegations:

Centers for Disease Control and Prevention, 37987

Research and Special Programs Administration**RULES**

Hazardous materials:

Intermediate bulk containers, 38040-38080

NOTICES

Safety advisories:

High pressure aluminum seamless and aluminum

composite hoop-wrapped cylinders, 38028-38030

Resolution Trust Corporation**RULES**

Predominantly minority neighborhood; definition, 37931

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:

Chicago Board Options Exchange, Inc., 38004

Chicago Stock Exchange, Inc., 38005-38007

New York Stock Exchange, Inc., 38007

Pacific Stock Exchange, Inc., 38007-38009

Philadelphia Depository Trust Co., 38010-38011

Philadelphia Stock Exchange, Inc., 38011-38013

Applications, hearings, determinations, etc.:

Berliner Handels- und Frankfurter Bank, 38013-38014

Cambridge Series Trust et al., 38014-38018

First Trust Special Situations Trust et al., 38018-38020

Public utility holding company filings, 38020-38021

Small Business Administration**NOTICES**

Disaster loan areas:

South Dakota et al., 38021

Organization, functions, and authority delegations:

Field personnel; guaranteed and economic development
loans approval, 38021-38022*Applications, hearings, determinations, etc.:*

First Legacy Fund, Inc., 38022

State Department**NOTICES**Agency information collection activities under OMB
review, 38022

Organization, functions, and authority delegations:

Assistant Secretary for Administration, 38022-38023

Surface Mining Reclamation and Enforcement Office**PROPOSED RULES**

Initial and permanent regulatory programs:

Underground mining activities—

Permit application requirements and performance
standards, 37952-37953**Textile Agreements Implementation Committee**See Committee for the Implementation of Textile
Agreements**Transportation Department**

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

See Research and Special Programs Administration

NOTICES

Aviation proceedings:

Hearings, etc.—

TSP, Inc., 38023

Treasury Department

See Customs Service

See Fiscal Service

See Internal Revenue Service

NOTICESAgency information collection activities under OMB
review, 38030-38032

Senior Executive Service:

Performance Review Board; membership, 38032-38033

Veterans Affairs Department**NOTICES**

Privacy Act:

Systems of records, 38035-38036

Separate Parts In This Issue**Part II**Department of Transportation, Research and Special
Programs Administration, 38040-38080**Part III**

Department of Education, 38082-38083

Part IV

Department of Education, 38086-38089

Part V

Office of Management and Budget, 38092-38096

Part VI

Department of Interior, Bureau of Indian Affairs, 38098

Reader AidsAdditional information, including a list of public laws,
telephone numbers, and finding aids, appears in the Reader
Aids section at the end of this issue.**Electronic Bulletin Board**Free **Electronic Bulletin Board** service for Public Law
numbers, **Federal Register** finding aids, and a list of
documents on public inspection is available on 202-275-
1538 or 275-0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
301.....37929

10 CFR
Proposed Rules:
20.....37950
35.....37950

12 CFR
215.....37930
1630.....37931

14 CFR
39 (2 documents)37932,
37933

23 CFR
650.....37935

29 CFR
Proposed Rules:
1926.....37951

30 CFR
Proposed Rules:
701.....37952
784.....37952
817.....37952

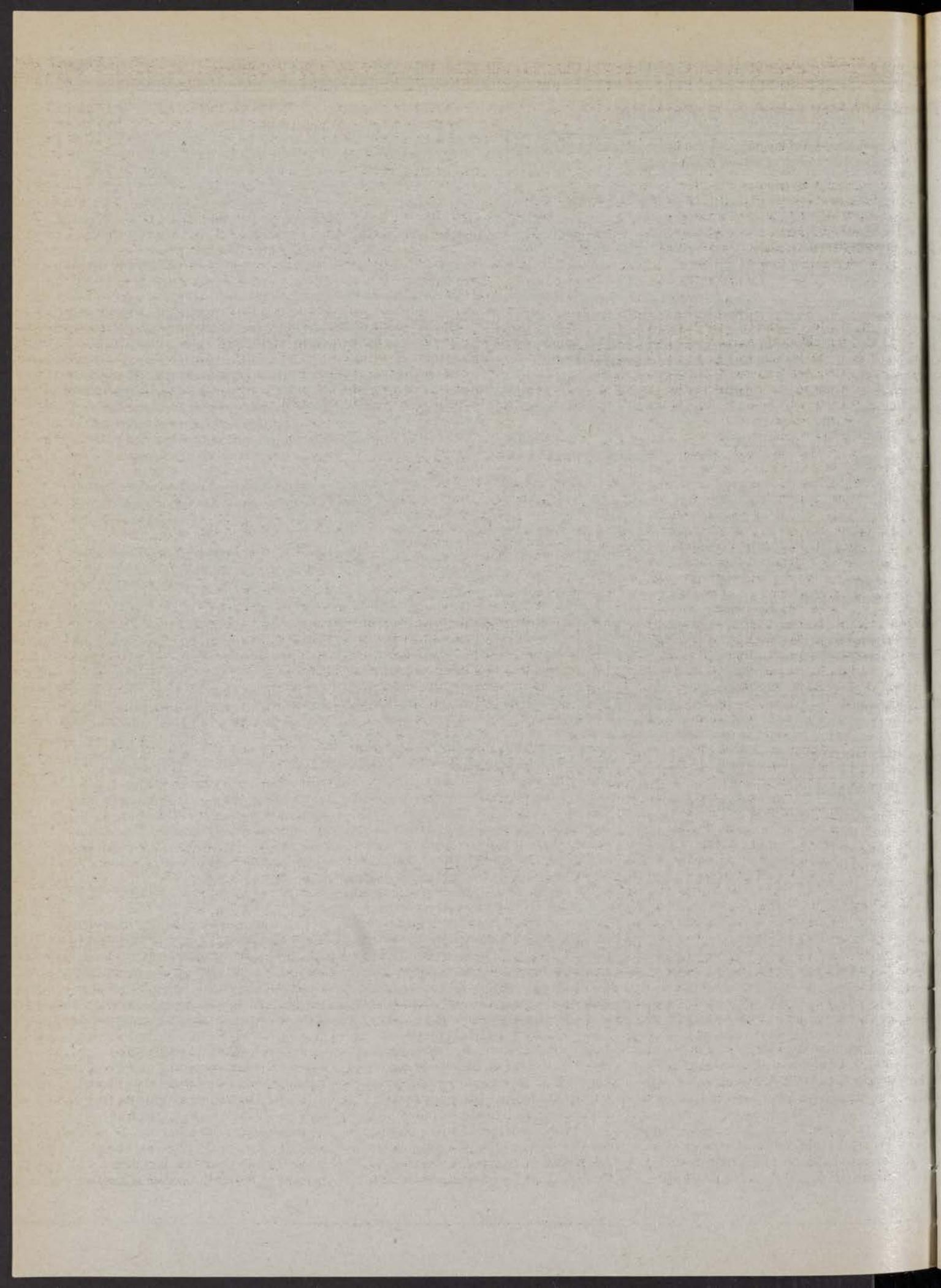
32 CFR
Proposed Rules:
865.....37953

40 CFR
52 (3 documents)37939,
37944, 37947
81.....37939

Proposed Rules:
52 (3 documents)37956,
37957
70.....37957
81.....37957

49 CFR
171.....38040
172.....38040
173.....38040
178.....38040
180.....38040

Proposed Rules:
575.....38038



Rules and Regulations

Federal Register

Vol. 59, No. 142

Tuesday, July 26, 1994

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-130-2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County and that the quarantine and restrictions are no longer necessary.

DATES: Interim rule effective July 20, 1994. Consideration will be given only to comments received on or before September 26, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-130-2. Comments 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 are requested to call ahead on (202) 690-

2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. The Oriental fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Oriental fruit fly regulations (7 CFR 301.93 through 301.93-10, referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles. In an interim rule effective on October 22, 1993, and published in the *Federal Register* on October 28, 1993 (58 FR 57951-57952, Docket No. 93-130-1), we amended the regulations in § 301.93-3 by quarantining a portion of Los Angeles County, CA, and restricting the interstate movement of regulated articles from that area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the previously quarantined portion of Los Angeles County, CA. The last finding of Oriental fruit fly in this area was October 19, 1993.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Further, Oriental fruit fly infestations are not

known to exist anywhere else in the continental United States. Therefore, we are removing Los Angeles County, CA, from the list of quarantined areas in § 301.93-3(c), and revising § 301.93-3(c) to state that the Oriental fruit fly is not known to exist anywhere in the continental United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. There is very little commercial activity in the previously quarantined area that may be affected by this rule. The 250 small entities that may be affected include 199 fruit/produce sellers, 22 nurseries, 27 mobile vendors, and 2 fruit growers. These small entities comprise less than 1 percent of the total number of similar

small entities operating in the State of California.

Most of these small entities sold previously regulated articles primarily for local intrastate, not interstate, movement. The sale of these articles will therefore remain unaffected by the regulatory provisions we are removing. Also, many of these entities sold other items in addition to the previously regulated articles, so that the effect, if any, of this regulation on these entities will be minimal.

The effect of this regulation on those entities that did move previously regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

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 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

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 document 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 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93-3, paragraph (c) is revised to read as follows:

§ 301.93-3 Quarantined areas.

(c) The Oriental fruit fly is not known to exist anywhere in the continental United States.

Done in Washington, DC, this 20th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-18141 Filed 7-25-94; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket Nos. R-0800 and R-0809]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Corrections to final regulation.

SUMMARY: This document contains technical corrections to the final regulation (12 CFR part 215) that was published February 24, 1994 (59 FR 8831). The regulation sets forth various requirements and restriction on loans by a member bank to its insiders and to insiders of its affiliates.

EFFECTIVE DATE: July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunications for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections makes permanent an interim rule increasing the aggregate lending limit for small, adequately capitalized banks from 100 percent of unimpaired capital and surplus to 200 percent. The final regulation also reduces the burden and complexity of the regulation and implements certain technical amendments in order to make it more readily understandable and somewhat shorter.

Correction of Publication

As published, the final regulation contains certain errors. Accordingly, the publication on February 24, 1994 (59 FR 8831), of the final regulation, which was the subject of FR Doc. 94-3860, is corrected as follows:

§ 215.2 [Corrected]

1. On page 8838, in the first column, in § 215.2, in paragraph (c)(4), the phrase "paragraph (b)(2) of this section" is corrected to read "paragraph (c)(2) of this section".

2. On page 8838, in the first column, in § 215.2, in paragraph (d) introductory text, in the first sentence, the phrase "Director of a member bank means any director of a member bank" is corrected to read "Director of a company or bank means any director of the company or bank".

§ 215.3 [Corrected]

3. On page 8839, in the first column, in § 215.3, in paragraph (b)(2), the word "§ 215.4(e)" is corrected to read "§ 215.4(e)".

§ 215.4 [Corrected]

4. On page 8840, in the second column, in § 215.4, in paragraph (e)(1), introductory text, the phrase "No member bank may pay an overdraft of an executive officer or director of the bank³" is corrected to read "No member bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates³".

5. On page 8840, in the second column, in § 215.4, in paragraph (e)(1), in footnote 3, in the second sentence, the phrase "executive officer, director, or principal shareholder of the member bank" is corrected to read "executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates".

§ 215.5 [Corrected]

6. On page 8840, in the third column, in § 215.5, in paragraph (b), the phrase "paragraph (c)(3) of this section" is corrected each time it appears to read "paragraph (c)(4) of this section".

7. On page 8841, in the first column, in § 215.5, in paragraph (c)(4), the phrase "capital and unimpaired surplus" is corrected to read "unimpaired capital and unimpaired surplus".

§ 215.11 [Corrected]

8. On page 8842, in the first column, in § 215.11, in paragraph (b)(1), in the first sentence, the word "of" as it appears before the word "\$500,000" is corrected to read "or".

Board of Governors of the Federal Reserve System, July 19, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-18125 Filed 7-25-94; 8:45 am]

RESOLUTION TRUST CORPORATION

12 CFR Part 1630

RIN 3205-AA21

Definition of Predominantly Minority Neighborhood

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) is adopting a rule which defines "predominantly minority neighborhood" as used in section 21A(s) of the Federal Home Loan Bank Act (FHLBA) and section 21A(w)(17) of the FHLBA, as amended by the Resolution Trust Corporation Completion Act. Section 21A(w)(17) of the FHLBA requires, among other things, that in considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under subsection 21A(s)), the Corporation shall give preference to an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation, as determined under section 13(c)(4) of the Federal Depository Insurance Act. Section 21A(s) of the FHLBA permits the RTC to lease to a minority acquiror, on a rent-free basis, subject to certain conditions, any branch of a failed institution which is located in a "predominantly minority neighborhood." Section 21A(w)(17) of the FHLBA also generally provides that the RTC may provide to such minority individual, minority-owned business, or minority depository institution additional preferences in the form of capital assistance and performing assets. The rule generally defines "predominantly minority neighborhood" as any U.S. Postal Zip Code geographical area in which 50% or more of the persons residing therein are minorities based upon the most recent Census data, unless the RTC has determined, in its sole discretion, that other reasonably reliable, readily accessible data indicates different neighborhood boundaries.

EFFECTIVE DATE: August 25, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert C. Fick, Counsel, RTC Legal

Division, (202) 736-3069; Gregory B. Smith, Senior Counsel, RTC Legal Division, (202) 736-3013; Mark G. Flanigan, Senior Attorney, RTC Legal Division, (202) 736-3085; Edward Thomas, Resolutions Analyst, (202) 416-7179; Sherry Chen, Field Resolutions Specialist, (202) 416-7209. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Resolution Trust Corporation published in the *Federal Register* of February 24, 1994 (59 FR 8842-8845) an interim rule defining "predominantly minority neighborhood" as used in sections 21A(s) and 21A(w)(17) of the FHLBA as a geographic area constituting a United States Postal Service 5-digit Zip Code (Zip Code) in which 50% or more of the persons residing therein are minorities, based upon the most recent census data, unless the RTC determines, in its sole discretion, that other reasonably reliable, readily accessible data indicates that different neighborhood boundaries are more appropriate. The population data and the minority composition of these Zip Codes are determined using the most recent (currently 1990 data) Census of Population data (Census Data) collected and published by the U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (Census Bureau).

If the institution or a branch thereof is located in a Zip Code area for which no significant Census Data is available (e.g., a business district or office building) the Zip Code of a nearby geographic area served by the institution or branch, for which such Census Data is available, will be used as its Zip Code for purposes of this rule. If the RTC determines, in its sole discretion, based upon other reasonably reliable and readily accessible data, and subject to RTC's Cost Constraints, that a different delineation would more accurately reflect the area served by the financial institution or branch to be marketed, the RTC will use such delineation as the boundaries for the relevant neighborhood.

Interested persons were invited to submit written comments on or before March 28, 1994. Although comments were received by various RTC officials on related minority resolution programs, no comments were received on the interim rule itself. Since no comments were received on the interim rule, the final rule is adopted without change from the interim rule for the reasons set forth in support of the interim rule by the RTC when it was published in the *Federal Register* of February 24, 1994 (59 FR 8842-45).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following final regulatory flexibility analysis is provided:

1. A succinct statement of the need for, and the objectives of, the rule. The objective of the rule is to provide a definition of the term "predominantly minority neighborhood," as used in Sections 21A(s), (w)(17) of the FHLBA. The rule is needed in order to implement the minority benefits and preferences contained in those sections.

2. A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. No public comments were received, and therefore, no changes were made to the interim rule.

3. A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected. The rule has no significant economic impact on small entities, and therefore, no alternatives to the rule were identified or considered.

Authority: 12 U.S.C. 1441a (b)(11), (s) and (w)(17).

List of Subjects in 12 CFR Part 1630

Savings associations.

Accordingly, the interim rule adding 12 CFR part 1630 which was published in the *Federal Register* at 59 FR 8842-8845 on February 24, 1994, is adopted as a final rule without change.

By order of the Deputy and Acting Chief Executive Officer.

Dated at Washington, DC this 20th day of July, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94-18063 Filed 7-25-94; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-CE-04-AD; Amendment 39-8984; AD 94-15-13]

Airworthiness Directives: Aerostar Aircraft Corporation PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92-13-01, which currently requires inspecting the nose landing gear (NLG) drag brace assembly for corrosion on certain Aerostar Aircraft Corporation (Aerostar) PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes, and replacing any corroded components. It also requires replacing the existing spring and piston with new corrosion-resistant parts. This action requires replacing the NLG drag link assembly with a new assembly of improved design. The Federal Aviation Administration (FAA) has received several reports of frozen moisture in the cylinder of the over-center release system, which has led to nose gear collapse on airplanes already in compliance with AD 92-13-01. The actions specified by this AD are intended to prevent failure of the NLG caused by frozen moisture in the cylinder, which could lead to nose gear collapse and damage to the airplane.

DATES: Effective September 12, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; telephone (509) 455-8872. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Aerostar PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes was published in the Federal Register on April 1, 1994 (59 FR 15348). The action proposed to supersede AD 92-13-01 with a new AD that would require replacing the existing NLG drag link assembly, part number (P/N) 450563-1, with a new assembly of improved design, P/N 450563-501. The proposed actions would be accomplished in accordance with the instructions to Aerostar Kit No. 045-001 (Service Kit No. SB600-128), Drawing No. 89414, Rev. N/C, dated December 28, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

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

The FAA estimates that 700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$55 an hour. Parts cost approximately \$1,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,242,500. This figure is based on the assumption that no affected airplane operator has accomplished the proposed action. The FAA believes that numerous operators have already incorporated the modification referenced in this proposed AD.

In addition, AD 92-13-01 requires installing a new spring and piston. The new NLG drag link assembly includes the improved design piston and spring. Aerostar will give a \$96 credit for the piston and spring installed as required by AD 92-13-01. Aerostar has shipped 362 of these piston and spring kits. Based on these figures, the cost referenced above would be reduced by \$34,752 (362 airplanes x \$96) from \$1,242,500 to \$1,207,748.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing AD 92-13-01, Amendment 39-8270 (57 FR 23135, June 2, 1992), and by adding a new airworthiness directive to read as follows:

94-15-13 Aerostar Aircraft Corporation: Amendment 39-8984; Docket No. 94-CE-04-AD. Supersedes AD 92-13-01, Amendment 39-8270.

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

Model	Serial Nos.
PA-60-600 (Aerostar 600) ¹ .	60-0001-003 through 60-0608-7961195.
PA-60-600 (Aerostar 600).	60-0614-7961196 through 60-0933-8164262.
PA-60-601 (Aerostar 601) ¹ .	61-0001-004 through 60-0605-7962136.

Model	Serial Nos.
PA-60-601 (Aerostar 601).	61-0611-7962137 through 61-0880-8162157.
PA-60-601P (Aerostar 601P) ¹ .	61P-0157-001 through 61P-0610-7963274.
PA-60-601P (Aerostar 601P).	61P-0612-7963275 through 61P-0859-8163455.
PA-60-602P (Aerostar 602P).	62P-0750-8165001 through 60-8365021.
PA-60-700P (Aerostar 700P).	60-8423001 through 60-8423025.

¹ = that have been converted to Wiebel nose gear system (Option No. 199)

Note 1: The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the nose landing gear (NLG) caused by frozen moisture in the cylinder, which could lead to nose gear collapse and damage to the airplane, accomplish the following:

(a) Replace the existing NLG drag link assembly, P/N 450563-1, with a new assembly of improved design, P/N 450563-501, in accordance with the instructions to Aerostar Kit No. 045-001 (Service Kit No. SB600-128), Drawing No. 89414, Rev. N/C, dated December 28, 1993.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) The replacement required by this AD shall be done in accordance with the instructions to Aerostar Kit No. 045-001 (Service Kit No. SB600-128), Drawing No. 89414, Rev. N/C, dated December 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street

Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8984) supersedes AD 92-13-01, Amendment 39-8270.

(f) This amendment (39-8984) becomes effective on September 12, 1994.

Issued in Kansas City, Missouri, on July 19, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-17977 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-68-AD; Amendment 39-8983; AD 94-15-12]

Airworthiness Directives; Boeing Model 747-100SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747-100SR series airplanes, that currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI). That AD was prompted by a structural re-evaluation of this airplane model by the FAA. The actions specified in that AD are intended to ensure the continued structural integrity of the total Boeing Model 747-100SR fleet. This amendment revises the applicability of the rule by removing airplanes and adding others.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 26, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-68-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207.

This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2777; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On August 8, 1986, the FAA issued AD 86-19-01, amendment 39-5394 (51 FR 29212, August 15, 1986), which is applicable to certain Boeing Model 747-100SR (short range operation) series airplanes. That AD requires that the FAA-approved maintenance inspection program of affected operators be revised to include inspections that will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document No. D6-35655, "Supplemental Structural Inspection Document" (SSID), approved March 22, 1986. That action was prompted by a structural re-evaluation of this airplane model by the FAA. The requirements of that AD are intended to ensure the continued structural integrity of the total Boeing Model 747-100SR fleet.

AD 86-19-01 is applicable only to Model 747-100SR series airplanes that are listed in the referenced Boeing Document No. D6-35655. These airplanes represented the "candidate fleet" of airplanes selected to participate in the SSID program. Since the issuance of that AD, however, the FAA has been advised that the airplanes applicable to AD 86-19-01 are no longer operated as short range airplanes, but have been converted to long range, high gross weight freighters. Therefore, these airplanes are no longer representative of the Model 747-100SR candidate fleet. The FAA has now identified other airplanes to replace the original airplanes as the candidate fleet.

Further, on December 28, 1993, the FAA issued a notice of proposed rulemaking, Airworthiness Directive Rules Docket 93-NM-174-AD (59 FR 265, January 4, 1994), applicable to certain Boeing Model 747 series airplanes (not including Model 747-100SR's), which would require that affected operators' revise their FAA-approved maintenance inspection programs to include inspections that will give no less than the required DTR for each SSI, as specified in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document (SSID) for Model 747

Airplanes." Revision E, dated June 17, 1993. The applicability of that proposed AD includes Model 747 series airplanes that were formerly operated as Model 747-100SR series airplanes.

Consequently, the airplanes that are currently subject to the requirements of AD 86-19-01 are included in the applicability of Rules Docket 93-NM-174-AD and will be subject to its requirements. To avoid redundant requirements for these airplanes, the FAA has determined that AD 86-19-01 must be revised to remove those airplanes that are currently listed both in its applicability as well as the applicability of Rules Docket 93-NM-174-AD.

The FAA has reviewed and approved Boeing Document No. D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986, which specifies supplemental inspections of Boeing Model 747-100SR series airplanes that give no less than the required DTR for each SSL. This Document is essentially identical to Boeing Document No. D6-35655, approved March 22, 1986, which was called out in AD 86-19-01 as the appropriate source of service information. Incorporating the inspections described in this Document will ensure the continuing structural integrity of the total Model 747-100SR fleet. (It should be noted, however, that the airplanes listed in this document as the "candidate fleet" are no longer operated as short-range airplanes.)

Since the failure of an SSI can compromise the structural integrity of these airplanes, and since such conditions are likely to exist or develop on other Model 747-100SR airplanes, this AD is being issued to supersede AD 86-19-01 with a new AD to require that affected operators revise their maintenance inspection programs to include inspections that provide no less than the required DTR for each SSI listed in the Boeing Document No. D6-35655, dated April 2, 1986. The applicability of this AD lists six specific airplanes as the candidate fleet.

Additionally, this new AD differs from the superseded AD in certain other ways:

1. All references to the use of "later FAA-approved revisions" of the applicable Boeing Document have been deleted in order to be consistent with FAA policy in that regard. Later revisions of the Document may be approved for use as an alternative method of compliance, as provided by paragraph (c) of this AD.

2. This AD does not include a specific paragraph similar to paragraph E. of AD 86-19-01, which stated that, if an

operator's maintenance program has been revised to incorporate the inspections specified in the Boeing Document, that operator is exempt from the requirements of the AD. Since the Compliance section of this new AD indicates that compliance is required "unless accomplished previously," any additional paragraph, such as one similar to paragraph E. of AD 86-19-01, would be redundant.

3. The new AD has been reformatted to be in compliance with **Federal Register** style.

There currently are no Model 747-100SR series airplanes affected by this AD on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 36.25 work hours to accomplish the required actions, at an average labor charge of \$55 per work hour. Based on these figures, the total cost impact of this AD would be \$1,993.75 per airplane.

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

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-68-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39-5394 (51 FR 29212, August 15, 1986) and by adding a new airworthiness directive (AD), amendment 39-, to read as follows:

94-15-12 Boeing: Amendment 39-8983. Docket 94-NM-68-AD. Supersedes AD 86-19-01, amendment 39-5394.

Applicability: Model 747-100SR series airplanes having line numbers 346, 351, 420, 426, 427, and 601; certificated in any category.

Note: The airplanes listed as the "747-100SR Candidate Airplanes" on page 2 of Section 3.0 of Boeing Document D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986, are not subject to the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of the total fleet of these airplanes, accomplish the following:

(a) Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) as listed in Boeing Document D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986. The revision to the maintenance program must include and be implemented in accordance with the procedures specified in sections 5.0 and 6.0 of the Document.

(b) Cracked structure must be repaired prior to further flight, in accordance with an FAA-approved method.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(d) 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.

(e) The incorporation of the revision to the maintenance program shall be done in accordance with Boeing Document No. D6-35655, Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986, which contains the following list of effective pages:

Page No.	Revision letter shown on page
List of Active Pages: Section A, Pages 1-11	(None)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 10, 1994.

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-17857 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-13-U

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 93-6]

RIN 2125-AD08

Erosion and Sediment Control on Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Final rule.

SUMMARY: Section 1057 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires the Secretary of Transportation to develop erosion control guidelines for States to follow when carrying out Federal-aid construction projects. Pursuant to this authority, the existing erosion and sediment control regulation, issued in 1974, is being updated and modified by the FHWA to reflect current state-of-the-art practices and management techniques. To fulfill the requirements of section 1057, the FHWA is adopting, as guidelines, the American Association of State Highway and Transportation Officials (AASHTO) publication Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992. The updated regulation includes a statement recommending that each State highway agency (SHA) apply these guidelines, or their own more stringent guidelines, to develop specific standards and practices for the control of erosion.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robin L. Schroeder, Office of Engineering, HNG-23, 202-366-1577; or Mr. Robert J. Black, Office of the Chief Counsel, HCC-31, 202-366-1359; Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 1057 of the ISTEA (Pub. L. 102-240, 105 Stat. 1914, 2002) requires the Secretary to develop erosion control guidelines for the States to follow in carrying out federally funded construction projects. It requires that these guidelines not preempt any requirement under State law if such requirement is more stringent than the guidelines. It also requires that these guidelines be consistent with nonpoint source management programs under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1339) and coastal nonpoint pollution control guidance¹ under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 codified at 16 U.S.C. § 1455b (Pub. L. 101-508, 104 Stat. 1388-299, as amended) (Coastal Zone Act).

To satisfy this requirement the FHWA is adopting, as guidance, the AASHTO publication Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992. Other minor editorial changes to 23 CFR 650 were also made to correct typographical errors and to change the wording to reflect current practice. A notice of proposed rulemaking (NPRM) proposing to revise 23 CFR 650, subpart B to reference this AASHTO publication was published in the Federal Register on March 1, 1993, at 58 FR 11814.

Comments To Docket

Nine comments were submitted to the docket. Eight comments were received from SHA's and one comment from a Federal Government agency. The following is a summary of the comments and the FHWA responses:

¹ The final guidance document "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters," 84-B-92-002, U.S. Environmental Protection Agency, January 1993, is available in FHWA docket 93-6 for inspection and copying in Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590.

Supportive of Change

The North Carolina Department of Transportation (DOT) supported FHWA's proposal to adopt the AASHTO guidelines.

The Connecticut Department of Transportation submitted a letter stating that they had no comment concerning the guidelines.

Existing Guidelines More Stringent

The California Department of Transportation (CALTRANS) did not object to the changes to 23 CFR 650 subpart B. CALTRANS stated that it has adopted requirements and guidelines for erosion control on construction projects that are equal to or more stringent than the guidelines set forth in the AASHTO publication.

National Pollutant Discharge Elimination System (NPDES) Requirements

The Hawaii Department of Transportation stated that the FHWA should adopt the AASHTO publication. It suggested, though, that the final rule reference the NPDES permit requirements in 23 CFR 650. The NPDES permits are issued under the authority of the Environmental Protection Agency (EPA) in compliance with the provisions of the Federal Water Pollution Control Act (FWPCA), (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500).

The FHWA does not believe that it is necessary to specifically reference NPDES permit requirements in 23 CFR 650. There is a statement in 23 CFR 650.207(b) that the FHWA shall take all reasonable steps to insure that all project designs for control of erosion and sedimentation comply with applicable standards and regulations of other agencies. This would include the NPDES permit requirements as well as any other State or local regulations concerning the control of erosion and sedimentation.

Guidelines

Four of the SHA respondents had comments concerning specific sections of the AASHTO publication Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992.

The Nebraska Department of Roads (NDOR) questioned the use of a hydraulic engineer in the design and review of diversion dikes and ditches, and temporary slope drains. The NDOR believed that normal roadway design engineers would be adequate for most hydraulic designs. Hydraulic engineers, the NDOR argued, could be used for the

design and review of complex sediment and erosion control systems.

While the FHWA agrees that a roadway design engineer may be capable of conducting an adequate hydraulic design, it is important that erosion and sediment control structures are designed properly. These structures should be sized and located based on flows resulting from the design year storm. Proper design of the project requires a working knowledge of hydraulic engineering. While it is not required that a hydraulic engineer conduct the design and review of the erosion and sediment control structures, the design must be conducted by someone competent in hydraulic design procedures. While the FHWA does not agree with the NDOR suggestion that the reference to a hydraulic engineer be removed from the guidance, it does agree that a person who is competent in hydraulic design could adequately fulfill the intent of the guidelines.

The Arkansas State Highway Department had no reservations about adopting the AASHTO guidelines, but suggested that a summary be added indicating that the level of effort dedicated to the planning of a project and the development of the erosion control plan be commensurate with size and complexity of project. While the FHWA agrees that more complex projects or projects that may affect sensitive ecosystems such as wetlands, streams, rivers, or other water bodies will include detailed erosion and sediment control plans, every project should be planned, located, designed, and constructed with the intent of limiting the project's effects on the environment. Though projects may differ in the type and extent of the mitigation measures and practices that are implemented, the level of effort put forth to limit the environmental effects for smaller, less complex projects should be equal to that put forth on larger, more complex ones.

The Georgia Department of Transportation (GDOT) found the AASHTO document acceptable but had the following minor comments. The GDOT argued that detailed erosion and sediment control plans should not be required as part of the contract document in order to allow the contractor the necessary flexibility to develop a site and operational-specific plan. Instead the GDOT argued that the contract plans should include any extremely sensitive areas such as lakes, wetlands, and streams and sufficient quantities of erosion control devices should be provided as a bid item to mitigate possible erosion and sedimentation effects. According to the

GDOT this would allow the contractor and the project engineer the flexibility to customize the erosion control measures employed to the contractor's approach to the work.

While the FHWA agrees erosion and sediment control plans should be flexible, both contractors and contracting agencies should be fully aware of the possible environmental effects of their projects. Therefore, all potential environmental impacts associated with erosion and sedimentation, not just those affecting sensitive areas, and the measures and practices required to mitigate these impacts, should be included in the plans, specifications, and special provisions. As previously mentioned, the effectiveness of many erosion and sediment control measures is dependent upon proper design and installation.

The FHWA believes it is inappropriate to delegate responsibility for the planning and design of erosion and sediment control measures to the contractor or the project engineer, who may or may not have sufficient design expertise in this area. However, erosion and sediment control plans should be flexible enough to properly fulfill their intended purpose. Accordingly, each erosion and sediment control plan should be periodically evaluated to insure that all necessary controls are being implemented correctly and that unnecessary or improperly installed controls are eliminated or revised. Additions, deletions, or revisions to the erosion and sediment control plan should be reviewed by a person competent in erosion and sediment control design.

The GDOT and the Michigan Department of Transportation had minor technical comments on specific design details contained in the AASHTO publication. While the FHWA may agree with some of these design-related comments, the agency emphasizes that the AASHTO publication is intended to provide guidance on the development and implementation of erosion and sediment control measures and practices. The design details that are included are provided as a basis for the development of more detailed project-specific designs. Each State should apply the AASHTO guidelines or its own guidelines, if those guidelines are more stringent, to develop standards and practices for the control of erosion and sedimentation on Federal-aid construction projects. Although the AASHTO guidelines can be used for the development of a statewide implementation program for controlling erosion and sedimentation, each project

must be analyzed separately to assure that the most appropriate and effective erosion and sediment control measures and practices are designed, implemented, and maintained.

Revisions to Part 650

A comment concerning the revisions to Part 650 was made by the EPA's Office of Wetlands, Oceans and Watersheds. Although the EPA supported the regulatory changes proposed in the NPRM, it had two specific comments. Both concerned the requirement of the ISTEA that FHWA erosion control guidelines be consistent with nonpoint source management programs under section 319 of the FWPCA and coastal nonpoint pollution control guidance issued by the EPA in January 1993, under section 6217(g) of the Coastal Zone Act of 1990.

Request to Add a New Paragraph

The EPA proposed that the FHWA add a specific paragraph to 23 CFR Part 650 that would quote a management measure contained in the section 6217(g) management measure guidance document (see footnote #1). The management measure at issue is in Chapter 4.II.A., "New Development Management Measure," and concerns reducing the amount of total suspended solids (TSS) leaving the site after construction has been completed and the site is permanently stabilized. It allows for two options to accomplish this goal. Under the first option, after construction, the average amount of TSS (including sediment) leaving the project site would be reduced by 80 percent. The second option would limit the post-development discharge of suspended solids to an amount equal to or less than pre-development conditions.

Guidance under section 6217(g) specifies management measures for a wide range of pollutant sources. These include agricultural, forestry, urban area, and marina and recreational boating sources. The management measure cited by the EPA is found under Chapter 4: "Management Measures for Urban Areas," and specifically under Section II, "Urban Runoff." It is intended to be applied by States in areas within the designated coastal zone, under the authority of the Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, as amended), to control urban runoff and treat associated pollutants from new development, redevelopment, and new and relocated roads, highways, and bridges.

This management measure deals with the post construction control of erosion and sedimentation. It applies to the

reduction of TSS after the project has been fully stabilized. However, during several meetings between the EPA and the FHWA, the EPA emphasized that this reduction can be accomplished through design or by performance. In other words, projects should be designed, using the best available technology, with the intent of reducing or limiting TSS by the specified amount. The intent was not to require the actual measurement of the TSS leaving the project site either before or after construction but to establish guidance relative to project design standards.

The section 6217(g) guidance does not apply to storm water discharges covered by the NPDES storm water permit program. This includes all highway construction projects disturbing five or more acres of land. In addition, the section 6217(g) guidance does not apply to States without coastal zone management programs approved by the United States Department of Commerce.

The ability to limit or reduce the amount of TSS leaving a specific site will depend on the type of best management practice (BMP) selected. Each BMP has its own strengths and weaknesses, and no one BMP will be applicable to every situation. The effectiveness of the selected BMP can also be highly variable. For example, wet ponds, which are one of the most reliable and attractive BMPs that exist, have a reported sediment removal rate of between 50 to 90 percent.² Extended detention ponds, or dry ponds, on the other hand, have a sediment removal efficiency of only 30 to 70 percent. Both of these BMPs may need to be supplemented by other controls to conform with the 6217(g) guidance.

Key design factors in determining the effectiveness of particular BMPs include size, configuration, retention time and long term maintenance. The effectiveness of a particular BMP is influenced by a variety of locational factors as well. For example, problems will be encountered if wet ponds are located in areas experiencing long periods of dry weather and/or high evaporation rates, or long periods of cold weather when the pond is frozen. In any case, many aspects related to BMP performance are not well understood and all BMP options will require careful site assessment prior to design.

The provisions of 23 CFR part 650, subpart B, deal with erosion and sediment control for all federally funded

²"A Current Assessment of Urban Best Management Practices, Techniques for Reducing Non-Point Source Pollution in the Coastal Zone," Metropolitan Washington Council of Governments, 1993.

construction projects nationwide. Their objectives are to control erosion and sedimentation during the construction of highway projects and to assure that highway projects are located, designed, and operated to minimize erosion and sediment damage. The AASHTO guidelines that are being proposed for adoption as guidance include three objectives for erosion and sediment control. These objectives are:

1. Limit off-site effects to acceptable levels.
2. Facilitate project construction and minimize overall cost, and
3. Comply with Federal, State, and local regulations.

As stated in the first objective, an intent of these guidelines is not to establish specific design standards but to limit off-site effects to acceptable levels. The determination of what constitutes an undesirable effect is not specified. The intent is to assess possible adverse off-site effects and to implement BMPs as appropriate to minimize these effects.

The FHWA agrees with the EPA that a goal of any highway construction project would be to limit the amount of erosion and resulting sedimentation attributable to that project. The FHWA also recognizes that within the coastal zone there may be water bodies that are extremely sensitive to the deposition of sedimentation. However, the FHWA believes that it is inappropriate to set specific design standards for all projects nationwide. The FHWA is amending 23 CFR part 650 to add § 650.211 which provides that projects located within coastal zone management areas, as specified by States with coastal zone management programs approved by the United States Department of Commerce, National Oceanic and Atmospheric Administration, utilize "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters."

Request to Incorporate Additional Guidance

The EPA also requested that the FHWA add a new paragraph to Part 650 that incorporates, by reference, certain portions of the section 6217(g) guidance. These other management measures, found under Chapter 4.VIII, "Roads, Highways, and Bridges," would include management measures in the areas of planning, siting, and developing roads and highways; bridges; construction projects; construction site chemical control; operation and maintenance; and road, highway and bridge runoff systems.

Section 1057 of the ISTEA requires that the guidelines that are developed be

consistent with the section 6217(g) guidance. The AASHTO guidelines that the FHWA is now adopting deal primarily with erosion and sediment control during construction. However, the guidelines also state that, "While much of the effort for control of erosion and sedimentation is expended during the construction phase of highway development, a successful program must address erosion and sediment control during the planning, location, design, and future maintenance phases as well." The AASHTO guidelines provide comprehensive guidance concerning the establishment of criteria and controls for erosion and sedimentation. These guidelines provide detailed information that addresses and is consistent with the pertinent sections of the section 6217(g) guidance.

However, as previously stated, the FHWA is amending 23 CFR Part 650 to add § 650.211 which provides that highway construction projects covered under the provisions of the section 6217(g) guidance should utilize "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters."

Additional Revisions

The language of § 650.209(c), dealing with monitoring erosion and sediment control measures and practices, has been revised from that proposed in the NPRM. As set forth in the NPRM, this section implied that if a problem in the effectiveness of the erosion and sediment control measure is indicated, revision of that measure would be required. The intent of this section is to ensure that erosion and sediment control measures are periodically reviewed to assure their effectiveness. This would include maintenance of the existing measures as well as revising those measures that are found to be less than fully effective. The language of § 650.209(c) has been revised to clarify this issue.

Rulemaking Analyses and Notices

Administrative Procedure Act

This final rule is made effective upon publication. The FHWA believes that this final rule is exempt from the 30-day delayed effective date requirement of 5 U.S.C. § 553(d) for the following reason. The FHWA finds that good cause exists to dispense with the 30-day delay because an earlier version of the AASHTO erosion and sediment control publication adopted by this action has already been adopted, as guidance "to provide valuable information in attaining good design" in highway

construction projects. See 23 CFR 625.5. This final rule simply amends title 23, Code of Federal Regulations, to reference the updated AASHTO guidelines on this subject and it includes this reference under 23 CFR part 650, which specifically addresses erosion and sediment control on highway construction projects. Therefore, this final rule imposes no new requirements or mandates on State highway agencies. Instead, it simply cites the revised AASHTO guidelines with the aim of assisting States in assuring that highway projects are located, designed, and operated to minimize erosion and sediment damage.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA (at 23 CFR 650, Subpart B) and other Federal agencies currently have regulations regarding erosion and sediment control. Adopting the AASHTO guidelines would merely update and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. The FHWA concluded that it and other Federal agencies currently have regulations dealing with erosion and sediment control, and adopting the 1992 AASHTO guidelines would merely reinforce existing policy. Therefore, the FHWA hereby certifies that this rulemaking will 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 principles and criteria contained in Executive Order 12612, and it has been determined that this action would 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 20.205, Highway Planning and Construction.

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

National Environmental Policy Act

This rulemaking will provide guidance to State Highway Agencies when implementing or developing erosion and sediment control guidelines. This will aid in the control and prevention of nonpoint source pollutants. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

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 650

Grant programs—transportation, Highways and roads, Soil conservation.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 650, subpart B as set forth below.

Issued on: July 18, 1994.

Rodney E. Slater,
Federal Highway Administrator.

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS [AMENDED]

1. The authority for part 650 is revised to read as follows:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 315, and 319; 23 CFR 1.32; 49 CFR 1.48(b), E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); § 161 of Public Law 97-424, 96 Stat. 2097, 3135; § 4(b) of Public Law 97-134, 95 Stat. 1699; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; and § 1057 of Public Law 102-240, 105 Stat. 2002.

Subpart B—Erosion and Sediment Control on Highway Construction Projects

2. Part 650 is amended by revising §§ 650.201, 650.203, 650.205 and 650.209 and by adding § 650.211 to read as follows:

§ 650.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution, and prevention of damage by sediment deposition from all construction projects funded under title 23, United States Code.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that all highways funded in whole or in part under title 23, United States Code, shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources. Guidance for the development of standards used to minimize erosion and sediment damage is referenced in § 650.211 of this part.

§ 650.205 Definitions.

Erosion control measures and practices are actions that are taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Permanent erosion and sediment control measures and practices are installations and design features of a construction project which remain in place and in service after completion of the project.

Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

Sediment control measures and practices are actions taken to control the deposition of sediments resulting from surface runoff.

Temporary erosion and sediment control measures and practices are actions taken on an interim basis during construction to minimize the disturbance, transportation, and unwanted deposition of sediment.

§ 650.209 Construction.

(a) Permanent erosion and sediment control measures and practices shall be established and implemented at the earliest practicable time consistent with

good construction and management practices.

(b) Implementation of temporary erosion and sediment control measures and practices shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout construction.

(c) Erosion and sediment control measures and practices shall be monitored and maintained or revised to insure that they are fulfilling their intended function during the construction of the project.

(d) Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

§ 650.211 Guidelines.

(a) The FHWA adopts the AASHTO Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992,¹ as guidelines to be followed on all construction projects funded under title 23, United States Code. These guidelines are not intended to preempt any requirements made by or under State law if such requirements are more stringent.

(b) Each State highway agency should apply the guidelines referenced in paragraph (a) of this section or apply its own guidelines, if these guidelines are more stringent, to develop standards and practices for the control of erosion and sediment on Federal-aid construction projects. These specific standards and practices may reference available resources, such as the procedures presented in the AASHTO "Model Drainage Manual," 1991.²

(c) Consistent with the requirements of section 6217(g) of the Coastal Zone

¹ This document is available for inspection from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D. It may be purchased from the American Association of State Highway and Transportation Officials offices at Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

² This document is available for inspection from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D. It may be purchased from the American Association of State Highway and Transportation Officials offices at Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

Act Reauthorization Amendments of 1990 (Pub. L. 101-508, 104 Stat. 1388-299), highway construction projects funded under title 23, United States Code, and located in the coastal zone management areas of States with coastal zone management programs approved by the United States Department of Commerce, National Oceanic and Atmospheric Administration, should utilize "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters," 84-B-92-002, U.S. EPA, January 1993.³ State highway agencies should refer to this Environmental Protection Agency guidance document for the design of projects within coastal zone management areas.

[FR Doc. 94-18124 Filed 7-25-94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN123-1-6349a; FRL-5009-1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 30, 1992, the Memphis and Shelby County Health Department (MSCHD), submitted a maintenance plan and a request to redesignate the Memphis/Shelby County area from nonattainment to attainment for carbon monoxide (CO). The public hearing was held on December 30, 1992, and the Tennessee Air Pollution Control Board gave approval on October 13, 1993. The CO nonattainment area consists only of Memphis/Shelby County. Under the Clean Air Act (CAA), designations can be revised if sufficient data are available to warrant such revisions. In this action, EPA is approving the Tennessee request because it meets the maintenance plan and redesignation requirements set forth in the Act. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for the Memphis/Shelby County nonattainment area.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, the EPA notified the State

³ This document is available for inspection and copying as prescribed by 49 CFR part 7, appendix D.

of Tennessee that the EPA had made a finding of failure to submit required programs for the CO nonattainment area. EPA's redesignation of the Memphis/Shelby County area to attainment abrogates those requirements for this area. Therefore, the sanctions and federal implementation plan clocks begun by those findings are stopped at the time of the redesignation.

EFFECTIVE DATE: This action will be effective September 26, 1994, unless critical or adverse comments are received by August 25, 1994. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the redesignation request and the State of Tennessee's submittal are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia, 30365.

Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the CO national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Memphis/Shelby County was designated under section 107 of the 1977 Act as nonattainment with respect to the CO NAAQS on March 3, 1978. (40 CFR 81.343) In accordance with section 110 of the 1977 Act, the State submitted a Part D CO SIP on February 13 and April 12 and 27, 1979, which EPA conditionally approved on February 6, 1980. On March 20 and December 17, 1980, Tennessee submitted revisions addressing the conditions stated in the

February 6, 1980, notice. EPA, on September 2, 1981, gave final approval and published Tennessee as meeting the requirements of section 110 and Part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments). (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q) The nonattainment designation of Memphis/Shelby County was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified by operation of law as moderate for CO according to section 186(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81 §81.343.)

Memphis/Shelby County has ambient monitoring data showing attainment of the CO NAAQS, during the period from 1990 through 1991. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on October 30, 1992, the State of Tennessee submitted a CO redesignation request for the Memphis and Shelby County area. The request for redesignation submittal was approved by the Tennessee Air Pollution Control Board on March 9, 1994. On May 14, 1993, Tennessee submitted evidence that a public hearing was held on the requests to redesignate Memphis/Shelby County from nonattainment of the NAAQS for CO to attainment for the CO NAAQS.

Additionally, there were no violations during the 1992 and 1993 CO season.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must meet all applicable requirements under section 110 and Part D of the CAA;
3. The area must have a fully approved SIP under section 110(k) of CAA;
4. The air quality improvement must be permanent and enforceable; and,
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

III. Review of State Submittal

On May 19, 1993, Region IV determined that the information received from the MSCHD constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are

applicable for redesignation purposes, EPA believes it is necessary to identify when the MSCHD first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the CAA, including redesignation submittals, would not be determined complete. See the memorandum entitled "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" from John Calcagni to Air Programs Division Directors, Regions I-X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3-4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria. (See 58 FR 38108 (July 15, 1993.)) Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. MSCHD submitted a redesignation request on October 30, 1992. In the October 30 submittal, MSCHD submitted the maintenance plan, thereby including the final element to make the October 30, 1992, request for parallel processing complete under the parallel processing exception to the completeness criteria. When the maintenance plan became state effective on October 13, 1993, the State of Tennessee no longer needed parallel processing for the redesignation request and maintenance plan.

The Tennessee redesignation request for the Memphis/Shelby County area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the CO NAAQS

The Tennessee request is based on an analysis of quality assured CO air quality data which is relevant to the maintenance plan and to the redesignation request. The ambient air CO monitoring data for calendar year

1990 through calendar year 1991 shows no violations of the CO NAAQS in the Memphis/Shelby County area. The most recent ambient CO data for the calendar year 1992 and 1993 continued to show no violations in the Memphis/Shelby County area. Because the Memphis/Shelby County area has complete quality-assured data showing no more than one exceedance of the standard per year over two consecutive years, the Memphis/Shelby County area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and appendix C). Tennessee has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

On September 2, 1981, EPA fully approved Tennessee's SIP for the Memphis/Shelby County area as meeting the requirements of section 110(a)(2) and Part D of the 1977 CAA (46 FR 26640). The 1990 CAA Amendments, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Memphis/Shelby County SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements.

As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Memphis/Shelby County may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of Part D establishes additional requirements

for nonattainment areas classified under section 186(a). The Memphis/Shelby County area was classified as moderate (See 40 CFR 81.343). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of Subpart 1 of Part D, specifically sections 172(c) and 176, and the requirements of Subpart 3 of Part D, which became due on or before October 30, 1992, the date the State submitted a complete redesignation request. EPA interprets section 107(d)(3)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. Requirements of the CAA that come due subsequent to the submission of the redesignation request continue to be applicable to the area (See section 175A(c)) and if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

B1. Subpart 1 of Part D—Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator but no later than three years after an area is designated as nonattainment. EPA had not determined that these requirements were applicable to classified CO nonattainment areas on or before October 30, 1992, the date that the State of Tennessee submitted a complete redesignation request for the Memphis/Shelby County area. Therefore, the State of Tennessee was not required to meet these requirements for purposes of redesignation.

Upon redesignation of this area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On June 24, 1982, the EPA approved the State of Tennessee's PSD program (47 FR 27269).

B2. Subpart 1 of Part D—Section 176(c) of the CAA requires States to revise their SOPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"). Section 176 further provides that the conformity revisions to be submitted by but must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one

year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final conformity regulations on November 24, 1993 (58 FR 62188) and November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of Tennessee is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Tennessee is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for these submittals have not yet come due, 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

B3. Subpart 3 of Part D—Under section 187(a) areas that retained a designation of nonattainment for CO under the amended CAA and that are classified as moderate were required to meet several requirements by November 15, 1992. These requirements included an Emission Inventory, which Tennessee submitted as part of the maintenance plan. EPA has reviewed their emission inventory and has determined it acceptable. Section 211(m) further required that Tennessee submit an oxygenated fuels regulation for the Memphis area. Tennessee failed to submit this measure for the Memphis area. On January 15, 1993, EPA made a finding of failure to submit the oxygenated fuels regulation by letter from Patrick M. Tobin, Acting Regional Administrator, to Ned McWherter, Governor of Tennessee. However, this requirement is not applicable for purposes of considering the State's redesignation request. For purposes of redesignation, EPA must consider whether the State has met all requirements that were applicable prior to the time the state submitted the redesignation request. In case the redesignation is not approved by EPA, the State will be required to implement a program. Since Tennessee submitted

the redesignation request for Memphis/Shelby County on October 30, 1992, this measure is not relevant for purposes of redesignation. Therefore, all Subpart 3 requirements that were applicable at the time the State submitted its redesignation request have been met.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the 1990 Amendments, EPA has determined that the Memphis/Shelby County area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the Tennessee SIP control strategy for the Memphis/Shelby County nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are Federal Motor Vehicle Control Program (FMVCP), the Inspection and Maintenance Program (I/M), and transportation control measures (TCMs). The FMVCP reduced CO emissions from motor vehicles by

approximately 127.67 tons per day from mobile sources since 1985 as a result of the above programs and measures.

In association with its emission inventory discussed below, the State of Tennessee has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule

for implementation, adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Tennessee's maintenance plan for the Memphis/Shelby County area because EPA finds that Tennessee's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of Tennessee submitted a comprehensive inventory of CO emissions from the Memphis/Shelby County area. The inventories include area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the NEDS format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the base year and projected maintenance year inventories. EPA's TSD contains more in-depth details regarding the base year inventory for the Memphis/Shelby County area.

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

Year	Area	Non-Road	Mobile	Point	Total
1990	48.44	83.31	455.05	22.78	609.58
1993	49.32	84.82	420.09	23.70	577.93
1996	50.21	86.35	418.50	24.62	579.68
1999	51.12	87.92	420.29	25.51	584.84
2002	52.05	89.51	419.53	26.33	587.42
2004	52.68	90.59	417.61	26.95	587.83

B. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. The projections show that CO emissions are not expected to exceed the level of the base year inventory during this time period.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Memphis/Shelby County area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submitting periodic

inventories of CO emissions every three years. Memphis/Shelby County's contingency plan will be triggered by two indicators, a violation of the CO NAAQS or should the triennial emission inventory for CO exceed the 1990 CO emission levels.

D. Contingency Plan

The level of CO emissions in the Memphis/Shelby County area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Tennessee has provided contingency measures with a

schedule for implementation in the event of a future CO air quality problem. In the case of a violation of the CO NAAQS or should the triennial emission inventory for carbon monoxide (winter season-tons per day) exceed the 1990 carbon monoxide emission inventory, the plan contains a contingency to implement additional control measures such as the county wide expansion of the I/M program and the implementation of a three point inspection of the automobile at the vent, gas cap, and the catalytic converter. The implementation of this inspection improvement will begin within one year of the above mentioned triggers. EPA finds that the contingency measures provided in the State submittal meet the

requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving the Memphis/Shelby County CO maintenance plan because it meets the requirements of section 175A. In addition, the Agency is approving the request and redesignating the Memphis/Shelby County CO area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. This action stops the sanctions and federal implementation plan clocks that were triggered for the Memphis and Shelby County area by the January 15, 1993, findings letter.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this *Federal Register* publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1994 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors and in relation to relevant statutory and regulatory requirements.

The CO SIP is designed to satisfy the requirements of Part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

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, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: June 28, 1994.

John H. Hankinson, Jr.,
Regional Administrator.

Parts 52 and 81 of chapter I, title 40, *Code of Federal Regulations*, are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(121) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(121) The redesignation and maintenance plan for Memphis/Shelby County submitted by the Memphis/Shelby County Health Department on October 30, 1992, as part of the Tennessee SIP. On October 15, 1993, and May 6, 1994, Tennessee Department of Environment and Conservation submitted a supplement to the above maintenance plan.

(i) Incorporation by reference.

(A) Memphis/Shelby County Carbon Monoxide Ten Year Maintenance Plan effective on October 13, 1993.

(B) Emissions Inventory Projections for Memphis/Shelby County effective on October 13, 1993.

(ii) Other material. None.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the attainment status table for "Tennessee-Carbon Monoxide" is amended by removing the entire first entry in the table, "Memphis Area / Shelby County"; by revising the subheading "Rest of State" in the first column to read "Statewide"; and by adding in alphabetical order a new entry for Shelby County to read as follows:

TENNESSEE—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date (1)	Type	Date (1)	Type
Statewide		Unclassifiable/Attainment.		
Shelby County	[Insert date sixty days after publication].			

(1) This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94-18070 Filed 7-25-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[MI28-01-6328a-FRL-5014-9]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency is approving Michigan's 1990 base year ozone (O₃) emission inventory for the Grand Rapids and Muskegon nonattainment areas (NAAs) submitted as a revision to the Michigan State Implementation Plan (SIP) for O₃. Michigan's O₃ NAAs are the counties of Muskegon, and the two county Grand Rapids area (which are the counties of Kent and Ottawa). The inventory was submitted by the State of Michigan to satisfy a requirement that those States containing O₃ nonattainment areas (NAAs) classified as marginal to extreme to submit inventories of actual O₃ season and emissions from all sources in accordance with USEPA guidance.

The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below in the supporting Technical Support Document (TSD).

DATES: This final rule will be effective September 26, 1994 unless notice is received by August 25, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Jeanette Marrero at (312) 886-6543 before visiting the Region 5 Office).

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeanette Marrero, (312) 886-6543.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act as amended (including 1990 Amendments) (the Act), States have the responsibility to inventory emissions contributing to the National Ambient Air Quality Standards (NAAQS) nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Section 182(b) of the Act, 42 U.S.C. 7511a(b)(1), requires O₃ NAAs designated as moderate, serious, severe, and extreme to submit a plan within 3 years after 1990 to reduce VOC emissions by 15 percent within 6 years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress projection inventory, and the modeling inventory are derived. See General Preamble to title I, 57 FR 13502 (April 16, 1992). Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," United States Environmental Protection Agency, Office of Air Quality Planning

and Standards (OAQPS), Research Triangle Park, North Carolina (March 1991).

The air quality planning requirements for marginal to extreme O₃ NAAs are set out in section 182(a)-(e) of the Act. The General Preamble to Title I of the Act describes the basis for reviewing SIP revisions submitted under Title I of the Act, including requirements for the preparation of the 1990 base year inventory. See 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992). A more detailed discussion of the interpretations of Title I of the Act, as well as detailed policy guidance on the development of the emission inventory is contained in the General Preamble. See 57 FR 18070, Appendix B (April 28, 1992).

Those States containing O₃ NAAs classified as marginal to extreme are required under section 182(a)(1) of the Act to submit a final, comprehensive, accurate, and current inventory of actual O₃ season and weekday emissions from all sources within 2 years of enactment (November 15, 1992). The inventory must include both anthropogenic (man-made) and biogenic (natural) sources of volatile organic compounds (VOCs), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOCs, NO_x, and CO emissions for the area during peak O₃ season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble. See 57 FR 13498 (April 16, 1992).

Summary of the SIP Revision and Criteria in This Notice Action

A. Procedural Background

USEPA must determine whether a submittal is complete and therefore warrants further USEPA review and action. See section 110(k)(1) and 57 FR

13565 (April 16, 1992). USEPA'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). USEPA 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 USEPA 6 months after receipt of the submission.

The emission inventory was adopted by the State and signed by the Governor's designee on January 4, 1993 and submitted to USEPA on January 5, 1993, as a proposed revision to the SIP. USEPA reviewed Michigan's emission inventory to determine completeness shortly after its submittal, 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). USEPA found the January 5, 1993 submittal to be complete on March 4, 1993, and sent a letter dated March 16, 1993 to the State indicating that the submittal was complete with the exception of evidence of a public hearing.

The State of Michigan held a public hearing on August 2, 1993 to hear public comment on the 1990 base year emission inventory for Grand Rapids and Muskegon nonattainment areas and certified the hearing to the USEPA in a submittal on November 15, 1993.

Supplemental information was also submitted to USEPA on November 29, 1993 in response to USEPA's preliminary comments on the inventory.

After reviewing the evidence of the public hearing USEPA sent a letter dated January 7, 1994 to Roland Harnes, Director, Michigan Department of Natural Resources (MDNR), indicating the completeness of the submittal and the next steps to be taken in the review process.

When reviewing the final inventory, USEPA used the Level I, II, and III, O₃ nonattainment inventory quality review checklists provided by the OAQPS to determine the acceptance and approvability of the final emission inventory.

Level I is essentially the initial level of broad review that USEPA perform in order to determine if the inventory preparation guidance requirements found in the report "Emission Inventory Requirements for Ozone State Implementation Plans" (EPA-450/4-91-011) have been met. The Level II review addresses completeness, procedures and

consistency for each of the four general source types in the inventory: stationary point and area sources, highway mobile sources, and non-highway mobile sources. The data quality is also evaluated.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable, it must meet all of the following criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance program contained in the IPP was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to the current USEPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current USEPA guidance.

7. Biogenic emissions must have been prepared according to current USEPA guidance or another approved technique.

8. The method used to develop VMT estimates must follow USEPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", United States Environmental Protection Agency, Office of Mobile Sources and OAQPS, Ann Arbor, Michigan, and Research Triangle Park, North Carolina (December 1992). The VMT development methods were adequately described and documented in the inventory report.

9. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories," United States Environmental Protection Agency, OAQPS, Research Triangle Park, NC,

(August 1992). Level III review procedures are specified in a memorandum from David Mobley and G.T. Helms to the Regions entitled "1990 O₃/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992, and revised in a memorandum from John Seitz, Director of OAQPS, to the Regional Air Directors, dated June 24, 1993.

USEPA completed the Level I and II checklists finding that the State followed USEPA guidance, and submitted an acceptable emission inventory. Further information on the procedures followed by USEPA in completing the review, and the answers to the checklists questions are available in the TSD.

After completing the Level III review, USEPA found that the State of Michigan adequately addressed USEPA criteria for providing an acceptable inventory of actual emissions in the O₃ NAAs. A more detailed discussion of the Level III checklist is also included in the TSD.

B. Emission Inventory Analysis

The State of Michigan has met the requirements of section 182(a)(1) of the Act by submitting an O₃ SIP revision that includes a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the NAAs, classified marginal to extreme. This section of the notice describes the adequacy of Michigan's inventory of actual emissions as required by section 182(a)(1).

The State of Michigan Department of Natural Resources submitted a 1990 base year emission inventory for the two areas designated nonattainment for O₃. Michigan's 2 moderate nonattainment areas for O₃ include a total of 3 counties: Muskegon County, and 2 Grand Rapids counties: Kent and Ottawa. The nonattainment boundaries for these areas are described in Federal Register notices dated November 6, 1991 (56 FR 56778-56779), and November 30, 1992 (57 FR 56771).

The emissions inventory contains stationary point and area sources, highway (on-road) and non-highway (or non-road) mobile sources, and biogenic sources within the NAA. Emissions from these groupings of emission source types for the two O₃ NAAs are presented below in the following tables by pollutant (VOC, CO, NO_x), in units of tons per summer weekday:

DAILY VOC EMISSIONS FROM ALL SOURCES
[Tons/Summer Weekday]

Ozone NAA	Point source emissions	Area source emissions	On-road source emissions	Non-road source emissions	Biogenic emissions	Total emissions
Grand Rapids	41.52	39.31	52.36	23.04	47.06	199.29
Muskegon	7.28	9.60	13.54	8.77	20.19	58.53

DAILY CO EMISSIONS FROM ALL SOURCES
[Tons/Summer Weekday]

Ozone NAA	Point source emissions	Area source emissions	On-road source emissions	Non-road source emissions	Total emissions
Grand Rapids	6.17	9.16	444.75	123.61	583.69
Muskegon	9.27	1.33	114.80	36.50	161.90

DAILY NO_x EMISSIONS FROM ALL SOURCES
[Tons/Summer Weekday]

Ozone NAA	Point source emissions	Area source emissions	On-road source emissions	Non-road source emissions	Total emissions
Grand Rapids	117.58	13.96	65.82	16.47	213.83
Muskegon	17.30	0.60	15.39	3.76	37.05

In developing these emission estimates, MDNR followed methodologies recommended by USEPA for the preparation of O₃ inventories. Information on methods used to determine each of the above source category groupings is presented in the TSD.

II. Final Rulemaking Action

USEPA approves the 1990 base year O₃ emission inventory as meeting the requirements of section 182(a)(1) of the Act, as a revision to the O₃ SIP for the Muskegon and Grand Rapids areas in Michigan designated as nonattainment, classified moderate. These areas include counties of Muskegon, Kent, and Ottawa.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on September 26, 1994. However, if we receive adverse comments by August 25, 1994, then USEPA will: (1) publish a document that withdraws the final action; and (2) address the comments received in a subsequent final rule based on the proposed action published in the Proposed Rules section of this **Federal Register**. The public comment period will not be extended or reopened.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

final rule on small entities. U.S.C. 603 and 604. Alternatively, USEPA 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.

The 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 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989 the Office of Management and Budget (OMB) waved Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order (EO) 12291 for a

period of 2 years. The USEPA 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 of USEPA's request. This request continues in effect under EO 12866 which superseded EO 12291, on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, and Volatile organic compounds.

Dated: June 14, 1994.

Valdas V. Adamkus,
Regional Administrator

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (c) to read as follows:

§ 52.1174 Control strategy: Ozone.

(c) Approval—On January 5, 1993, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan (SIP) for the 1990 base year inventory. The inventory was submitted by the State of Michigan to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990 (the Act), as a revision to the ozone SIP for the Grand Rapids and Muskegon areas in Michigan designated nonattainment, classified as moderate. These areas include counties of Muskegon, and the two county Grand Rapids area (which are the counties of Kent and Ottawa).

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40 CFR Part 52

[OH63-1-6403a, OH64-1-6404a; FRL-5020-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, through "direct final" procedure, two exemption requests from the requirements contained in Section 182(f) of the Clean Air Act (Act) for the Toledo and Dayton ozone nonattainment areas in Ohio. These exemption requests, submitted by the State of Ohio, are based upon the most recent three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in each of these areas without additional reductions of nitrogen oxides (NO_x). Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to adopt reasonably available control technology (RACT) rules for major stationary sources of NO_x and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x. Section 182(f) provides further that these requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in the area.

EFFECTIVE DATE: This action will be effective August 25, 1994 unless notice is received by August 10, 1994, that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the exemption and redesignation requests are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353-5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE-17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5089.

SUPPLEMENTARY INFORMATION:**I. Background**

The air quality planning requirements for the reduction of NO_x emissions are set out in Section 182(f) of the Act. Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to impose the same control requirements for major stationary sources of NO_x as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and major modifications. Section 182(f) provides further that these NO_x requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_x would not contribute to attainment. Also, the NO_x-related general and transportation conformity provisions (see 58 FR 63214 and 58 FR 62188) would not apply in an area that is granted a Section 182(f) exemption. In an area that did not implement the Section 182(f) NO_x requirements, but did achieve attainment of the ozone standard, as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the USEPA's—Aerometric Information

Retrieval System (AIRS)), it is clear that the additional NO_x reductions required by Section 182(f) would not contribute to attainment.

II. Criteria for Evaluation of Section 182(f) Exemption Requests

The criteria established for the evaluation of an exemption request from the Section 182(f) requirements are set forth in a USEPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria," and a USEPA guidance document entitled "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," dated December 1993, from USEPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

III. State Submittals

On September 20, 1993, and November 8, 1993, the State of Ohio submitted to USEPA Region 5 requests to redesignate to attainment of the NAAQS for ozone the Toledo (Lucas and Wood Counties) and Dayton (Montgomery, Greene, Miami, and Clark Counties) ozone nonattainment areas. These redesignation requests are currently under review and will be evaluated in a separate rulemaking. Included as part of the redesignation submittals were requests that the Toledo and Dayton ozone nonattainment areas be exempt from the requirements contained in Section 182(f) of the Act. These exemption requests are based upon the most recent three years of ambient air monitoring data which demonstrate that the NAAQS for ozone has been attained in each of these areas without additional reductions of NO_x (a violation of the ozone NAAQS occurs when the average expected exceedances for any ozone monitoring site in a three year period is greater than 1.0).

Two ozone exceedances were recorded in the Toledo area for the period from 1991 to 1993: 306 N. Yondota—0.127 ppm (1991) and 0.126 ppm (1993); Friendship Park—0.136 ppm (1993). For this three year period, the Toledo nonattainment area had an average of 0.73 expected exceedances with a design value of 0.120 ppm.

The only ozone exceedance, 0.125 ppm (1993), in the Dayton area for the period from 1991 to 1993 was recorded at the monitor located at 2100 Timberlane. For this three year period, the Dayton nonattainment area had an average of 0.33 expected exceedances with a design value of 0.112 ppm. Thus,

both areas are not currently recording violations of the air quality standard for ozone.

A more detailed summary of the ozone monitoring data for both areas is provided in the USEPA technical support document dated April 20, 1994.

IV. Analysis of State Submittals

USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the State of Ohio in support of these exemption requests, and has determined that a violation of the ozone NAAQS has not occurred in the Toledo or Dayton nonattainment areas, and, thus, the exemption requests for the Toledo and Dayton areas meet the applicable requirements contained in the USEPA policy and guidance documents referenced above.

V. NO_x RACT Rules

Ohio was required to submit NO_x RACT rules to USEPA for the Toledo and Dayton ozone nonattainment areas by November 15, 1992. On April 15, 1993, USEPA notified the Governor of Ohio of a finding that the State failed to submit the required rules. The State is required to submit complete rules to USEPA within 18 months of the date of the finding in order to avoid the initiation of sanctions under Section 179(b) of the Act. Ohio is currently drafting NO_x RACT rules for the Toledo and Dayton nonattainment areas. These rules, when approved by USEPA and adopted by the State, shall be suspended by the State for the Toledo and Dayton areas upon the approval of the 182(f) exemption requests. However, the State will be required to implement these rules upon a monitored violation on the ozone NAAQS in the applicable area(s) (please refer to Section VI of this Notice—Withdrawal of the Exemptions) [The current draft of the NO_x RACT rules (dated April 18, 1994) submitted by the State of Ohio does not include the provision that the NO_x RACT rules will be implemented upon a violation of the ozone NAAQS. USEPA notified the State of Ohio that this provision must be included in order for the NO_x RACT rules to be approvable.] Approval of the Section 182(f) exemption requests stops the sanctions clock for non-submission of the NO_x RACT rules for the Toledo and Dayton areas as of the effective date of this notice.

VI. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is contingent upon the continued monitoring and continued attainment and maintenance

of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s) (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) USEPA will provide notice in the Federal Register. A determination that the NO_x exemption no longer applies would mean that the NO_x NSR and general and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) to the affected areas. While the NO_x RACT requirements would also be applicable, some reasonable period of notice time is necessary to provide major stationary sources subject to the RACT requirements time to purchase, install and operate any required controls. Accordingly, the State may provide sources a reasonable time period after such USEPA determination to meet the RACT emission limits. USEPA expects such time period to be expeditious as practicable, but no case longer than 24 months. If a nonattainment area is redesignated to attainment of the ozone NAAQS, NO_x RACT is to be implemented as stated in the USEPA approved maintenance plan.

Additionally, as stated in the December 1993 USEPA guidance document referenced above, an exemption from the requirements contained in Section 182(f) would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_x exemption would interfere with the attainment or maintenance of the ozone NAAQS in a downwind area.

VII. Inspection and Maintenance (I/M) Programs

The I/M Program Final Rule (57 FR 52950) provides that if USEPA determines that NO_x emission reductions are not beneficial in a given ozone nonattainment area, then the basic I/M NO_x requirement may be omitted from the I/M program and NO_x emission reductions are not required of an enhanced I/M program (but the program shall be designed to offset NO_x increases resulting from the repair of hydrocarbon (HC) and carbon monoxide (CO) failures).

For the Toledo nonattainment area, a Basic I/M program is required. This approval allows the basic I/M NO_x requirement to be omitted from the program. For the Dayton nonattainment area, the State has adopted an Enhanced I/M program. Based on this approval, NO_x emission reductions are not required of this program (however, the program shall be designed to offset NO_x

increases resulting from the repair of HC and CO failures).

VIII. Final Action

USEPA is approving Ohio's requests to exempt the Toledo and Dayton ozone nonattainment areas from the Section 182(f) NO_x requirements. This approval is based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable USEPA guidance. This action exempts the Toledo and Dayton areas from the requirements to implement NO_x RACT requirements, nonattainment area new source review for new sources and modifications that are major for NO_x, and the applicable general and transportation conformity provisions for NO_x. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemption from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

IX. Procedural Background

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. The public is advised that this action will be effective August 25, 1994, unless notice is received by August 10, 1994, that someone wishes to submit adverse or critical comments. If the EPA receives adverse comment, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a proposed rule which is published in the proposed rule section of this Federal Register. Section 182(f)(3) of the Act provides that the exemption requests from the requirements of Section 182(f) be granted or denied within six months after such submittal. In view of this requirement, USEPA is reducing the time period allocated for public comments and the effective date in order to process the Section 182(f) exemption requests as expeditiously as practicable (even though the six-month deadline has already been exceeded).

X. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Sections 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities; 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

government entities with jurisdiction over populations of less than 50,000.

Today's exemptions do not create any new requirements, but allow suspension of the indicated requirements for the life of the exemptions. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated July 11, 1994.
Valdas V. Adamkus,
Regional Administrator

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

Subpart KK—Ohio

2. Section 52.1879 is amended by adding a new paragraph (f) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(f) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts these areas from implementing reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_x), nonattainment area new source review for new sources and modifications that are major for NO_x, and the NO_x related requirements of general and

transportation conformity provisions. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply

3. Section 52.1885 is amended by adding a new paragraph (r) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(r) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts these areas from implementing reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_x), nonattainment area new source review for new sources and modifications that are major for NO_x, and the NO_x related requirements of general and transportation conformity provisions. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall not apply

[FR Doc. 94-18233 Filed 7-25-94; 8:45 am]
 BILLING CODE 6560-50-M

Proposed Rules

Federal Register

Vol. 59, No. 142

Tuesday, July 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

[Docket No. PRM-35-11]

American Medical Association

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated March 28, 1994, which was filed with the Commission by the American Medical Association (AMA). The petition was docketed by the NRC on April 20, 1994, and has been assigned Docket No. PRM-35-11. The petitioner requests that the NRC amend its regulations to recognize that current medical practice concerning the therapeutic uses of I¹³¹, particularly in outpatient settings, is effective and safe for the public. The petitioner also requests that the NRC formally recognize that adequate home confinement precautions reduce the hazards associated with radioisotopes sufficiently to eliminate the need for hospitalization following therapeutic administration of radiopharmaceuticals. The petitioner also requests that the NRC increase the external radiation limit for the public from 100 mRem/year to 500 mRem/year.

DATES: Submit comments by October 11, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-415-7163 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The petitioner states that in order to "provide adequate protection of public health and safety" and to observe "the principle of keeping all radiation exposures as low as is reasonably achievable," the NRC has revised its standards for protection against radiation. NRC proposed a revision of the regulations governing radiation use and exposure limits in 1976. Modifications of the revised regulation were proposed in 1979, 1980, 1983, 1985, and 1986. Revised regulations were published May 21, 1991 (56 FR 23360), to become effective June 21, 1991, and to be fully implemented by January 1, 1993 (later extended to January 1, 1994, see 57 FR 38588; August 26, 1992). The petitioner states that the section of the final rule relevant to outpatient treatment with I¹³¹ or other radiopharmaceuticals (§ 20.1301) reduces the radiation exposure limit to the public from 500 mRem/year to 100 mRem/year.

The petitioner believes that § 20.1301 will have an adverse impact on the availability and the cost of treatment of thyroid disease, which will outweigh the advantages of reduced radiation exposure to the public. Therefore, the petitioner requests that this provision be amended to restore the previous external radiation limit of 500 mRem/year.

Petition

The AMA, following a report of its Council on Scientific Affairs (CSA

Report F (A-92)), submitted a petition for rulemaking to the NRC. The petitioner also submitted CSA Report F in support of the petition. The petitioner states that the medical use of inorganic sodium I¹³¹ has been an effective component of medical practice for over 35 years. The petitioner also states that radioactive biologicals, such as monoclonal antibodies labeled with I¹³¹, have been added to the physician's armamentarium. The petitioner believes that the ability of the physician to administer I¹³¹ on an outpatient basis has maintained the accessibility and minimized the costs of these treatments. According to the petitioner, patients treated with I¹³¹ must contain no more than 30 mCi total body activity before they may be released from the treatment facility. The petitioner states that therapeutic use of I¹³¹, particularly in the treatment of thyroid carcinoma, often requires doses in excess of 30 mCi, and may require doses as great as 400 mCi.

The petitioner states that because doses of 30 mCi of I¹³¹ are substantially below the doses typically used to treat thyroid carcinoma, treatment of up to 10,000 cancer patients annually with appropriate doses would require the hospitalization of the patients under the revised regulation (10 CFR 20.1301). The petitioner argues that this new radiation exposure limit set by the NRC is inconsistent with medical experience and is not necessary in order to protect the public from radiation hazards. The petitioner states that the new radiation exposure limit will reduce both early release of patients and the treatment of patients at home, thus creating potentially avoidable hospital inpatient costs and burdens on the health care delivery system.

Suggested Changes to the Regulations

The petitioner requests that the following amendments to the NRC's regulations be made:

1. Reinstate § 20.107 from the regulations in effect before the 1991 amendments to Part 20. The added section would read as follows:

Section 20.107 Medical Diagnosis and Therapy.

Nothing in the regulations of this part shall be interpreted as limiting the intentional exposure of patients to radiation for the purpose of medical diagnosis or medical therapy.

2. Section 35.75 should be revised to read as follows:

Section 35.75 Release of Patients Containing Radiopharmaceuticals or Permanent Implants.

A licensee may not authorize release from confinement for medical care any patient administered a radiopharmaceutical or a permanent implant until the measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter or the cumulative dose to individual members of the public will be less than 500 millirems per year.

3. In § 35.310(a), the introductory text of paragraph (a) should be revised to read as follows:

Section 35.310 Safety Instruction.

(a) A licensee shall provide reasonable and adequate radiation instruction for all personnel caring for the patient receiving radiopharmaceutical therapy and confined for compliance with § 35.75 of this chapter.

* * * * *

4. In § 35.315(a), the introductory paragraph should be revised to read as follows:

Section 35.315 Safety Precautions.

(a) For each patient receiving radiopharmaceutical therapy and confined for compliance with § 35.75 of this chapter, a licensee shall:

* * * * *

The AMA believes that these amendments will have a beneficial impact on the availability and cost of treatment of thyroid disease while maintaining safeguards to the health of the public.

Related Petitions and Proposed Rule

On December 26, 1990, Carol S. Marcus, MD, filed a petition for rulemaking with the NRC (PRM-20-20). Dr. Marcus requested that the NRC restore the radiation dose limit in the amended standards for protection against radiation that can be absorbed by members of the public from patients receiving radiopharmaceuticals for diagnosis or therapy from 100 mRem/year to 500 mRem/year. Dr. Marcus opposed the newly effective radiation dose limit in 10 CFR 20.1301 because of the impact of this lower limit on outpatient medical procedures. She believed that therapeutically effective doses of I¹³¹ may result in exposure to the public within the immediate surroundings of greater than 100 but less than 500 mRem/year. She stated that some procedures utilizing

radioisotopic materials that have routinely been performed on an outpatient basis would require hospitalization for regulatory rather than medical reasons. She also believed that enforced hospitalization would significantly increase the cost of medical care and possibly result in the patient's inability to receive that care.

On October 5, 1991, the American College of Nuclear Medicine (ACNM) filed a petition for rulemaking with the NRC (PRM-35-10). On April 14, 1992, the ACNM filed an amendment to its original petition (PRM-35-10A). The ACNM requested that the NRC adopt a dose limit of 500 mRem/year for nonpatients and permit licensees to authorize release from hospitalization any patient administered a radiopharmaceutical regardless of the activity in the patient by defining "confinement" to include not only confinement in a hospital, but also confinement in a private residence. The ACNM stated that their request is in the best interest of patients who require access to affordable quality care while allowing them to be diagnosed and treated on an outpatient basis instead of being confined to a hospital. The ACNM believed that temporary home confinement should be allowed instead of mandating hospitalization. The ACNM stated that published scientific papers attest to the safety of outpatient radiopharmaceutical therapy in doses of up to 400 millicuries of I¹³¹ NaI.

On June 15, 1994 (59 FR 30724), the Commission published a proposed rule addressing the issues raised in PRM-20-20 and PRM-35-10. The petitioner and commenters are advised to review and comment on this proposed rule. It provides the Commission's position on the fundamental concern underlying the current petition. In the proposed rule, the Commission states that the provisions of 10 CFR 35.75 govern the release of patients, not the provisions in 10 CFR 20.1301. Consequently, commenters should comment on PRM-35-11 in this context because most of the issues raised in this petition are addressed in the proposed rule. The NRC staff also issued NRC Information Notice No. 94-09, dated February 3, 1994, entitled "Release of Patients with Residual Radioactivity from Medical Treatment and Control of Areas Due to Presence of Patients Containing Radioactivity Following Implementation of Revised 10 CFR Part 20," which provided the NRC staff's interim guidance governed by 10 CFR 35.75.

Dated at Rockville, Maryland, this 20th day of July 1994.

For the Nuclear Regulatory Commission,
John C. Hoyle,
Acting Secretary of the Commission.
[FR Doc. 94-18112 Filed 7-25-94; 8:45 am]
BILLING CODE 7590-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of meetings and agendas.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of the schedule of two Committee meetings of the Steel Erection Negotiated Rulemaking Advisory Committee (SENTRAC). Notice is also given of the locations and agendas for the meetings. These meetings are open to the public. Information on room numbers will be available in the lobby of the designated building. A schedule of additional meetings will be provided in a future notice.

DATES: (1) Boston: August 16-18, 1994. The meeting will begin at 10 a.m. on August 16, 1994.

(2) Washington, DC: September 20-22, 1994. The meeting will begin at 10 a.m. on September 20, 1994.

ADDRESSES: (1) Boston: Swissotel, One Avenue de Lafayette, Boston, MA 02111, (617) 451-2600.

(2) Washington, DC: Quality Hotel—Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219-8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENTRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the

Committee include representatives from labor, industry, public interests and government agencies.

The first two SENRAC meetings were held in Bethesda, Maryland on June 14-16, 1994 and in Denver, Colorado on July 11-13, 1994. The Committee established workgroups to address issues on fall protection, allocation of responsibility, construction specifications, and scope of the standard. Also, the Committee groundrules were formally adopted.

Agenda for the meetings are as follows:

Boston: On August 16th the full Committee will meet in the morning with workgroup meetings in the afternoon; August 17th will consist of workgroup meetings all day; and, on August 18th workgroup meetings will be held in the morning followed by a full Committee meeting.

Washington: To be determined at the August 16-18 meeting.

All interested parties are invited to attend both the workgroup and full Committee meetings at the times and places indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Facilitator to obtain appropriate accommodations.

During the meeting, members of the general public may request permission to informally address the full Committee and workgroups.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N-2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219-7894. Copies of these materials may also be obtained by sending a written request to the Facilitator. Also, certain materials including meeting minutes, issues for resolution and notices can be obtained through the use of the OSHARULE Forum in the Department of Labor Electronic Bulletin Board System (Labor News). The Labor News can be accessed via modem at (202) 219-4784. Modem settings should be: 8 Data-Bit Words, 1 Stop Bit, Parity = None, and BAUD speeds up to 14,400.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, NW., Washington, DC 20037; Telephone (202) 887-1033, FAX (202) 833-1036.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, DC 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, DC, this 20th day of July, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94-18106 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784 and 817

RIN 1029-AB69

Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

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

ACTION: Reopening of public comment period on proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is reopening the public comment period on the proposed rule published in the September 24, 1993, *Federal Register* (57 FR 50174) to provide for review and comment on additional information which has been added to the Administrative Record. Public comments are also being sought on limited aspects of water replacement requirements. The proposed rule would amend the regulations applicable to underground coal mining and the control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards.

DATES: *Written Comments:* OSM will accept written comments only on specific items and issues related to the proposed rule that are further described under **SUPPLEMENTARY INFORMATION**. OSM will accept written comments until 5 p.m. Eastern time on August 25, 1994.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol St. NW., Washington, DC; or mail to the Office of Surface Mining

Reclamation and Enforcement, Administrative Record, Room 660 NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy R. Brokerick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208-2564.

SUPPLEMENTARY INFORMATION: On September 24, 1993 (58 FR 50174), OSM published a proposed rule which would require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations; rehabilitate, restore, or replace identified structures and compensate owners in the full amount of the diminution in value resulting from the subsidence; replace water supplies which have been adversely affected by underground coal mining operations; perform a pre-subsidence survey and repair or compensate for subsidence-related damage caused by underground mining activities to structures or facilities; and provide, when necessary, an additional performance bond to cover subsidence-related material damage. The proposed rule provides for broader protection of structures by removing the provision that imposes a State law limitation on an underground coal mine operator's liability for damage to structures. Performance standards required by the Energy Policy Act of 1992 would be enforceable nationwide immediately upon the effective date of the final rule.

OSM held public hearings on the proposed subsidence rule in Harrisburg, Pennsylvania, November 8, 1993; Columbus, Ohio, November 9, 1993; Whitesburg, Kentucky, November 16, 1993; Salt Lake City, Utah, November 17, 1993; Washington, DC, November 19, 1993; and Washington, Pennsylvania, November 22, 1993.

The comment period for the proposed rule closed on January 24, 1994 (as extended on November 22, 1993, 58 FR 61638). Subsequently, in the course of analyzing the comments received on the proposed rule OSM discussed subsidence-related issues with coal operators and citizens during an on-site tour of coal fields. OSM is reopening the comment period to allow interested persons time to review additional material which consists of meeting notes from these discussions and handouts and a video tape received

during the field tour. This information has been added to the Administrative Record and can be reviewed at the address noted above. This information will also be available for review at the following OSM offices: Eastern Support Center, 10 Parkway Center, Pittsburgh, PA; Western Support Center, 1999 Broadway, Suite 3320, Denver, CO; Harrisburg Transportation Center, Fourth and Market Streets, Suite 3C, Harrisburg, PA; Eastland Professional Plaza, 4480 Refugee Road, Suite 201, Columbus, OH; 603 Morris Street, Charleston, WV; 530 Gay Street, Suite 500, Knoxville, TN; and 2675 Regency Road, Lexington, KY.

In addition, as a result of comments received during the initial comment period on the proposed rule and requests by States and OSM field offices to clarify the requirement for replacement of water supplies, OSM is considering an alternative provision. The alternative would further define what sections 717(b) and 720(a)(2) of SMCRA mean when they provide that an operator must replace certain types of water supplies. OSM is considering adding a provision in the final rulemaking that, when the owner confirms in writing that the owner does not desire replacement of the delivery system, and no such system is needed for either the existing or approved postmining land uses, the operator may provide replacement of the water supply by demonstrating that an equivalent water source exists that can be developed if desired by future owners.

OSM is requesting comment on this procedure, by which an owner of interest could forgo replacement of the water delivery system if the system is not essential to maintenance of the existing land use of attainment of the postmining land use. The operator would still be required to demonstrate the presence and availability of a water source equivalent to premining quantity and quality, so that the current owner of interest or his or her successor could utilize the water if desired in the future. Thus, the owner would have the option of forgoing installation of a delivery system, in those circumstances in which the system would be neither wanted or needed, and would not be used if installed.

Comments will now be accepted until 5 p.m. local time on August 25, 1994.

Dated: July 20, 1994.

Robert J. Uram,

Director, Office of Surface Mining,
Reclamation and Enforcement.

[FR Doc. 94-18118 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 865

Personnel Review Boards

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to amend Part 865 of Chapter VII, Title 32, Code of Federal Regulations, by revising Subpart A, Air Force Board for Correction of Military Records. Subpart A establishes procedures for the consideration of applications for the correction of military records and provides guidance to applicants and others interested in the process. This revision incorporates format changes and clarifies various minor provisions of the subpart. The public is invited to participate in this rulemaking by submitting comments to the point of contact listed below.

DATES: Comments must be received no later than September 26, 1994.

ADDRESSES: Comments should be submitted to: Executive Director, Air Force Board for Correction of Military Records, 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB MD 20331-7002.

FOR FURTHER INFORMATION CONTACT: C. Bruce Braswell, Executive Director, (301) 981-5727.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this proposed rule is not a major rule because it will not have an annual effect on the economy of \$100 million or more. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment) certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-611, and does not have a significant economic impact on small entities as defined by the Act. This rule imposes no obligatory information requirements beyond internal Air Force use.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Accordingly, 32 CFR Part 865, Subpart A, is proposed to be revised to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.

- 865.0 Purpose.
- 865.1 Setup of the Board.
- 865.2 Board responsibilities.
- 865.3 Application procedures.
- 865.4 Board actions.
- 865.5 Decision of the Secretary of the Air Force.
- 865.6 Reconsideration of applications.
- 865.7 Action after final decision.
- 865.8 Miscellaneous provisions.

Subpart A—Air Force Board for Correction of Military Records

Authority: 10 U.S.C. 1034, 1552.

§ 865.0 Purpose.

This subpart sets up procedures for correction of military records to remedy error or injustice. It tells how to apply for correction of military records and how the Air Force Board for Correction of Military Records (AFBCMR, or the Board) considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552. System of Records notice F035 SAFCB A, Military Records Processed by the Air Force Correction Board, applies.

§ 865.1 Setup of the Board.

The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. 1552. The Board consists of civilians in the executive part of the Department of the Air Force who are appointed and serve at the pleasure of the Secretary of the Air Force. Three members constitute a quorum of the Board.

§ 865.2 Board responsibilities.

(a) *Considering applications.* The Board considers all applications properly brought before it. In appropriate cases, it directs correction of military records to remove an error or injustice, or recommends such correction.

(b) *Recommending action.* When an applicant alleges reprisal under the Military Whistleblowers Protection Act, 10 U.S.C. 1034, the Board may recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against those responsible for the reprisal.

(c) *Deciding cases.* The Board normally decides cases on the evidence of record. It is not an investigative body. However, the Board may, in its discretion, hold a hearing or call for

additional evidence or opinions in any case.

§ 865.3 Application procedures.

(a) Who may apply:

(1) In most cases, the applicant is a member or former member of the Air Force, since the request is personal to the applicant and relates to his or her military records.

(2) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, parent or other close relative, an heir, or a legal representative (such as a guardian or executor) of the member or former member may be able to show a proper interest. Applicants will send proof of proper interest with the application when requesting correction of another person's military records.

(b) *Getting forms.* Applicants may get a DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., Section 1552, and Air Force Pamphlet 31-5, Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR), from:

(1) Any Air Force Military Personnel Flight (MPF) or publications distribution office.

(2) Most veterans' service organization.

(3) The Air Force Review Boards Office, SAF/MIBR, 550 C Street West, Suite 40, Randolph AFB TX 78150-4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20331-7002.

(c) *Preparation.* Before applying, applicants should:

(1) Review Air Force Pamphlet 31-5.

(2) Discuss their concerns with MPF, finance office, or other appropriate officials. Errors can often be corrected administratively without resort to the Board.

(3) Exhaust other available administrative remedies (otherwise the Board may return the request without considering it).

(d) *Submitting the application.*

Applicants should complete all applicable sections of the DD Form 149, including at least:

(1) The name under which the member served.

(2) The member's social security number or Air Force service number.

(3) The applicant's current mailing address.

(4) The specific records correction being requested.

(5) Proof of proper interest if requesting correction of another person's records.

(6) The applicant's signature.

(e) Applicants should mail the original signed DD Form 149 and any supporting documents to the Air Force address on the back of the form.

(f) *Meeting time limits.* Ordinarily, applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence, should have been discovered. An application filed later is untimely and may be denied by the Board on that basis.

(1) The Board may excuse untimely filing in the interest of justice.

(2) If the application is filed late, applicants should explain why it would be in the interest of justice for the Board to waive the time limits.

(g) *Stay of other proceedings.*

Applying to the AFBCMR does not stay other proceedings.

(h) *Counsel representation.*

Applicants may be represented by counsel, at their own expense.

(1) The term "counsel" includes members in good standing of the bar of any state, accredited representatives of veterans' organizations recognized under 38 U.S.C. 3402, and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See Department of Defense Directive 7050.6, Military Whistleblower Protection Act, 3 September 1992,¹ for special provisions for counsel in cases processed under 10 U.S.C. 1034.

(i) *Page limitations on briefs.* Briefs in support of applications:

(1) May not exceed 25 double-spaced typewritten pages.

(2) Must be typed on one side of a page only with not more than 12 characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(j) Responses to advisory opinions must not exceed 10 double-spaced typewritten pages and meet the other requirements for briefs.

(k) These limitations do not apply to supporting documentary evidence.

(l) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(m) *Withdrawing applications.*

Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the 3-year time limit.

§ 865.4 Board actions.

(a) *Board information sources.* The applicant has the burden of providing evidence of probable error or injustice. However, the Board:

(1) May get additional information and advisory opinions on an application from any Air Force organization or official.

(2) May require the applicant to furnish additional information necessary to decide the case.

(b) Applicants will normally be given an opportunity to review and comment on advisory opinions and additional information obtained by the Board.

(c) *Consideration by the Board.* A panel consisting of at least three board members considers each application. One panel member serves as its chair. The panel's actions and decisions constitute the actions and decisions of the Board.

(d) The panel may decide the case in executive session or authorize a hearing. When a hearing is authorized, the procedures in paragraph (f) of this section apply.

(e) *Board deliberations.* Normally only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

(f) *Board hearings.* The Board in its sole discretion determines whether to grant a hearing. Applicants do not have a right to a hearing before the Board.

(g) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed 30 days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than 15 days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case in executive session if the applicant declines the hearing or fails to appear.

(h) When granted a hearing, the applicant may appear before the Board in person, represented by counsel, or in person with counsel and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

(i) The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel observes reasonable bounds of competency, relevancy, and materiality. Witnesses other than the applicant will

¹ Copies of the publication are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to 2 hours but may allow more time if necessary to ensure a full and fair hearing.

(j) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.6.²

(k) The Board will not deny or recommend denial of an application on the sole ground that the issue already has been decided by the Secretary of the Air Force or the President of the United States in another proceeding.

(l) *Board decisions.* The panel's majority vote constitutes the action of the Board. The Board's decision will be in writing and will include determinations on the following issues:

(1) Whether the provisions of the Military Whistleblowers Protection Act apply to the application. This determination is needed only when the applicant invokes the protection of the Act, or when the question of its applicability is otherwise raised by the evidence.

(2) Whether the application was timely filed and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

(3) Whether the applicant has exhausted all available and effective administrative remedies. If the applicant has not, the application will be denied on that basis.

(4) Whether the applicant has demonstrated the existence of an error or injustice that can be remedied effectively through correction of the applicant's military record and, if so, what corrections are needed to provide full and effective relief.

(5) In Military Whistleblowers Protection Act cases only, whether to recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's record of proceedings and will not be given to the applicant, but will be provided directly to the Secretary of the Air Force under separate cover (§ 865.2(b)).

(m) *Record of proceedings.* The Board staff will prepare a record of

proceedings following deliberations which will include:

- (1) The name and vote of each Board member.
- (2) The application.
- (3) Briefs and written arguments.
- (4) Documentary evidence.
- (5) A hearing transcript if a hearing was held.
- (6) Advisory opinions and applicants related comments.
- (7) The findings, conclusions, and recommendations of the Board.
- (8) Minority reports, if any.
- (9) Other information necessary to show a true and complete history of the proceedings.

(n) *Minority reports.* A dissenting panel member may prepare a minority report which may address any aspect of the case.

(o) *Separate communications.* The Board may send comments or recommendations to the Secretary of the Air Force as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on other matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to applicant or counsel.

(p) *Final action by the Board.* The Board acts for the Secretary of the Air Force and its decision is final when it:

- (1) Denies any application (except under 10 U.S.C. 1034)
- (2) Grants any application in whole or part when the relief was recommended by the official preparing the advisory opinion, was unanimously agreed to by the panel, and does not involve an appointment or promotion requiring confirmation by the Senate.

(q) The Board sends the record of proceedings on all other applications to the Secretary of the Air Force or his or her designee for final decision.

§ 865.5 Decision of the Secretary of the Air Force.

(a) The Secretary may direct such action as he or she deems appropriate on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the Board's recommendation, the decision will be in writing and will include a brief statement of the grounds for denial.

(b) Decisions in cases under the Military Whistleblowers Protection Act.

The Secretary will issue decisions on such cases within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense (SecDef). Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Air Force.

(3) That the request for review must be in writing and include the applicant's name, address, and telephone number; a copy of the application to the AFBCMR and the final decision of the Secretary of the Air Force; and a statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Air Force.

(4) That the request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for reconsideration by the Board under § 865.6.

§ 865.6 Reconsideration of applications.

The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not available when the application was previously considered. The Executive Director will screen each request for reconsideration to determine whether it contains new evidence.

(a) If the request contains new evidence, the Executive Director will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

(b) If the request does not contain new evidence, the Executive Director will return it to the applicant without referral to the Board.

§ 865.7 Action after final decision.

(a) *Action by the Executive Director.* The Executive Director will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the

²See footnote to § 865.3(h)(2).

Executive Director will advise the applicant of reconsideration provisions and, for cases processed under the Military Whistleblowers Protection Act, review by the SecDef. The Executive Director will send decisions requiring corrective action to the Chief of Staff, US Air Force, for necessary action.

(b) *Settlement of claims.* The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(c) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(d) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(e) *Public access to decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at a public reading room in the Washington DC metropolitan area.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

- (1) All available military records pertinent to an application.
- (2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to records.* Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of expenses.* The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a

correction of military records under 10 U.S.C. 1034 or 1552.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-18053 Filed 7-25-94; 8:45 am]

BILLING CODE 3910-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI28-01-6328b-FRL-5015-1]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes full approval of Michigan's 1990 base year O₃ emission inventory for the Grand Rapids and Muskegon nonattainment areas (NAAs) submitted as a revision to the Michigan State Implementation Plan for O₃. The inventory was submitted by the State of Michigan to satisfy a requirement that those States containing O₃ nonattainment areas (NAAs) classified as marginal to extreme to submit inventories of actual O₃ season and emissions from all sources in accordance with USEPA guidance. In the Final Rules Section of this *Federal Register*, USEPA is approving the State's revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 25, 1994.

ADDRESSES: Written comments can be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18j), United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard,

Chicago, Illinois 60604. Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Jeanette Marrero at (312) 886-6543 before visiting the Region 5 Office). United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeanette Marrero (312) 886-6543.

SUPPLEMENTARY INFORMATION: See the information provided in the final rule which is located in the Rules Section of this *Federal Register*.

Authority: 42 U.S.C. 7401-7642.

Dated: June 14, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-17551 Filed 7-25-94; 8:45 am]

BILLING CODE 6580-60-P

40 CFR Part 52

[OH63-1-6403b, OH64-1-6404b; FRL-5020-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is approving, through direct final procedure, two exemption requests from the requirements contained in Section 18(f) of the Clean Air Act (Act) for the Toledo and Dayton ozone nonattainment areas in Ohio. These exemption requests, submitted by the State of Ohio, are based upon the most recent three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in each of these areas without additional reductions of nitrogen oxides (NO_x). Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to adopt reasonably available control technology (RACT) rules for major stationary sources of NO_x and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x. Section 182(f) provides further that these requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in the area.

In the Final Rules Section of this **Federal Register**, the USEPA is approving these exemption requests as a direct final rule without prior proposal because USEPA views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by August 10, 1994.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17)), USEPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

Copies of the State's request and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE-17)), USEPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE-17)), USEPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7642.

Dated: July 11, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-18234 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 81

[TN123-1-6349b; FRL-5009-2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP)

revision submitted by the State of Tennessee for the purpose of redesignating Memphis/Shelby County area to attainment for carbon monoxide (CO). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 25, 1994.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the redesignation request and the State of Tennessee's submittal are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365.

Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 28, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 94-18044 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5020-9]

Clean Air Act Proposed Approval, Operating Permits Program; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA proposes to grant interim approval to the Operating Permits Program submitted by the State of Hawaii. Alternatively, EPA proposes to grant full approval if specified changes are made. Hawaii's Operating Permit Program was submitted for the purpose of complying with Federal requirements that mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by August 25, 1994.

ADDRESSES: Comments should be addressed to the contact indicated in **FOR FURTHER INFORMATION CONTACT**, attention Docket No. HI-94-OPS-P. Copies of the State's submittal and other supporting information used in developing the proposed full/interim approval are available for inspection between 9 a.m. and 5 p.m. Monday through Friday at the following location: EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. A courtesy copy of certain documents may be available for inspection at: Clean Air Branch, Environmental Management Division, State Department of Health, 919 Ala Moana Boulevard, Honolulu, Hawaii 96814, telephone (808) 586-4200.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744-1248), A-5-2, United States Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of

Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act, and the part 70 regulation, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Hawaii submitted an administratively complete part 70 permitting program on December 20, 1993 for the State of Hawaii with a letter requesting EPA's approval. The program includes a legal opinion from the Attorney General of Hawaii stating that the State of Hawaii's Department of Health has adequate legal authority to carry out the program. The program also contains a description of how the Department of Health intends to implement the program consistent with the requirements of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401-7671q) and 40 CFR part 70. The program includes supporting documentation such as evidence of the procedurally correct adoption of the permitting rule, permit application forms, and a model permit. EPA intends to develop an implementation agreement with Hawaii, although an implementation agreement is not required for this proposed action.

2. Regulations and Program Implementation

Hawaii's part 70 permitting regulation is contained in title 11, chapter 60.1 of the Hawaii Administrative Rules (HAR). Hawaii has notified EPA in a letter dated June 13, 1994 that the part 70 program includes the following: General Requirements—subchapter 1 (except subsections 6, 8, 12, 13, 15, 16, and 17); Covered Sources—subchapter 5; Hazardous Air Pollutants—subchapter 9 (except sections 179 and 180 on ambient concentrations and NESHAP adoption by reference); and the covered source

fee requirements—subchapter 6, sections 111 through 116. EPA will accept public comment on all aspects of Hawaii's submittal that are related to part 70 program requirements. Hawaii's part 70 permitting rule meets the main requirements of part 70 as described below:

a. Applicability (40 CFR 70.2 and 70.3). Sources required to obtain a permit under Hawaii's program are defined as covered sources. Hawaii's definition of covered source includes all major part 70 sources. The rule also includes non-major sources subject to a section 112 standard, other than sources subject solely to the section 112(r) accidental release requirements, and any source subject to a section 111 standard of performance adopted by the State (HAR sections 1 and 82).

b. Permit content (40 CFR 70.6). Each covered source permit must contain emission limitations and standards to ensure compliance with all applicable requirements. Permits will also contain certain operational flexibility requirements (HAR sections 90 and 96).

c. Public participation (40 CFR 70.7). The public will be provided with notice of, and an opportunity to comment on, each draft covered source permit, permit renewal, and significant modification (HAR section 99).

d. Permit modifications (40 CFR 70.7). Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo all part 70 permit issuance procedures (HAR sections 103 and 104).

e. EPA oversight (40 CFR 70.8). Each covered source permit, renewal, and minor or significant modification is subject to EPA oversight and veto (HAR section 95).

f. Enforcement authority (40 CFR 70.11). The Hawaii Revised Statutes (HRS) directly provide for enforcement and penalties for civil and criminal violations of permits and rules (HRS 342B part IV). The regulation (HAR section 18) forbids variances from any federal regulation or any covered source federally enforceable permit term or condition.

g. Relationship to title I preconstruction requirements. Hawaii's permitting program combines part 70 and Prevention of Significant Deterioration (title I, part C of the Act) requirements. Upon part 70 program approval, preconstruction permits issued to new covered sources will include all part 70 requirements and also Hawaii's Prevention of Significant Deterioration requirements under 40 CFR 52.21. This part 70 approval does not address or modify EPA's current delegation of 40 CFR 52.21, Prevention

of Significant Deterioration, to Hawaii under 40 CFR 52.632.

3. Permit Fee Demonstration

Hawaii's fee analysis demonstrates that the state will collect sufficient revenue to implement the permitting program. Hawaii will collect permit fees of \$37 per ton of regulated air pollutant as defined in section 114 from covered sources, which meets both the § 70.9 presumptive minimum and Hawaii's projected resource requirements. State law establishes a dedicated account to ensure that permit program fees are used to fund the permitting program (HRS section 342B-32).

4. Provisions Implementing the Requirements of Other Titles of the Act

Hawaii has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements. This legal authority is contained in Hawaii's enabling legislation (HRS chapter 342B, including § 12); the Attorney General's legal opinion that chapter 342B authorizes Hawaii to carry out all section 112 activities; and regulatory provisions that incorporate all applicable requirements into each covered source permit. EPA has determined that this broad legal authority adequately assures compliance with all section 112 requirements.

EPA is interpreting the above legal authority and Hawaii's rule to mean that Hawaii can, and will, carry out all section 112 activities. These activities include, but are not limited to, the following:

a. Section 112 Emission standards. The rule requires that covered source permit terms and conditions ensure compliance with all section 112 standards, including existing and future standards promulgated under sections 112 (d), (f), and (h) and the General Provisions (40 CFR part 63, subpart A, and HAR section 81, definition of applicable requirements, section 90).

b. Case-by-case MACT determinations. The rule requires sources to comply with CAA sections 112(g) and 112(j) case-by-case Maximum Achievable Control Technology (MACT) requirements and authorizes the director to make such case-by-case determinations (HAR sections 174-176).

c. Early reductions. The rule authorizes the director to establish an alternate emission limit under the CAA section 112(i)(5) early reductions program (40 CFR 63 subpart D) and requires compliance with any alternate emission limit.

d. Accidental releases. The rule requires sources to prepare and submit a risk management plan, and defines the submittal of a risk management plan as an applicable requirement. Sources must address their compliance with risk management plan requirements in biannual certifications (HAR sections 81, 86, and 178).

Hawaii's program does not need to include title IV acid rain requirements because the acid rain program applies only to the 48 contiguous United States.

B. Options for Approval/Disapproval and Implications

1. Full Approval

The EPA proposes to fully approve the operating permits program submitted to EPA for the State of Hawaii on December 20, 1993 if certain insignificant activities are removed or capped and the permit application shield is expanded. EPA intends to consider at least all changes submitted prior to September 15 in the final approval. EPA has determined that the program is otherwise adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

EPA is proposing to approve the program if the State makes the changes listed below. Please refer to the Technical Support Document, which is included in the docket, for additional details.

a. Insignificant activities. The rule must not allow the director to determine what activities are insignificant without EPA approval of these activities or the criteria that delineate such activities (40 CFR 70.5(a)). Therefore, sub-section 82(f)(7) must be deleted or include criteria, such as emission levels, for determining which activities are insignificant. Section 70.5 requires that Hawaii submit a list of insignificant activities with criteria demonstrating that the activities listed are insignificant. The director's discretion clause is bounded by the requirement that the source submit enough information to determine and impose all applicable requirements. However, the rule does not contain the required criteria, such as the type of equipment or emission rate, for determining whether activities designated under § 82(f)(7) are insignificant (40 CFR 70.4(b)(2)).

EPA is proposing that an emissions cap of two tons per year would constitute an approvable criterion for ensuring that any activities designated under this clause would not hinder the State's ability to make applicability determinations and impose all

applicable requirements and fees. Therefore, the director's discretion clause may be approved if it includes criteria, such as an emissions cap, that will ensure that any activities designated by the director are insignificant. For toxic or hazardous air pollutants, the threshold would be twenty-five percent of any title I modification threshold or 1000 pounds per year, whichever is less. Hawaii may also choose to impose a more stringent cap.

EPA is proposing that restrictions on the following insignificant activities are also necessary to qualify for full approval: paint spray booths, water pump motors, and portable fuel burning equipment. EPA believes that these activities could emit significant amounts of emissions triggering applicable requirements and these activities must contain an emissions cap.

EPA is seeking comments on whether Hawaii's permit program should be fully approved if any of the changes to these specific activities on Hawaii's list of insignificant activities are not made and which (if any) should not preclude full approval of the program.

b. Permit application shield. The program must expand the permit application shield to include existing sources that become subject to the program due to rulemaking changes to qualify for full approval. For example, a noncovered (non-part 70) source will be required to obtain a covered (part 70) source permit if it becomes subject to an EPA MACT standard under CAA section 112(d). Both part 70 and Hawaii's rule (40 CFR 70.7(b) and HAR section 82(a)) prohibit sources from operating without a required operating permit. However, Hawaii's rule does not include the part 70 provision that newly subject sources may temporarily operate without a permit if they submit a timely and complete application (40 CFR 70.7(b)).

2. Interim Approval

The EPA is proposing to grant interim approval to the operating permits program under § 70.4(d) if the changes required for full approval as described above are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because Hawaii's permit program substantially meets the approval process, and requirements of part 70 as discussed in section II(A) of this notice. The problems noted above will not prevent Hawaii from issuing permits that are consistent with part 70 on an interim basis. Interim approval, which may not be renewed, would extend for a period of two years. During the interim

approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the three year time period for processing the initial permit applications begins upon interim approval. Permits issued by Hawaii prior to EPA's full or interim approval of the program are not considered part 70 permits until reissued under a program that has been approved at the time the permit is reissued.

3. Program for Straight Delegation of Section 112 Standards

The requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass the section 112(l)(5) approval requirements for a program for delegation of section 112 standards as promulgated by EPA. Section 112(l)(5) requires that Hawaii's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Hawaii's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. EPA proposes to grant 112(l) approval whether Hawaii is granted full or interim approval because the program contains sufficient authority to implement and enforce delegated section 112 standards. This delegation applies to both major and non-major part 70 sources subject to section 112 standards because Hawaii's permitting program applies to all sources subject to section 112 standards.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full/interim approval, particularly the changes necessary for full approval. Copies of the State's submittal and other information relied upon for the proposed alternatives of full approval and interim approval are contained in a docket maintained at the EPA Regional Office. A courtesy copy of certain technical documentation may also be available for inspection from the State of Hawaii. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full/interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by August 25, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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.

Operating permits program approvals under section 502 of the Act, including interim approvals under section 502(g) of the Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program 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 EPA to base its actions concerning operating permits programs 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).

If the program is granted an interim approval which is subsequently converted to a disapproval, it will not affect any existing state requirements applicable to small entities. Federal

disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new federal requirement. Therefore, EPA certifies that such a disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new federal requirement.

Authority: 42 U.S.C. 7401, et seq.

List of Subjects in 40 CFR Part 70

Environmental Protection Agency, Administrative practices and procedures, Air pollution control, Environmental protection, Hawaii, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: July 11, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-18187 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-60-P

Notices

Federal Register

Vol. 59, No. 142

Tuesday, July 26, 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

Office of the Secretary

[Docket No. 94-023N]

1995 Farm Bill; Notice of Hearings

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Public Hearings.

SUMMARY: The Department is announcing two public hearings on the general issues relating to food safety and quality in preparation for the 1995 Farm Bill. These hearings will provide an opportunity for interested persons to present their views on food safety and quality issues.

DATES: The public hearings are scheduled for August 3, 1994, in Chicago, Illinois and August 19, 1994, in Philadelphia, Pennsylvania.

Participants may submit written materials at the hearings or written comments will be accepted until August 16, 1994, for the hearing in Chicago and until September 2, 1994, for the hearing in Philadelphia. Those wishing to make oral remarks or submit written materials should contact Elizabeth Jones, Confidential Assistant, Information and Legislative Affairs, Food Safety and Inspection Service, Room 1175-S, Washington, DC 20250, (202) 720-7943.

Transcripts of the public hearings and copies of data and information submitted during the hearings will be available for review at the office of the FSIS Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, under Docket Number 94-023N.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jones, Confidential Assistant, Information and Legislative Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-7943.

SUPPLEMENTARY INFORMATION: We are holding these hearings to gather

information and public opinions relating to the issues of food safety and quality that will be addressed in the 1995 Farm Bill. The presiding officer at each hearing will be Patricia Jensen, Acting Assistant Secretary for Marketing and Inspection Services. The presiding officer will be accompanied by a panel of USDA employees with relevant food safety and quality expertise. Oral presentations will be limited to 5 minutes.

Done at Washington, DC on: July 21, 1994

Patricia Jensen,

Acting Assistant Secretary Marketing and Inspection Services.

[FR Doc. 94-18272 Filed 7-25-94; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: American Travel Survey.

Form Number(s): ATS-1, 2, 6(L), 7(L), 7(L).1, 7(L).2, 7(L).3, 8(L), 9(L), 9(L).1, 9(L).2, 9(L).3, 10, 14, 15.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 142,626 hours.

Number of Respondents: 87,000.

Avg Hours Per Response: 26 minutes.

Needs and Uses: The Census Bureau plans to conduct the American Travel Survey (ATS) as part of the larger Census of Transportation. This survey will provide information on the interregional flows of passenger travel. The Bureau of Transportation Statistics (BTS) of the Department of Transportation (DOT) has contracted with the Census Bureau to conduct the sampling, data collection, and processing operations for the ATS. The BTS and DOT will use the data to develop and analyze legislation affecting billions of dollars in user charges, infrastructure investments, new technology initiatives, and productivity of the transportation industry. Private businesses will use the data to find markets and target activities to survive and prosper in a dynamic economy. We

will interview sampled households four times over a one year period. We will collect the data by conducting computer assisted telephone and personal interviews.

Affected Public: Individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-18093 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A-427-813; A-533-811; A-508-807; A-557-808; A-580-824; A-549-809; A-412-816; A-307-812; C-533-812; C-508-808]

Postponement of Preliminary Antidumping Duty Determinations: Certain Carbon Steel Butt-Weld Pipe Fittings from France, et al.
Postponement of Final Countervailing Duty Determinations: Certain Steel Butt-Weld Pipe Fittings From India, et al.

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (France and Israel), Vincent Kane (United Kingdom and Thailand), or Julie Anne Osgood (India, Malaysia, South Korea and Venezuela), Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-2239, (202) 482-2815 or (202) 482-0167, respectively.

POSTPONEMENT: On March 25, 1994, the Department of Commerce ("the Department") initiated antidumping duty investigations of certain carbon steel butt-weld pipe fittings from France, India, Israel, Malaysia, South Korea, Thailand, the United Kingdom and Venezuela (59 FR 14149). On June 30, 1994, the U.S. Fittings Group (petitioner) requested that the Department postpone its preliminary determinations until September 27, 1994, in order to provide the Department with sufficient time to investigate whether respondents in the investigations involving France, the United Kingdom and Thailand are selling carbon steel butt-weld pipe fittings in the home market at prices that are below the cost of production. Petitioner also requested that the other five investigations be postponed in order to keep all of the investigations on the same schedule.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930 ("the Act"), as amended, and 19 CFR 353.15(c), we find no compelling reason to deny petitioner's request and are, accordingly, postponing the dates of these preliminary determinations until no later than September 27, 1994.

On June 27, 1994, we published a notice in the **Federal Register** aligning the due date for the final countervailing duty determinations of certain carbon steel butt-weld pipe fittings from India and Israel with that of the companion antidumping duty determinations (59 FR 32955). Those determinations, originally due no later than October 24, 1994, are now due no later than December 12, 1994.

Under Article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. See 19 CFR 355.20(c)(ii). Therefore, we will instruct the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise entered on or after September 29, 1994, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the merchandise entered between June 1, 1994 (the date of publication of the preliminary countervailing duty determination, 59 FR 28337), and September 28, 1994. We will reinstate suspension of liquidation under section 703(d) of the Act if the Department issues a final affirmative countervailing duty determination and the International Trade Commission issues a final affirmative injury determination. If these conditions are met, we will require a cash deposit on

all entries of the subject merchandise equal to the rate determined in the final affirmative countervailing duty determination.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: July 19, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-18168 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-357-810, A-433-805, A-475-816, A-588-835, A-580-825, A-201-817, and A-469-806]

Initiation of Antidumping Duty Investigations: Oil Country Tubular Goods From Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Cameron Werker, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-6320 or 482-3874.

INITIATION OF INVESTIGATIONS:

The Petition

On June 30, 1994, we received seven petitions filed in proper form by: Koppel Steel Corporation, USS/Kobe Steel Company, and U.S. Steel Group (a unit of USX Corporation) with respect to Austria, Argentina, and Spain; Koppel Steel Corporation and U.S. Steel Group with respect to Japan; North Star Steel Ohio (a division of North Star Steel Corporation) with respect to Italy and Mexico; and Bellville Tube Corporation, IPSCO Steel, Inc., and Maverick Tube Corporation with respect to Korea. In accordance with Section 732(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.12 (1994), the petitioners allege that oil country tubular goods (OCTG) from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and

because the petitions were filed on behalf of the U.S. industry producing the subject merchandise. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

For purposes of these investigations, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). These petitions do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers:

7304.20.10.00, 7304.20.10.10,
7304.20.10.20, 7304.20.10.30,
7304.20.10.40, 7304.20.10.50,
7304.20.10.60, 7304.20.10.80,
7304.20.20.00, 7304.20.20.10,
7304.20.20.20, 7304.20.20.30,
7304.20.20.40, 7304.20.20.50,
7304.20.20.60, 7304.20.20.80,
7304.20.30.00, 7304.20.30.10,
7304.20.30.20, 7304.20.30.30,
7304.20.30.40, 7304.20.30.50,
7304.20.30.60, 7304.20.30.80,
7304.20.40.00, 7304.20.40.10,
7304.20.40.20, 7304.20.40.30,
7304.20.40.40, 7304.20.40.50,
7304.20.40.60, 7304.20.40.80,
7304.20.50.10, 7304.20.50.15,
7304.20.50.30, 7304.20.50.45,
7304.20.50.50, 7304.20.50.60,
7304.20.50.75, 7304.20.60.10,
7304.20.60.15, 7304.20.60.30,
7304.20.60.45, 7304.20.60.50,
7304.20.60.60, 7304.20.60.75,
7304.20.70.00, 7304.20.80.00,
7304.20.80.30, 7304.20.80.45,
7304.20.80.60, 7305.20.20.00,
7305.20.40.00, 7305.20.60.00,
7305.20.80.00, 7306.20.10.30,
7306.20.10.90, 7306.20.20.00,
7306.20.30.00, 7306.20.40.00,

7306.20.60.10, 7306.20.60.50,
7306.20.80.10, and 7306.20.80.50.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

For purposes of these initiations, no adjustments to petitioners' calculations were necessary. If it becomes necessary at a later date to consider these petitions as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated margins in determining BIA.

Argentina

Petitioners based U.S. price (USP) on a quoted transaction price of subject merchandise produced by Siderca, an OCTG producer in Argentina, and offered to a U.S. distributor for sale in the United States. The sales terms of the price quote represent a sale made prior to importation of the subject merchandise to the United States. Petitioners calculated a net USP by subtracting ocean freight and insurance, unloading and wharfage charges at the U.S. port of entry, and the applicable 7.5 percent *ad valorem* U.S. customs duty. Petitioners used U.S. import statistics for the month of offer to estimate the actual average ocean freight and insurance charges for subject merchandise subject to the price quote. Petitioners adjusted the USP by adding an 8.3 percent cascade turnover tax and an 18 percent value-added tax (VAT), both of which were calculated on the invoice price net of discounts.

Petitioners stated that information regarding Siderca's sales to third country markets was not reasonably available and, thus, they were unable to calculate home market viability. However, petitioners assumed the home market to be viable based on a published report estimating the Argentine drilling market to be the seventh most active in the world. Accordingly, petitioners based foreign market value (FMV) on home market sales. Petitioners also based FMV on constructed value (CV).

First, petitioners stated that they used a home market sales price of merchandise identical to that offered for sale in the United States. Petitioners made adjustments for differences in circumstances of sale (*i.e.*, credit) and the home market VAT. The comparison of USP to FMV results in a negative dumping margin.

Second, petitioners calculated a CV as the basis for FMV because Siderca

allegedly sold the subject merchandise at a price substantially below its cost of production (COP). COP was based on the production costs of one of the U.S. producers adjusted to reflect Siderca's production costs.

Petitioners calculated COP and CV in accordance with a methodology acceptable to the Department. Because petitioners do not have access to the foreign producer's proprietary data, petitioners utilized their own cost information and adjusted for all known differences between the U.S. and Argentine markets with publicly available information. When practicable, petitioners used public information specific to Siderca. Petitioners added an amount for the statutory minimum eight percent profit and their own packing costs to the estimated COP to derive the CV. The dumping margin of OCTG from Argentina based on a comparison of USP to CV alleged by petitioners is 41.60 percent.

The Department is initiating a COP investigation of Siderca's home market sales. Based on our analysis of petitioners' COP allegation, we find that we have reasonable grounds to believe or suspect that home market sales are being made below the COP. In their allegation, petitioners provided company-specific information, used a reasonable methodology, and demonstrated that the products they used in their calculations were representative of the broader range of OCTG products sold by Siderca in Argentina. If, during the course of the investigation, Siderca does not become a respondent, this COP investigation will be terminated with no further action from the Department.

The Department will not initiate a COP investigation for those companies/exporters where petitioners do not provide a company-specific allegation.

Austria

Petitioners based USP on a sale made by a U.S. trading company related to Voest-Alpine, an Austrian producer of the subject merchandise, to an unrelated U.S. customer. Petitioners deducted from USP amounts for international shipment charges calculated based on U.S. Customs data for shipments of subject merchandise during the second half of 1993, and the applicable eight percent *ad valorem* U.S. customs duty.

Petitioners demonstrated that the home market is not viable. Specifically, petitioners illustrated that the home market shipments of Voest-Alpine expressed as a percentage of exports to third country markets is substantially less than five percent. Therefore,

petitioners first based FMV on third country sales. Petitioners stated that with regards to similarity of merchandise, volume of sales, and similarity of the Russian OCTG market relative to the U.S. OCTG market, Russia is the appropriate third country market on which to calculate FMV.

Petitioners first based FMV on the bid of Voest-Alpine, an Austrian producer of OCTG, to supply subject merchandise to a Russian oil production association. The Austrian producer's offering price was contemporaneous to the U.S. sales price on which petitioners based USP. To calculate an ex-factory price, petitioners deducted inland freight and made a circumstance-of-sale adjustment for the differences in credit expenses. Based on a comparison of USP to FMV, the dumping margin alleged by petitioners is 16.5 percent.

Petitioners also based FMV on CV because Voest-Alpine allegedly sold the subject merchandise to Russia at prices below the COP. COP was based on the production costs of one of the U.S. producers, adjusted to reflect Voest-Alpine's production costs.

Petitioners calculated COP and CV in accordance with a methodology acceptable to the Department. Because petitioners do not have access to the foreign producer's proprietary data, petitioners utilized their own cost information and adjusted for all known differences between the U.S. and Austrian markets with publicly available information. When practicable, petitioners used public information specific to Voest-Alpine. Petitioners added to the estimated manufacturing costs an amount for the statutory minimum ten percent selling, general, and administrative (SG&A) expense. Petitioners then added an amount for the statutory minimum eight percent profit and their own packing costs to the estimated COP to derive the CV. Based on a comparison of USP to CV, the dumping margin alleged by petitioners is 41.7 percent.

The Department is initiating a COP investigation of Voest-Alpine's third country sales to Russia. Based on our analysis of petitioners' COP allegation, we find that we have reasonable grounds to believe or suspect that sales to Russia are being made below the COP. In their allegation, petitioners provided company-specific information, used a reasonable methodology, and demonstrated that the products used in their calculations were representative of the broader range of OCTG products sold by Voest-Alpine to Russia. This COP investigation will be terminated automatically if, during the course of the investigation, any one of the

following conditions is met: Voest-Alpine does not become a respondent; the home market is determined to be viable; or Russia is determined not to be an appropriate third country market on which to base FMV.

The Department will not initiate a COP investigation for those companies/exporters where petitioners do not provide a company-specific allegation.

Italy

Petitioner based USP on quoted transaction prices of subject merchandise produced by the Italian producer, Dalmine, and offered to U.S. distributors for sale in the United States during the first quarter of 1994. These price quotes represent sales made prior to importation of subject merchandise to the United States. Petitioner calculated a net USP by subtracting the foreign inland freight from the mill to the port of export, loading and wharfage charges at the port of export, ocean freight and insurance, U.S. terminal and handling fees, and the applicable 6.2 percent *ad valorem* U.S. customs duty. Petitioner used U.S. import statistics for the first quarter of 1994 to estimate the actual average ocean freight and insurance charges.

Petitioner stated that it based FMV on CV because it was unable to obtain home market or third country prices. Because Dalmine's production costs were unavailable to petitioner, petitioner used the production costs of a U.S. producer, adjusted to reflect Dalmine's production costs.

Petitioner calculated CV in accordance with a methodology acceptable to the Department. Because petitioner did not have access to the foreign producer's proprietary data, petitioner utilized its own cost information and adjusted for all known differences between the U.S. and Italian markets with publicly available information. When practicable, petitioner used public information specific to Dalmine. Petitioners added to the estimated manufacturing costs an amount for the statutory minimum ten percent SG&A expense. Petitioner then added an amount for the statutory minimum eight percent profit and its own packing cost to derive the CV. The range of dumping margins based on a comparison of USP to CV alleged by petitioner is 41.60 percent to 49.78 percent.

Japan

For Japan, petitioners based USP on two price offers for seamless OCTG tubing manufactured by two Japanese producers, Sumitomo and Nippon Steel, to unrelated parties for purchase prior to

importation into the United States. Petitioners demonstrated that the products for which these offers were made, are representative of OCTG products imported into the United States from Japan in terms of type and manufacturing method.

Petitioners calculated a net USP by deducting international shipment charges such as ocean freight and marine insurance; U.S. inland freight; U.S. handling charges including loading; U.S. port charges such as unloading and wharfage; and the applicable 7.5 percent *ad valorem* U.S. customs duty. Petitioners used the official U.S. import statistics for the period of time corresponding to the dates of the USP offers to estimate the actual ocean freight and marine insurance charges.

Petitioner calculated two FMVs. First, petitioners used third country sales prices of merchandise allegedly comparable to that offered for sale in the United States. Specifically, petitioners used Japanese sales contract prices for OCTG products exported to the People's Republic of China (PRC) obtained from a Chinese trading company, adjusted to reflect differences in circumstances of sale (*i.e.*, credit) between the PRC and U.S. markets.

Before resorting to third country price data, petitioners demonstrated that the Japanese home market was not viable to serve as the basis of FMV. Specifically, petitioners compared domestic and third country OCTG shipment data for the period January through November 1993, and found that home market shipments expressed as a percentage of third country shipments is substantially less than five percent.

Petitioners claimed that the PRC constituted the appropriate third country market to serve as the basis for FMV for each Japanese producer based on the similarity of the merchandise, the volume of sales and the similarity of the Chinese OCTG market relative to the U.S. OCTG market. The range of dumping margins of OCTG from Japan based on a comparison of USP to FMV alleged by petitioners is 10.4 percent to 24.8 percent.

Second, petitioners calculated a CV as the basis for FMV because they claimed that the Japanese producers' third country sales are being made at prices below the COP. Because petitioners could not obtain actual production costs for Sumitomo and Nippon Steel, they used U.S. production costs, adjusted to reflect production costs in Japan.

Petitioners calculated COP and CV in accordance with a methodology acceptable to the Department. Because petitioners do not have access to the

foreign producers' proprietary data, petitioners utilized their own cost information and adjusted for all known differences between the U.S. and Japanese markets with publicly available information. When practicable, petitioners used public information specific to Sumitomo and Nippon Steel. Petitioners added an amount for the statutory minimum eight percent profit and their own packing costs to the estimated COP to derive the CV. The range of dumping margins of OCTG from Japan based on a comparison of USP to CV alleged by petitioners is 36.5 percent to 44.2 percent.

The Department is initiating a COP investigation of Sumitomo's and Nippon Steel's third country sales to the PRC. Based on our analysis of petitioners' COP allegation, we find that we have reasonable grounds to believe or suspect that sales to the PRC are being made below the COP. In their allegation, petitioners provided company-specific information, used a reasonable methodology, and demonstrated that the products used in their calculations were representative of the broader range of OCTG products sold by Sumitomo and Nippon Steel to the PRC. This COP investigation will be terminated automatically if, during the course of the investigation, any one of the following conditions is met: Sumitomo or Nippon Steel do not become respondents; the home market is determined to be viable; and the PRC is determined not to be an appropriate third country market on which to base FMV.

The Department will not initiate a COP investigation for those companies/exporters where petitioners do not provide a company-specific allegation.

Korea

Petitioners based USP on the sales price of two Korean-produced OCTG tubing products to a U.S. distributor for sale to end users. Petitioners made adjustments for ocean freight, port and handling charges, the 1.9 percent *ad valorem* U.S. Customs duty, applicable discounts and distributor mark-up, and end finishing costs.

Petitioners assumed that the Korean home market was not viable as the basis for FMV. Petitioners based this assumption on a report reviewing worldwide drilling activity, which indicated that no rigs are expected to be in operation in Korea during 1994. Thus, petitioners assumed that there is no OCTG market in Korea.

Petitioners selected Canada as the appropriate third country market for calculating FMV based on the volume of

sales and the similarity of the Canadian market relative to the United States. Additionally, Canada was the only third country for which pricing data was available to petitioners. Specifically, petitioners based FMV on Canadian distributor prices to end-users. Petitioners made adjustments for inland freight, port and handling charges, ocean freight, Canadian import duties, distributor mark-up, and end finishing costs.

The range of dumping margins of OCTG from Korea based on a comparison of USP to FMV alleged by petitioners is 2.68 percent to 12.23 percent.

Mexico

Petitioner based USP on two price quotes for sales of OCTG manufactured by TAMSA, a Mexican producer of OCTG, and offered for sale in the United States. Petitioner adjusted the first price quote for foreign port and loading fees, a Mexican Customs clearance fee, ocean freight and insurance, U.S. import duties, U.S. terminal and unloading fees and other movement expenses, distributor mark-up, and sales agent fees. Petitioner made adjustments to the second price quote for foreign inland freight, Mexican Customs processing fees, U.S. customs duties, U.S. terminal and unloading fees and other movement charges, and sales agent fees.

Petitioner was unable to obtain home market sales information and, therefore, was unable to conduct a home market viability test. However, petitioner assumed the home market to be viable based on a published report estimating the Mexican drilling market to be one of the most active in the world given the number of drilling rigs in operation.

Petitioner based FMV on CV because it stated that it was unable to obtain home market prices. Petitioner used a U.S. producer as a surrogate for the Mexican producer, TAMSA, to determine the production costs of the subject merchandise.

Petitioner calculated CV in accordance with a methodology acceptable to the Department. Because petitioner did not have access to the foreign producer's proprietary data, petitioner utilized its own cost information and adjusted for all known differences between the U.S. and Mexican markets with publicly available information. When practicable, petitioner used public information specific to TAMSA. Petitioner added an amount for the statutory minimum eight percent profit and its own packing cost to derive the CV.

The range of dumping margins of OCTG from Mexico based on a comparison of USP to CV alleged by petitioner is 40.44 percent to 45.22 percent.

Spain

Petitioners based USP on average U.S. Customs values for seamless carbon steel OCTG tubing derived from statistics published by the U.S. Census Bureau for the months of August and November 1993, claiming that actual U.S. sales price information was unobtainable. Petitioners also claimed that seamless carbon steel OCTG tubing products are representative of OCTG imports from Spain produced by Tubos Reunidos, a Spanish producer of the subject merchandise which allegedly accounted for all OCTG imports from Spain during the period April 1993 through March 1994, the most recent 12-month period for which data was available to petitioners.

Petitioners calculated FMV based on CV. Prior to resorting to CV, petitioners demonstrated that the home market for Tubos Reunidos was not viable. Specifically, petitioners compared estimated Spanish consumption in 1993 and Spanish export statistics for January through August 1993, and found that home market shipments as a percentage of exports to third country markets was substantially less than five percent. Petitioners also stated that information on Tubos Reunidos' sales of OCTG products to third country markets was not reasonably available despite their efforts to obtain such information.

Therefore, in the absence of a viable home market and comparable third country sales, petitioners based FMV on CV. Because petitioners could not obtain actual production costs for Tubos Reunidos, they used U.S. production costs, adjusted to reflect production costs in Spain.

Petitioners calculated CV in accordance with a methodology acceptable to the Department. Because petitioners do not have access to the foreign producer's proprietary data, petitioners utilized their own cost information and adjusted for all known differences between the U.S. and Spanish markets with publicly available information. When practicable, petitioners used public information specific to Tubos Reunidos. Petitioners added an amount for the statutory minimum eight percent profit and their own packing costs to the estimated COP to derive the CV.

The range of dumping margins for OCTG from Spain based on a comparison of USP to CV alleged by

petitioners is 5.3 percent to 18.6 percent.

Initiation of Investigations

We have examined the petitions on OCTG from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain and have found that the petitions meet the requirements of section 732(b) of the Act and 19 CFR 353.12. Therefore, we are initiating antidumping duty investigations to determine whether imports of OCTG from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determinations by the International Trade Commission

The International Trade Commission (ITC) will determine by August 15, 1994, whether there is a reasonable indication that imports of OCTG from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain are materially injuring, or threaten material injury to, a U.S. industry. Negative ITC determinations will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 20, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-18170 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-05-P

[C-433-806, C-475-817]

Notice of Initiation of Countervailing Duty Investigations: Oil Country Tubular Goods ("OCTG") From Austria and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (Austria) and Kristin Heim (Italy), Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-2239 and (202) 482-3798, respectively.

INITIATION:

The Austria Petition

On June 30, 1994, Koppel Steel Corporation; U.S. Steel Group, a unit of

USX Corporation; and USS/Kobe Steel (hereinafter, "petitioners") filed with the Department of Commerce ("the Department") a countervailing duty petition on behalf of the United States industry producing OCTG. Co-petitioners in this investigation are North Star Steel Company; IPSCO Steel, Inc.; and Maverick Tube Corporation. In accordance with section 702(b) of the Tariff Act of 1930, as amended ("the Act"), petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Austria receive countervailable subsidies.

The Italy Petition

On June 30, 1994, Ipsco Steel, Inc. and Maverick Tube Corporation (herein after, "petitioners") filed with the Department of Commerce ("the Department") a countervailing duty petition on behalf of the United States industry producing OCTG. Co-petitioners in this investigation are North Star Steel Company; Koppel Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and USS/Kobe Steel Company. In accordance with section 702(b) of the Act, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Italy receive countervailable subsidies.

Injury Test

Because Austria and Italy are "countries under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Austria and Italy materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioners have stated that they have standing to file the petition because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and that they have filed the petition on behalf of the U.S. industry producing the like product. If any interested party, as described in sections 771(9)(C), (D), (E) or (F), wishes to register support for, or opposition to, this petition, such party should file written notification with the Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Scope of the Investigation

The products covered by these investigations are OCTG, which are hollow steel products of circular cross-

section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes). These investigations do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to these investigations are currently classified in the Harmonized Tariff Schedule ("HTS") under item numbers:

7304.20.10.00, 7304.20.10.10,
7304.20.10.20, 7304.20.30.80,
7304.20.10.30, 7304.20.10.40,
7304.20.10.50, 7304.20.10.60,
7304.20.10.80, 7304.20.20.00,
7304.20.20.10, 7304.20.20.20,
7304.20.20.30, 7304.20.20.40,
7304.20.20.50, 7304.20.20.60,
7304.20.20.80, 7304.20.30.00,
7304.20.30.50, 7304.20.30.60,
7304.20.30.80, 7304.20.40.00,
7304.20.40.10, 7304.20.40.20,
7304.20.40.30, 7304.20.40.40,
7304.20.40.50, 7304.20.40.60,
7304.20.40.80, 7304.20.50.10,
7304.20.50.15, 7304.20.50.30,
7304.20.50.45, 7304.20.50.50,
7304.20.50.60, 7304.20.50.75,
7304.20.60.50, 7304.20.60.60,
7304.20.60.75, 7304.20.70.00,
7304.20.80.00, 7304.20.80.30,
7304.20.80.45, 7304.20.80.60,
7305.20.20.00, 7305.20.40.00,
7305.20.60.00, 7305.20.80.00,
7306.20.10.30, 7306.20.10.90,
7306.20.20.00, 7306.20.30.00,
7306.20.40.00, 7306.20.60.10,
7304.20.30.10, 7304.20.30.20,
7304.20.30.30, 7304.20.30.40,
7304.20.60.10, 7304.20.60.15,
7304.20.60.30, 7304.20.60.45,
7306.20.60.50, 7306.20.80.10,
7306.20.80.50

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petitions on OCTG from Austria and Italy and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of OCTG from Austria and Italy receive subsidies.

A. Austria

We are including in our investigation the following programs which we believe, based on the petition and the record in the *Countervailing Duty Investigation of Certain Steel Products from Austria (Certain Steel)*, to have provided subsidies to producers of the subject merchandise in Austria:

- 1 *Equity (Capital) Infusions to Voest-Alpine AG (VAAG): 1983, 1984, and 1986*
- 2 *Pre-Restructuring Grants to VAAG*
- 3 *Assumption of Losses at Restructuring by VAAG*
- 4 *Equity Infusions to certain VAAG subsidiaries under Law 298/1987*
- 5 *Post-Restructuring Equity Infusions to VAAG*
- 6 *Post-Restructuring Grants to VAAG*
- 7 *Post-Restructuring Grants to Voest-Alpine Stahl AG (VAS)*

Allegation of Upstream Subsidies

Petitioners have alleged that Kindberg, the producer of OCTG, receives upstream subsidies through its purchase of steel blooms from a related company, Voest-Alpine Donawitz GmbH (Donawitz). In order to initiate on an upstream subsidy allegation, the Department's regulations require that petitioners submit "factual information reasonably available" regarding the following: 1) domestic subsidies that the government provides to the upstream supplier; 2) the competitive benefit the subsidies bestow upon the subject merchandise; and, 3) the significant effect the subsidies have on the cost of producing the subject merchandise (19 CFR 355.12(b)(8)). Petitioners have met the three criteria set forth above as described below.

1. Domestic Subsidies

In order to satisfy the first criterion, petitioners have alleged that Donawitz benefitted from the programs outlined above. We have analyzed these programs in accordance with section 702(b) of the Act and found that all programs meet the requirements stated therein.

2. Competitive Benefit

For the purposes of initiation, in determining whether petitioners have provided sufficient evidence of competitive benefit, the Department will determine whether a petitioner has provided a reasonable basis to believe or suspect that:

(i) The supplier of the input product controls the producer of the merchandise, the producer controls the supplier, or the supplier and the producer are both controlled by a third person;

(ii) The price for the input product is lower than the price that the producer otherwise would pay for the input product in obtaining it from an unsubsidized seller in an arm's length transaction; or

(iii) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the merchandise" (See, Section 355.45(b) of the Department's proposed regulations (54 FR 23366, 23383 (May 31, 1989) (*Proposed Regulations*)).

It is clear from the petition and the record in *Certain Steel* that the condition expressed in (i) has been met. Since 1987, Kindberg and Donawitz have been separately incorporated and, during this time, they have been either both controlled by the same third party or Donawitz controlled Kindberg.

3. Significant Effect

The Department considers that subsidies to the upstream supplier may have a significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the total production costs of the merchandise accounted for by the input product is equal to, or greater than, one percent (see, *Proposed Regulations* Section 355.45(b)).

Petitioners have provided calculations with respect to subsidies received by Donawitz for the programs listed above. The alleged benefits are 10.64 percent. Petitioners additionally provided information regarding the percentage that steel blooms account for in the cost of producing OCTG. The alleged benefit to Donawitz multiplied by the percentage of the cost of production accounted for by the input exceeds one percent. Therefore, petitioners have provided information sufficient to support a claim of significant effect.

Therefore, we are initiating an upstream subsidy investigation with respect to any subsidies received by Donawitz.

We invite interested parties to provide comments with respect to the

methodological approach that the Department plans to follow in its investigation of subsidies provided on the production of OCTG in Austria.

B. Italy

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Italy:

1. *1988/89 Equity Infusion*
2. *Subsidized Loans under Law 675/77*
3. *Grants under Law 193/84*
4. *Retraining Grants*
5. *Preferential Export Financing under Law 227/77*
6. *Exchange Rate Guarantee Program under Law 796/76*
7. *European Coal and Steel Community ("ECSC") Loans and Interest Rebates*

We are not including the following programs alleged to be benefitting producers of the subject merchandise in Italy:

1. "Indirect" Equity Infusion Into Dalmine

Petitioners have named Dalmine S.p.A. ("Dalmine") and Acciaierie Tubificio Arvedi S.p.A. ("Arvedi") as the producers in Italy of the subject merchandise. The alleged receipt of an "indirect" infusion concerns only Dalmine; petitioners do not allege that Arvedi received any such infusion.

Petitioners claim that Dalmine owned 51 percent of a subsidiary, Tubificio Dalmine Italsider S.p.A. ("Tubificio"), until 1989. The remaining 49 percent was owned by Dalmine's parent company ILVA S.p.A. ("ILVA"), which is a government-owned steel producer. In 1989, Dalmine sold its shares in Tubificio to ILVA. Petitioners allege that in return, Dalmine received a cash payment from ILVA which should be treated as an "indirect" equity infusion. The reasons cited by petitioners are that (1) Tubificio was essentially a worthless company because it made losses in the three years immediately prior to the sale, and (2) the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA.

In previous cases involving the Italian steel industry, we have treated capital infusions into unequityworthy companies by government-owned holding companies such as Finsider S.p.A. ("Finsider") and the Istituto per la Ricostruzione Industriale ("IRI") as countervailable equity infusions. However, in those cases, the recipient companies were offering their own shares in exchange for cash. (See, e.g., *Final Affirmative Countervailing Duty Determination: Grain-Oriented*

Electrical Steel from Italy, ("Electrical Steel"), 59 FR 18357 (April 18, 1994).)

In the instant case, however, Dalmine sold shares in its subsidiary, Tubificio, to ILVA, Dalmine's parent and the other owner of Tubificio. ILVA's holding in Dalmine did not increase (absolutely or relatively) as a result of this transaction. Therefore, we do not view this as a direct or indirect equity infusion into Dalmine. Moreover, ILVA is not a holding company like IRI or Finsider, but an operating company. While the Department found in *Electrical Steel* and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, ("Certain Steel from Italy"), 58 FR 37327 (July 9, 1993), that ILVA benefitted from subsidies, those subsidies were allocated to ILVA S.p.A.'s operations and not to those of its subsidiaries. Beyond their simple claim that the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA, petitioners have provided no basis for believing that ILVA was channelling government funds to Dalmine.

On this basis, we are not including the "indirect" equity infusion in the investigation.

2. Secured and Unsecured Loans From Italian Banks to Dalmine

Petitioners maintain that Dalmine was uncreditworthy from 1978 through 1992. According to petitioners, all secured and unsecured loans obtained by Dalmine from Italian banks during these years are, therefore, countervailable. Petitioners state that, while they cannot outline the terms of the financing provided, the loans are countervailable because they were provided at interest rates lower than the rates that should have been charged to an uncreditworthy company.

Petitioners have not specified under which laws or programs the secured and unsecured loans are being provided, nor have petitioners provided information as to how this funding is specific to the steel industry (see the petition requirements in section 355.12(b)(7) of the Department's regulations).

Regarding Arvedi, petitioners have not alleged that the company received countervailable benefits from secured and unsecured loans, nor have petitioners alleged that Arvedi was uncreditworthy.

For these reasons, we are not including the secured and unsecured loans in our investigation.

3. Debt Forgiveness to Dalmine in Connection With the 1981 and 1988 Restructuring Plans

Petitioners claim that in *Certain Steel from Italy*, the Department found that Finsider (the government-owned holding company for the steel industry until 1989) benefitted from government assumption of debt in connection with the 1981 and 1988 restructurings of the state-owned steel industry. Because Dalmine was a subsidiary of Finsider in those years, petitioners allege that Dalmine benefitted from the debt forgiveness granted to Finsider in connection with these restructurings. Petitioners have not alleged that Arvedi benefitted from either instance of debt forgiveness provided to Finsider.

Regarding the 1981 debt forgiveness, the Department established in *Certain Steel from Italy* that Finsider assumed the debts of its subsidiary Italsider which we treated as a countervailable subsidy to Italsider. In the present case, however, petitioners have not provided any evidence that Dalmine or Arvedi benefitted from this debt forgiveness, or that Finsider forgave Dalmine's or Arvedi's debts.

With respect to the 1988 debt forgiveness, we found in *Certain Steel from Italy* that a portion of Finsider's liabilities was forgiven in connection with another restructuring of the state-owned steel industry undertaken from 1988-1990. We treated this forgiveness as a countervailable subsidy to ILVA, which was the respondent company in that investigation. However, in *Electrical Steel*, we focused our investigation on subsidies provided directly to the producer of the subject merchandise, rather than subsidies received by its parent company. Therefore, we did not treat the debt forgiveness provided to Finsider as a countervailable benefit in *Electrical Steel*.

In this case, petitioners have not shown that any debt forgiveness was provided directly to Dalmine or Arvedi, or that a portion of the debt forgiven to Finsider in 1988 can be attributed to Dalmine or Arvedi. On this basis, we are not including the 1981 or 1988 instances of debt forgiveness provided to Finsider in our investigation.

4. European Investment Bank ("EIB") Loans to Dalmine

Petitioners maintain that Dalmine received loans from the EIB in the early 1980s. Petitioners do not claim that Arvedi received EIB loans. While petitioners do not allege that the EIB loan program itself represents a countervailable subsidy, they contend

that Dalmine received EIB loans at interest rates below the rates that should have been applied to an uncreditworthy company.

The Department has previously found EIB loans to be not countervailable (see, e.g., *Certain Steel Products from Belgium*, 58 FR 37273 at 37285 (July 9, 1993)). Because petitioners have not provided any new information that would cause us to change our earlier determination, we are not including the EIB loans in our investigation.

5. European Regional Development Fund ("ERDF") Subsidies

Petitioners claim that some loans obtained by Dalmine from the EIB and ECSC may have been subsidized by the ERDF, but have not presented any evidence in support of this allegation. Petitioners do not allege that Arvedi received ERDF subsidies.

At verification of the responses submitted by the European Community ("EC") in *Certain Steel from Italy*, we found that ERDF grants are provided to regions whose development is lagging behind and to regions seriously affected by industrial decline. In addition, we found that rural regions with certain development problems are eligible for ERDF aid. In the instant case, however, petitioners have not demonstrated that Dalmine or Arvedi have production facilities in the regions that are eligible for ERDF assistance. Moreover, there is no evidence in the petition or in previous investigations that ERDF grants are used to subsidize ECSC or EIB loans. For these reasons, we are not including the ERDF grants in our investigation.

6. Early Retirement Benefits for Dalmine Under Law 193/84

Petitioners allege that Dalmine has used the early retirement provisions under Law 193/84 and that this program provided a countervailable subsidy to Dalmine. Petitioners request that the Department treat benefits under Law 193/84 as non-recurring grants. Petitioners have not provided any details regarding Arvedi's use of early retirement.

Dalmine's Annual Reports show that the company used early retirement pursuant to Law 193/84 in 1984 through 1987. In *Certain Steel from Italy*, the Department found early retirement, including the program provided under Law 193/84, to be countervailable. Because early retirement is a program we typically consider to be recurring (see the *General Issues Appendix to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 at 37226 (July 9, 1993)), we countervailed the

program as a recurring grant in *Certain Steel from Italy*.

At verification in *Electrical Steel*, Italian government officials explained that there were two laws providing for early retirement in 1992: Law 223/91 and Law 406/92. We found early retirement under Law 223/91 to be not countervailable in our final determination. We did not make a determination with respect to any other early retirement laws, including Law 193/84, because these laws were not used by the *Electrical Steel* respondent in the period of investigation. Petitioners have requested that, because the Department did not make a determination with respect to Law 193/84 in *Electrical Steel*, we should investigate whether Dalmine used early retirement under Law 193/84. However, information collected in *Electrical Steel* suggests that Law 193/84 has been superseded and petitioners have not presented any evidence to the contrary. There is no evidence in the petition that Dalmine used early retirement under Law 193/84 after 1987. Rather, petitioners want us to change our practice and treat early retirement as a non-recurring benefit.

The last year for which we have been able to establish that Dalmine used early retirement is 1991. The Annual Report for that year shows that Dalmine used the early retirement program under Law 223/91, which we found to be not countervailable in *Electrical Steel*. Moreover, petitioners have not presented any information that would cause us to change our earlier determination that early retirement, if found countervailable, should be treated as a recurring grant. For these reasons, we are not including early retirement in our investigation.

7. Grants to Dalmine From the Cassa per il Mezzogiorno

Petitioners allege that Dalmine has received grants from the Cassa per il Mezzogiorno ("Cazmez") which are directed to southern Italy. In *Certain Steel*, we found such grants to be countervailable because they were provided on a regional basis. Petitioners are not aware of any Dalmine plants outside of Bergamo, which is in the North, but point to Dalmine's Annual Reports which show that the company received Cazmez grants in the early and mid-1980s. Based on this finding, petitioners state that Dalmine must have a plant located in the South. Therefore, petitioners request that the Department, in addition to the Cazmez grants, investigate a large number of other subsidy programs directed to the South,

should we find that Dalmine maintains production facilities there.

Regarding Arvedi, petitioners have not alleged that the company received Cazmez grants or that it benefitted from any other subsidy programs directed to the South. On the contrary, petitioners maintain that Arvedi is located in Cremona which is in the north of Italy.

From Dalmine's Annual Reports, we have found that the company formerly had two production facilities in the South, both of which produced welded pipe. Apart from these two plants, which were spun off in 1989, we have not found any other production facilities in the South. Because both the plants in the South produced welded pipe, which is not included in the scope of this investigation, we are not including the Cazmez grants or any other programs directed to the South in our investigation.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by August 15, 1994, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Austria and Italy of OCTG. Any ITC determination which is negative will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: July 20, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510-DS-P

[A-570-829; A-580-823]

Postponement of Final Antidumping Duty Determinations: Saccharin from the People's Republic of China (PRC), et al.

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (PRC) and Thomas McGinty (Korea), Office of Countervailing

Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2239 and (202) 482-5055, respectively.

POSTPONEMENT OF FINAL DETERMINATION: On June 16, 1994 (59 FR 32412, 32416, June 23, 1994), the Department of Commerce (the Department) issued preliminary determinations in the antidumping duty investigations of saccharin from the PRC and Korea.

On July 1, 1994, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), the respondents in the PRC investigation, Shanghai KJ Import and Export Corporation and Suzhou Cereals Import and Export Corporation, requested that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. On July 6, 1994, in accordance with section 735(a)(2)(B) of the Act the petitioner in the Korean investigation, PMC Specialties Group, also requested that the Department postpone its final determination in that investigation until 135 days after the date of publication of the preliminary determination. Under section 735(a)(2) of the Act and § 353.20(b) of the Department's regulations (19 CFR 353.20(b)) if, subsequent to the preliminary determination, the Department receives a request for postponement of the final determination from the party adversely affected by the determination, the Department will, absent compelling reasons for denial, grant the request. Accordingly, we are postponing our final determinations in these investigations until November 7, 1994.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than September 23, 1994, and rebuttal briefs, no later than September 28, 1994. We have received requests for a hearing by the petitioner and respondents in the PRC investigation and the petitioner in the Korea investigation and, therefore, under 19 CFR 353.38(f), we will hold public hearings to allow parties to comment on arguments raised in the case or rebuttal briefs. Tentatively, the hearing for the PRC investigation will be held on September 30, 1994, at 10:00 a.m. and the hearing for the Korea investigation will be held on September 30, 1994, at 2:00 p.m. at the U.S.

Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: July 19, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-18169 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-23-805]

Correction of Ministerial Errors in Preliminary Antidumping Duty Determination: Silicomanganese from Ukraine

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Greg Thompson or Donna Berg, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2336 or (202) 482-0114, respectively.

AMENDED PRELIMINARY DETERMINATION:

On June 17, 1994, we disclosed our calculations for the preliminary determination to counsel for petitioners. On June 20, 1994, and July 8, 1994, we received timely submissions from petitioners alleging ministerial errors in the Department of Commerce's (Department) preliminary determination calculations. (For specific details of these allegations and our analysis of them, see Memoranda from Richard W. Moreland to Barbara R. Stafford dated June 27, 1994, and July 14, 1994).

Petitioners alleged that the Department made certain "ministerial errors" with respect to calculating usage figures for Nikopol Ferroalloys Plant, one of the respondents in this investigation. We agree in part with these allegations, and in accordance with procedures set forth in the proposed regulations, we are amending Ukraine's preliminary dumping margin because the corrections represent a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original (erroneous) preliminary determination. See § 353.15(g)(4)(ii) of the Department's

proposed regulations, 57 FR 1131 (January 10, 1992). The corrected dumping margin for Ukraine is 163.00 percent.

This notice is published pursuant to procedures set forth in the Department's proposed regulations, § 353.15(g)(3), 57 FR 1131 (January 10, 1992).

Dated: July 19, 1994.

Barbara R. Stafford,
Acting Assistant Secretary for Import Administration.

[FR Doc. 94-18167 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 062994F]

Endangered Species; Permits

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

ACTION: Issuance of a Third Modification to Permit 726 (P45I).

On May 20, 1994, notice was published (59 FR 26481) that an application had been filed by Dr. Boyd Kinard of the University of Idaho Department of Fish and Wildlife, for a third modification to Permit 726 (P45I) to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific research activities, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on July 6, 1994, as authorized by the provisions of the ESA, NMFS issued a third modification to Permit Number 726 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of the modification; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, modifications, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226 (301-713-2322); and

Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508-281-9250).

Dated: July 6, 1994.

William W. Fox, Jr., Ph.D.,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 94-18152 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 070194A]

Endangered Species; Permits

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

ACTION: Issuance of an Amendment to Modification 3 of Scientific Research and Enhancement Permit 817 (P45K).

Notice is hereby given that on July 6, 1994, as authorized by the provisions of the Endangered Species Act (ESA), NMFS issued the first amendment to Modification 3 of Permit Number 817 (P45K) to Stanley D. Smith of the National Biological Survey for an increased take of listed Snake River fall chinook salmon and listed Snake River spring/summer chinook salmon for scientific research and enhancement purposes, subject to certain conditions set forth therein.

Issuance of this amendment, as required by the ESA, was based on a finding that the permit and modifications, as amended: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which is/are the subject of the permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This amendment was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226 (301-713-2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: July 6, 1994.

William W. Fox, Jr., Ph.D.,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 94-18153 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

July 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated June 21, 1994, the Governments of the United States and the Sultanate of Oman agreed to amend their Bilateral Textile Agreement, effected by exchange of notes dated December 3, 1993 and January 15, 1994, to establish specific limits for certain textile products for two consecutive one-year periods, beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period January 1, 1994 through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65160, published on December 13, 1993; and 59 FR 25894, published on May 18, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 20, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on July 27, 1994, you are directed to cancel the directive dated May 10, 1994, which directed you to count imports for consumption and withdrawals from warehouse for consumption of cotton and man-made fiber textile products in Categories 334/634 and 335/635, produced or manufactured in Oman and exported during the period April 26, 1994 through April 25, 1995.

This directive amends, but does not cancel, the directive issued to you on December 6, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 27, 1994, you are directed to establish limits for textile products in the following categories, pursuant to the Memorandum of Understanding dated June 21, 1994 between the Governments of the United States and the Sultanate of Oman:

Category	Twelve-month restraint limit ¹
334/634	150,000 dozen.
335/635	200,000 dozen.

¹The limits have not been adjusted to account for any imports exported after December 31, 1993.

Textile products in Categories 334/634 and 335/635 which have been exported to the United States prior to January 1, 1994 shall not be subject to this directive.

For the import period January 1, 1994 through April 30, 1994, you are directed to charge the following amounts to the categories listed below:

Category	Amount to be charged
334	9,868 dozen.
335	1,418 dozen.
634	0-
635	4,615 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-18059 Filed 7-25-94; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of a New Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Lebanon

July 21, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Lebanon reached agreement, effected by exchange of notes dated September 16, 1993 and June 6, 1994, to establish an export visa arrangement for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Lebanon and exported from Lebanon on and after August 1, 1994. Goods exported during the period August 1, 1994 through September 1, 1994 shall not be denied entry for lack of a visa. All goods exported after September 1, 1994 must be accompanied by a visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993).

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Export Visa Arrangement, effected by exchange of notes dated September 16, 1993 and June 6, 1994, between the Governments of the United States and the Republic of Lebanon; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 1, 1994, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, including merged and part categories, produced or manufactured in Lebanon and exported from Lebanon on and after August 1, 1994, for which the Government of the Republic of Lebanon has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement, the entire category(s) or part category(s) shall be included in the coverage of this arrangement on an agreed effective date. Goods exported during the period August 1, 1994 through September 1, 1994 shall not be denied entry for lack of a visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Lebanon is "LB"), and a six digit numerical serial number identifying the shipment; e.g., 4LB123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature and printed name of the issuing official of the Government of the Republic of Lebanon.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTS) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340-510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be

accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348"). If, however, a merged quota category such as 340/640 has a quota sublimit on Category 340, then there must be a "Cat. 340" visa for the shipment if it includes Category 340 merchandise.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company actually involved in the manufacturing process of the textile products

covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa must be obtained from the Government of the Republic of Lebanon, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of the Republic of Lebanon, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Lebanon has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a visa waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial

sample shipments valued at U.S.\$250 or less, do not require a visa for entry.

A facsimile of the visa stamp is enclosed with this letter. Officials of the Government of the Republic of Lebanon authorized to issue export visas are Michel Ayoub, Agnes Ghosn and Georges Khoury.

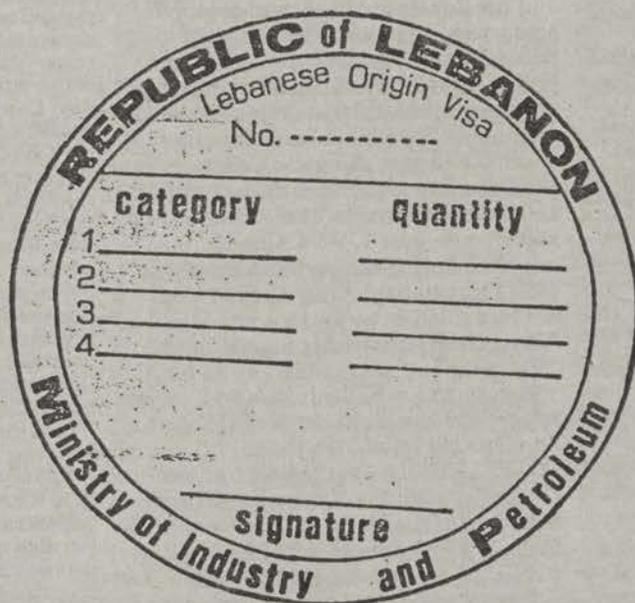
The actions taken concerning the Government of Lebanon with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-F



Textile Visa Stamp of the Republic of Lebanon

[FR Doc. 94-18166 Filed 7-25-94; 8:45 am]
BILLING CODE 3510-DR-C

DEPARTMENT OF DEFENSE

Office of the Secretary of the Army

Notice of Intent, Environmental Impact Statement for Wastewater Effluent Disposal at Schofield Barracks and Wheeler Army Airfield, Oahu, HI

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is for an Environmental Impact Statement (EIS) to assess the effects of implementing a system to dispose of wastewater effluent from the Schofield Barracks Wastewater Treatment Plant. The plant currently treats approximately 2.8 million gallons of sewage per day.

The proposed system consists of treatment facilities, reservoirs, pumping stations, pipelines, and monitoring equipment. The areas considered for

irrigation include golf courses, open fields, and undeveloped land, on and off Schofield Barracks/Wheeler Airfield. Other options may include no action, effluent disposal at various irrigation sites, stream disposal, ocean disposal, underground injection wells, and advanced treatment of effluent for disposal.

Potentially significant environmental and social concerns include possible impacts on archaeological/historic resources; groundwater resources; nearby streams; the ecosystems at the

irrigation sites; public health; economic stimulation from construction expenditures; and negative public perceptions concerning the proposed action.

Public involvement will consist of public scoping meetings following the processing of a notice of the project through the Areawide Clearinghouse; advertising the Notice of Intent in the State of Hawaii Office of Environmental Quality Control Bulletin, and through contacting local neighborhood boards and other community groups, affected government agencies, private organizations, and individuals. The public hearings will be held after distribution of the EIS. All interested government agencies, planning advisory committees, and private organizations and individuals are encouraged to provide input into the study process, identify potential environmental and social concerns and effects, and develop measures to avoid, ameliorate, or mitigate adverse environmental social impacts.

Coordination will be undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies, State of Hawaii agencies such as the Department of Health, Department of Land and Natural Resources, Department of Business and Economic Development, Office of State Planning, and Office of Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supply, Department of Public Works, Department of Land Utilization, and Department of General Planning; and organizations such as the Mililani and Wahiawa Neighborhood Boards.

FOR FURTHER INFORMATION CONTACT:

Ms. Helene Takemoto, U.S. Army Engineer District Honolulu, Environmental Division (CEPOD-ED-ES), Fort Shafter, Hawaii 96858-5440; Telephone: (808) 438-6931/1776 and FAX (808) 438-7801.

SUPPLEMENTARY INFORMATION: The EIS is currently scheduled to be available for public review in the spring of 1995.

Dated: July 18, 1994.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 94-18155 Filed 7-25-94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE ARMY

Grant of a Partially Exclusive License, U.S. Patent 5,128,882 to Applied Research Associates, Inc.

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective partially exclusive license of U.S. Patent No. 5,128,882, entitled "Device for Measuring Reflectance and Fluorescence of In-Situ Soil".

DATES: Written objections must be filed with the U.S. Army Waterways Experiment Station by September 26, 1994.

ADDRESSES: U.S. Army Engineer, Waterways Experiment Station, Attn: CEWES-CT-C, Vicksburg, MS 39180-6199.

FOR FURTHER INFORMATION CONTACT: Ms. Norma L. Logue, (601) 634-3076.

SUPPLEMENTARY INFORMATION: The Device for Measuring Reflectance and Fluorescence of In-Situ Soil was invented by Philip G. Malone and Stafford S. Cooper (U.S. Patent Application No. 570,679; U.S. Patent No. 5,128,882; filing date, August 22, 1990; issue date, July 7, 1992. Rights to this United States patent have been assigned to the United States government as represented by the Secretary of the Army, as represented by the U.S. Army Corps of Engineers, Waterways Experiment Station, intends to grant a partially exclusive license for the above mentioned patent to Applied Research Associates, Inc., 4300 San Mateo Blvd. N.E., Albuquerque, NM 87110.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file a written objection to this prospective partially exclusive license arrangement.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-18062 Filed 7-25-94; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection

requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 25, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-9915.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 21, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Graduate Assistance in Areas of National Need Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 325; Burden Hours: 13,432.

Recordkeeping Burden:

Recordkeepers: 0; Burden Hours: 0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.

Title: New and Noncompeting Continuation Application for Grants Under the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions.

Reporting Burden: Responses: 426; Burden Hours: 4,344.

Recordkeeping Burden:

Recordkeepers: 0; Burden Hours: 0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Ronald E. McNair Postbaccalaureate and Achievement Program. The Department will use the information to make grant awards.

[FR Doc. 94-18160 Filed 7-25-94; 8:45am]

BILLING CODE 4000-01-M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 29, 1990, an arbitration panel rendered a decision in the matter of *Dennis Franklin v. Kentucky Department for the Blind*, (Docket No. R-S/89-5). This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Dennis Franklin, on January 17, 1989. The Randolph-Sheppard Act provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary fair hearing

from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

The complainant, Dennis Franklin, is a blind vendor licensed by the respondent, the Kentucky Department for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The Department is the SLA responsible for the operation of the Kentucky vending facility program for blind individuals. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Franklin operated a vending facility from 1977 until 1987 at the Gardner Lane Postal Facility in Louisville, Kentucky. This was pursuant to a permit between the SLA and the U.S. Postal Service, which was supplemented by a food service contract between the SLA and the Postal Service. During 1985, complaints about the food service and Mr. Franklin's management surfaced. In both July and October 1985, the U.S. Postal Service specifically requested the removal of the vendor. Complaints cited poor attitude, empty vending machines, outdated food products, dirty tables, and lack of service. On July 17, 1985, the Postal Service threatened to terminate the supplemental food service contract with the SLA unless strong corrective actions were taken. Meetings throughout August and September 1985 indicated improvement and a partial resolution. In October 1985, however, an incident involving an alleged physical altercation led to the Postal Service requesting that the vendor be subject to disciplinary action for serious misconduct. Additional complaints were documented on January 17, 1986. In a February 4, 1986, letter to the vendor,

the SLA notified him of its dissatisfaction with his performance of duties in operating the Gardner Lane vending facility and the receipt of repeated complaints by postal service patrons, which were probable cause for finding a violation of the operator agreement. Additional complaints were received during the next several months. In October 1986, two union representatives from the Postal Service wrote to voice strong dissatisfaction with the food service and Mr. Franklin's management.

On June 26, 1987, Mr. Franklin received a letter from the SLA terminating his agreement effective July 27, 1987. On July 14, 1987, Mr. Franklin requested an administrative review, which was conducted by the SLA on July 28th. A decision was rendered by the reviewing officer confirming the decision of the SLA to terminate Mr. Franklin's operator's agreement. On July 27th, complainant filed a Motion for Preliminary Injunction in U.S. District Court for the Western District of Kentucky, and the SLA decided to delay termination of the vendor's operator's agreement until an order was issued by the Court. On September 9, the court conducted a hearing and on September 28 rendered its decision denying the vendor's request for injunction, citing that there was little likelihood of the vendor prevailing on the merits of the case.

On October 1, 1987, the SLA formally terminated the operator's agreement with the complainant; however, his license was not revoked. The SLA granted Mr. Franklin continued seniority up through October 1.

Subsequently, Mr. Franklin requested a full evidentiary hearing, which was held on January 20, February 4, and February 16, 1988. The hearing officer issued an opinion on March 30, 1988, indicating that the SLA's decision to terminate the agreement was justified by Mr. Franklin's failure to revise his operating procedures. On April 4, 1988, the complainant was notified by the SLA that the hearing officer's decision was being adopted as final agency action.

In addition, on June 9, 1988, Mr. Franklin requested an evidentiary hearing on several grievances concerning his failure to be appointed an assistant manager or manager for vending facilities up for bid by the SLA. On August 31, 1988, an evidentiary hearing was conducted, and on November 23, the hearing officer issued a decision finding that complainant had not been discriminated against regarding his bid application for two locations that he did not receive. On

January 17, 1989, the complainant filed a request with the Secretary of Education concerning an appeal of these issues, which were consolidated for an arbitration hearing scheduled for November 14 and 15, 1989.

Arbitration Panel Decision

The central issues that the arbitration panel reviewed were—(1) Whether the SLA followed its rules and regulations when it rescinded the complainant's operator's agreement and removed him from the Gardner Lane Post Office pursuant to 20 U.S.C. 107a(b) and 34 CFR 395.36; and (2) Whether the SLA adhered to proper procedures in the administration of its transfer and promotion policies concerning the complainant's bids on vendor openings in the program pursuant to 20 U.S.C. 107b-1(3)(c) and 34 CFR 395.7(c).

The arbitration panel concluded that the problems at the Gardner Lane Post Office were well documented beginning in 1985 with intensive involvement by the SLA in attempts to resolve the matters. On two occasions in 1985, the problems resulted in a request from postal officials for the removal of the complainant regarding alleged mismanagement and lack of customer satisfaction, including a threatened boycott of the vending facility by postal union employees in 1986 and culminating in 1987 with the SLA's possible loss of the Gardner Lane facility.

The arbitration panel held that the SLA acted properly and for just cause in removing the complainant from the Gardner Lane Post Office facility. The vendor had more than adequate notice of his performance deficiencies from the complaints, meetings, and reviews that had previously taken place. The SLA fulfilled its responsibilities to assist the vendor in working out the problems with the Federal property managers; however, the complainant failed to reform his business practices to satisfactorily continue to manage the vending facility.

The panel concluded that the SLA acted improperly in denying the vendor his profits for the period prior to the full evidentiary hearing. A vendor's earnings are protected during any proceeding against a vendor's license. Although no action was taken to revoke Mr. Franklin's license, the State and Federal regulations indicate a policy that a vendor's employment will remain protected until a full hearing on charges is held, absent a suspension of the vendor from the facility and subsequent termination.

Also, the panel held the SLA liable for lost profits for the period from his

removal until the State hearing officer's opinion was rendered. The panel also ordered a further investigation and review for the accounting of profits that had been paid to the vendor during a short period after he had been removed from the Gardner Lane Post Office facility. The record provided at the hearing did not adequately reconcile end-of-year discrepancies in accounting. The SLA will review documents and share findings with complainant.

The panel rejected the vendor's claim that he had been improperly denied certain positions for which he bid. Seniority is only one factor to be considered. The panel raised concerns, however, that the vendor not be blacklisted from employment. The vendor will continue to remain licensed to manage a facility. Also, the panel rejected the vendor's claim for attorney's fees, finding authority for such an award to be ambiguous.

Panel Members Gashel and Davis concurred in the majority opinion and filed separate dissenting opinions on certain issues.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 21, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94-18161 Filed 7-25-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Financial Assistance Award: Richard W. Foster-Pegg

AGENCY: Department of Energy.
ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Richard W. Foster-Pegg under Grant Number DE-FG01-94CE15604. The proposed grant will provide funding in the estimated amount of \$99,250 for Richard W. Foster-Pegg to gather necessary information through preliminary design and survey work to support formation of a consortium to commercialize Coal (Fired) Air Turbine (CAT) cycle plants. The invention is a design for a cogeneration system utilizing an indirectly heated, steam-injected gas turbine. The system consists of 11 subsystems.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Richard W. Foster-Pegg is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique device which would have a significant and favorable impact upon the energy's utilization. The device would reduce some of the demands and pressures on base-load facilities. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the program, the Energy-Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Linda S. Sapp, HR-531.23, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on July 19, 1994.

Richard G. Lewis,

Contracting Officer Headquarters Operation Division B Office of Placement and Administration.

[FR Doc. 94-18162 Filed 7-25-94; 8:45 am]

BILLING CODE 6450-01-P

Financial Assistance Award; Intent To Award a Grant To Jarvis Christian College

AGENCY: Department of Energy (DOE).
ACTION: Notice of Intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) to Jarvis Christian College, Hawkins, TX under grant number DE-FG01-94MI10322. The DOE intends to make a noncompetitive financial assistance award in establishing the Jarvis Enhancement of Males (JEM) Program. The JEM program is an educational and training program for African American males in grades 4, 5 and 6. The project's goal is to increase the number of African American males who are academically prepared to enter college and complete studies in energy-

related disciplines. The period of performance contemplated is for three years. DOE will provide funding in the amount of \$82,671 for the first budget period estimated to be August 30, 1994—August 29, 1995. There will be no cost sharing.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR-531.11, 1000 Independence Avenue, S.W., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to Jarvis Christian College, a private four year coeducational liberal arts institution located in Hawkins, Texas. The campus is ideal for a summer science, mathematics and computer enrichment program for young African American males who are separated from the urban setting and opportunities for day camps, summer jobs, neighborhood programs and activity centers. The campus offers science, mathematics and computer laboratories in addition to a biomedical research center. The faculty possesses credentials necessary to motivate youth to become successful in science and mathematics and in school. The project objectives will be achieved through family involvement in problem solving strategies, teacher training to strengthen the content of the science and math instruction, and providing hands on inquiry-based activities to promote a cooperative learning environment. The project to be funded is for the Hawkins, Texas School District, and will include the most rural and economically disadvantaged school communities. The most salient techniques include the use of the summer residential program and Saturday enrichment academies, which will focus on the joint involvement of students and parents in preparing students to receive information which will help them in their efforts to prepare for college with the ultimate goal of college admissions and graduation.

The program is meritorious because the program combines student interest development activities with family involvement and teacher training into a program which prepares students early at the 4th, 5th and 6th grade educational level to be receptive to further study in the technical fields. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that Jarvis Christian College will produce a longitudinal research project which will

track the academic progress and career choices of African American males who participate in precollege programs so that they do not get lost in the educational pipeline. The research results will be used to evaluate the potential effectiveness of other precollege programs developed to increase the number of African males and other minorities selecting studies and careers in the scientific and technical fields.

Michael B. Raizen,

Contracting Officer, Operations Branch A-1, Office of Placement and Administration.

[FR Doc. 94-18163 Filed 7-25-94; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Burlington Bottoms Wildlife Mitigation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: BPA proposes to provide funds for the protection and enhancement of wildlife and wildlife habitat for the Burlington Bottoms Wildlife Mitigation Project in a floodplain and wetlands located in Multnomah County in the State of Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than August 25, 1994.

ADDRESSES: Submit comments to the Public Involvement Manager, Bonneville Power Administration—ALP, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Roy B. Fox, NEPA Compliance Officer-PG, Bonneville Power Administration, P.O.

Box 3621, Portland, Oregon, 97208—3621, telephone number 503-230-4261, fax number 503-230-3752.

SUPPLEMENTARY INFORMATION: Burlington Bottoms consists of 169 ha (417 acres) of wetlands, riparian, and pasture (formerly wet prairie) habitat along the floodplain of the lower Columbia and Willamette Rivers. The area is located adjacent to the Multnomah Channel between Sauvie Island and the Tualatin Mountains (T2N, R1W, Sections 20 and 21). Past human activities at Burlington Bottoms have altered the quality and quantity of the existing wetlands. BPA proposes that existing wetlands would be maintained and where possible, enhanced to improve wildlife habitat. Enhancement activities could include control or removal of non-native plant species such as Reed canary grass, which is present in all of the lakes and ponds. The beaver dams located on the property have created wetlands. Should these dams be breached, water level control structures may be installed to maintain existing wetlands.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on July 12, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94-18164 Filed 7-25-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Fossil Energy

[FE Docket No. 94-43-NG]

Brooklyn Union Gas Company, et al.; Order Granting Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing sixteen New York, New Jersey, and New England local distribution companies (LDCs) to import natural gas from Canada to satisfy the compressor fuel requirements of Iroquois Gas Transmission System, L.P. associated with transporting the LDCs previously authorized import volumes through its pipeline facilities.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 13, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-18138 Filed 7-25-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-50-NG]

Consumers Power Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Consumers Power Company (CPCo) authorization to import up to 73 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

CPCo's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 13, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-18139 Filed 7-25-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EG94-83-000, et al.]

El Cayman, et al.; Electric Rate and Corporate Regulation Filings

July 19, 1994.

Take notice that the following filings have been made with the Commission:

1. El Cayman

[Docket No. EG94-83-000]

Take notice that on July 14, 1994, El Cayman, a Cayman Islands corporation (El Cayman), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, 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.

El Cayman intends to acquire up to 30 percent (but not less than 5 percent) of

the voting securities of a Colombian corporation that is developing a gas-fired electric generating facility with a capacity of up to 750 MW to be located in the City of Barranquilla, Department of Atlantico, Republic of Colombia. All of the facility's electricity will be sold at wholesale to Corporacion Electrica de la Costa Atlantic in Colombia.

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.

2. Tampa Electric Company

[Docket No. ER94-1196-000]

Take notice that on July 8, 1994, Tampa Electric Company (Tampa Electric) supplemented its prior filing in this docket concerning its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric continues to propose an effective date of May 1, 1994, and therefore requests waiver of the Commission's notice requirement.

Copies of the supplemental filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Ashton Energy Corporation

[Docket No. ER94-1246-000]

Take notice that on June 28, 1994, Ashton Energy Corporation tendered for filing additional information to its May 11, 1994, filing in the above-referenced docket.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. R.J. Dahnke & Associates

[Docket No. ER94-1352-000]

Take notice that on July 12, 1994, R.J. Dahnke & Associates tendered for filing an amendment to its June 13, 1994 filing in the above-referenced docket.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER94-1443-000]

Take notice that on July 11, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment to the Interconnection Agreement between itself and Upper

Peninsula Power Company (UPPCO). The amendment replaces Appendices A and B thereof with Appendix A (Modification 3) and Appendix B (Revision 2). The changes involve the Cornell and Mass Interconnections which will now be operated normally closed.

Wisconsin Electric requests an effective date of July 1, 1994. Accordingly, the Company respectfully requests waiver of the sixty day notice requirement in order to enhance reliability and economy of operation.

Copies of the filing have been served on UPPCO, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER94-1445-000]

Take notice that on July 8, 1994, Southwestern Public Service Company (Southwestern) tendered for filing a Rate Schedule to be included in its wholesale electric rate tariff. The rate schedule is a contribution in aid of construction agreement between Southwestern and Rita Blanca Electric Cooperative, Inc. (Rita Blanca). The agreement provides for Rita Blanca to pay Southwestern a one time charge of \$594 for the replacement of an existing structure with a taller structure and attachment of certain facilities.

Southwestern has requested that the amendment become effective as of the date service commences over the new facilities and has requested a waiver pursuant to 18 CFR 35.11. The waiver request is supported by the agreement of Rita Blanca.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER94-1446-000]

Take notice that on July 12, 1994, the New England Power Pool, tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Milford Power Limited Partnership, Milford Power Limited Partnership has its principal place of business in Milford, Massachusetts. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that Milford Power Limited Partnership has joined the over 90 other electric utilities that already

participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Milford Power Limited Partnership a participant in the pool.

NEPOOL requests an effective date of August 1, 1994, for commencement of participation in the power pool by Milford Power Limited Partnership, and requests waiver of the Commission's customary notice requirements to permit the membership of Milford Power Limited Partnership to become effective on that date.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER94-1447-000]

Take notice that on July 12, 1994, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with Enron Power Marketing, Inc. for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on August 1, 1994, or as soon thereafter as practicable.

FPL states that this filing is in accordance with 18 CFR Part 35 of the Commission's regulations.

Comment date: August 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER94-1448-000]

Take notice that on July 6, 1994, Central Maine Power Company tendered for filing a Contract Amendment Affecting the Rate Schedule in Northeast Empire Limited Partnership #2 in Docket No. QF82-129-000.

Comment date: August 2, 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, N.E., Washington, D.C. 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. 94-18084 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-282-000]

Northwest Pipeline Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northwest Hood River Pipeline Loop and Extension and Site Visit

July 20, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Northwest Hood River Pipeline Loop and Extension.¹ This EA will be used by the Commission in its decision-making process to determine whether or not to approve the project.

On August 2, 1994, OPR staff will conduct a site visit with representatives of Northwest for the facilities proposed in Klickitat County, Washington. Parties to the proceeding may attend. Those planning to attend must provide their own transportation.

Summary of the Proposed Project

Northwest Pipeline Corporation wants Commission authorization to construct and operate about 5.3 miles of 6-inch-diameter pipeline to partially loop and extend its existing Hood River Lateral in Klickitat County, Washington, and to construct a new delivery meter station, the KEP Meter Station. The proposed facilities will be used to provide about 11,000 million British thermal units per day of natural gas to the planned Klickitat Energy Partners cogeneration facility in Klickitat County, Washington.

The Klickitat Energy Partners will build a pipeline to connect the cogeneration facility to the KEP Meter Station. The Department of Energy is preparing an environmental assessment for the cogeneration facility.

The general location of these facilities is shown in appendix 1.²

¹ Northwest Pipeline Corporation's application was filed with the Commission pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

² The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426 or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Northwest proposes to use a 75-foot-wide construction right-of-way along the looped portions of the pipeline and a 60-foot-wide construction right-of-way along the pipeline extension. Through residential and commercial areas, the width of the right-of-way would be reduced to minimize disturbance to residences and commercial buildings. Construction in residential streets would be confined to the existing road pavements.

Eleven work areas outside the construction right-of-way would be required at road and railway crossings that are proposed to be bored, at the beginning and end of the pipeline loop and extension, and at the top of the steep slope located about 600 feet north and uphill of the White Salmon Meter Station. Each of these extra work areas would occupy an additional 0.1 to 0.25 acre of land. A 0.1 acre pipe storage area and contractor yard would be located on the SDS Lumber Company property. Access to the pipeline during construction would be along existing public and private roads and the existing pipeline right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. Our EA will give the Commission the information it needs to do that. If the EA concludes that the projects would result in significant environmental impacts, we will prepare an environmental impact statement. Otherwise we will prepare a Finding of No Significant Impact.

NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues, and to separate these from issues that are insignificant and do not require detailed study.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general subject headings:

- geology and soils
- endangered and threatened species
- vegetation and wildlife
- land use
- air quality and noise
- water resources, fisheries and wetlands

- cultural resources

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. We are particularly interested in alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP94-282-000;
- Send a copy of your letter to: Mr. Robert Kopka, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so they will be received in Washington D.C. on or before August 9, 1994.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr.

Robert Kopka, EA Project Manager, at (202) 208-0282.

Lois D. Cashell,
Secretary.

[FR Doc. 94-18085 Filed 7-25-94; 8:45 am]
BILLING CODE 6717-01-P

[Project No. 2411-005 Virginia]

STS Hydropower, Ltd. and Dan River, Inc.; Notice of Availability of Final Environmental Assessment

July 20, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Schoolfield Dam Project, located on the Dan River in Pittsylvania County, Virginia, in the city of Danville, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 94-18086 Filed 7-25-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP94-651-000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

July 19, 1994.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP94-651-000]

Take notice that on July 8, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP94-651-000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new meter station under FGT's

blanket certificate issued in Docket No. CP82-553-000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

FGT proposes to construct and operate a new meter station to serve as a delivery point to the City of Clearwater (Clearwater). FGT states that the new meter station will be located in Pasco County, Florida, at mile post 127.7 on FGT's 30-inch diameter pipeline that is part of FGT's Phase III expansion project, granted in Docket No. CP92-182, et al. The estimated cost of the proposed construction is \$250,000, which will be reimbursed to FGT by Clearwater. FGT further states that the new meter station will not impact FGT'S peak day or annual deliveries.

Comment date: September 2, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Koch Gateway Pipeline Company

[Docket No. CP94-655-000]

Take notice that on July 12, 1994, Koch Gateway Pipeline Company (Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-655-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap under Gateway's blanket certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Gateway proposes to construct a direct interconnect for a new delivery point to provide interruptible transportation service to Coastal Paper Company (Coastal) at Wiggins, Stone County, Mississippi. Gateway explains that the related natural gas requirements of Coastal do not represent additional incremental through-put because these requirements are currently supplied through Entex, Inc., a local distribution company, which is in turn supplied by Gateway. Gateway states that metering and regulating facilities would be installed at an existing 4-inch tap at an estimated cost of \$44,000, which would be reimbursed by Coastal. Gateway advises that the new facilities would be constructed on existing right-of-way and Coastal would construct nonjurisdictional facilities including a meter station and approximately 900 feet of 4-inch pipeline to interconnect with Gateway.

Comment date: September 2, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94-659-000]

Take notice that on July 12, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94-659-000 a request pursuant to Sections 157.205, 157.216, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 157.211) for approval to abandon certain existing facilities at its Evergreen Shores meter station in Thurston County, Washington and to construct and operate upgraded facilities at this station to provide expanded capacity to Washington Natural Gas Company (Washington Natural) at this delivery point, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it presently has firm maximum daily delivery obligations (MDDO) to deliver up to a total of 3,600 Dth per day to Washington Natural at the Evergreen Shores delivery point, subject to Subpart G of Part 284 of the Commission's regulations. Northwest indicates that Washington Natural has requested it to expand the delivery capacity of the facility to 6,700 Dth per day (at 350 psig). Northwest proposes to modify the trim plates in the existing regulators at the existing meter station from 50 percent trim to 100 percent trim. This change will increase the maximum design delivery capacity of the Evergreen Shores meter station from 4,620 Dth's per day to approximately 7,870 MMbtu per day at a pressure of 350 psig. Northwest further indicates it also plans to replace the existing two-inch filter assembly with a four-inch filter assembly. Northwest estimates that the cost of modifying the facility is approximately \$47,700, including the associated income tax liability, for which Washington Natural has agreed to reimburse Northwest.

Comment date: September 2, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18087 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1282-000]

Carolina Power & Light Co.; Filing

July 20, 1994.

Take notice that on July 15, 1994, Carolina Power & Light Company (CP&L), tendered for filing with the Commission a copy of the existing Service Agreement between Carolina Power & Light Company and Carteret-Craven Electric Membership Corporation (EMC). This document was requested by the Commission Staff.

A copy of this filing has been sent to Carteret-Craven EMC, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

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 August 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18183 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1277-000]

Midwest Power Systems Inc.; Filing

July 20, 1994.

Take notice that on July 6, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 1 to the filing of an annual rate revision of the Transmission Service Charge. On May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing an annual rate revision of a transmission service charge for a Transmission Service Agreement (Agreement) between Cedar Falls Utilities (CFU) and MPSI.

MPSI respectfully requests an effective date of 60 days after the original filing date of May 19, 1994.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

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 August 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18184 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1278-000]

Midwest Power Systems Inc.; Filing

July 20, 1994.

Take notice that on July 6, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 1 to the filing of a biennial rate revision of the Transmission Facilities Charge. On May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a biennial rate revision of a transmission facilities charge for an Interconnection and Interchange Agreement (Agreement) between Nebraska Public Power District (NPPD) and MPSI.

MPSI respectfully requests an effective date of 60 days after the original filing date of May 19, 1994.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

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 August 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18185 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-165-003]

OkTex Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 20, 1994.

Take notice that on May 19, 1994, OkTex Pipeline Company, (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 38, with an effective date of June 1, 1994.

OkTex states that the tariff sheet is being filed in order to implement post-abandonment rates as directed by the May 4, 1994, letter order in this proceeding.

OkTex further states that First Revised Sheet No. 38 reflects managerial changes that have been made in OkTex and various of its affiliates effective June 1, 1994.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18088 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-862-000]

Public Service Electric and Gas Co.; Filing

July 20, 1994.

Take notice that on July 13, 1994, Public Service Electric and Gas Company (PSE&G) tendered for filing a Second Supplement to the original Agreement dated October 1, 1993, (Agreement) covering the sale of capacity and energy to the Borough of Park Ridge, New Jersey (Park Ridge).

In response to questions and suggestions from Commission Staff, PSE&G hereby amends the filing with respect to: (i) Paragraph 5.4 of Section 5 of the Agreement; and (ii) Appendix A entitled "Incremental Energy Charge." More particularly Paragraph 5.4 which defines the subtransmission wheeling rate, has been revised to reflect the change in this rate from \$1.21/kW-Mo. to \$0.67/kW-Mo. This is due to the fact that the subtransmission wheeling rate is now calculated using a "Postage Stamp" methodology, while previously being calculated using a megawatt-mile methodology. With respect to the Supplemental Appendix A, it has been revised such that it now specifies the capacity rate caps instead of referencing their location in the Agreement and establishes a time limit on the adder to the cost of capacity supplied from firm power purchases. Included as separate attachments to the supplemental filing at Staff's request are an exhibit entitled "FERC Inquiries" in order to define terms and to explain PSE&G pricing methodology and an exhibit detailing expected utilization stacking. In addition, certain portions of the Cost Justification exhibits have been changed in order to reflect PSE&G's use of a "postage stamp" methodology applicable to subtransmission wheeling.

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, N.E., Washington, D.C. 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 August 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[DE Doc. 93-18186 Filed 7-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-203-047]

Tennessee Gas Pipeline Co.; Tariff Filing

July 20, 1994.

Take notice that on July 15, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets:

To be effective November 1, 1993

Fifth Revised Volume No. 1

3rd Substitute Alternate 1st Revised Sheet No. 177

Substitute Alternate 1st Revised Sheet No. 180

Substitute Alternate 1st Revised Sheet No. 181

Original Volume No. 2

Substitute 30th Revised Sheet No. 5

To be effective September 1, 1993

Fifth Revised Volume No. 1

2nd Substitute Original Sheet No. 20

2nd Substitute Original Sheet No. 21

2nd Substitute Original Sheet No. 22

2nd Substitute Original Sheet No. 23

2nd Substitute Original Sheet No. 24

2nd Substitute Original Sheet No. 25

2nd Substitute Original Sheet No. 27

2nd Substitute Original Sheet No. 28

Original Sheet No. 29A

Original Volume No. 2

Substitute 29th Revised Sheet No. 5

To be effective December 1, 1993

Fifth Revised Volume No. 1

1st Revised 2nd Sub Original Sheet No. 22

1st Revised 2nd Sub Original Sheet No. 24

To be effective May 1, 1994

Fifth Revised Volume No. 1

1st Revised 3rd Revised Sheet No. 22

1st Revised 3rd Revised Sheet No. 24

To be effective August 1, 1994

Fifth Revised Volume No. 1

5th Revised Sheet No. 22

5th Revised Sheet No. 24

Tennessee states that the purpose of these tariff sheets is to effectuate post-restructuring settlement rates effective September 1, 1993 for Tennessee's customers provided for in the Stipulation & Agreement filed on June 2, 1993, in Docket No. RP91-203 ("COS Settlement") as approved by the Commission's order issued on April 5, 1994, and in Stipulation & Agreement

October 29, 1992 in Docket No. RP92-132 ("NET Settlement") as approved by the Commission's June 23, 1994, order on rehearing. Furthermore, Tennessee states that the final base IT rates have been adjusted to reflect an allocation of 10% of GSR costs.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18089 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-261-001]

Tennessee Gas Pipeline Co.; Revised Tariff Rate Adjustment

July 20, 1994.

Take notice that on July 15, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing information in response to the Commission's orders issued June 30, 1994, in the referenced docket. As part of this filing, Tennessee is submitting as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute 2nd Revised Sheet No. 38, to be effective July 1, 1994.

Tennessee states that in compliance with the Commission's orders, Tennessee is submitting, (1) A supplemental statement stating where the level of its take-or-pay costs currently stands in relation to the overall cap on such costs, and (2) a revised tariff sheet and work papers that recalculates the surcharge amount and associated carrying charges, in order to eliminate double recovery of a producer payment for \$68,805 made in November 1993, which was inadvertently filed both in Docket No. RP94-69 and Docket No. RP94-261.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or

before July 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18090 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-15-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 20, 1994.

Take notice that on July 15, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifteenth Revised Fourth Revised Sheet No. 50, which tariff sheet is proposed to be effective on May 1, 1994.

TGPL states that the purpose of the instant filing is to track a rate change attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT. The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule FT-NT.

TGPL states that the attached Appendix A to the filing contains an explanation of the rate change and details the computation of the revised Rate Schedule FT-NT rates.

TGPL states that it is serving copies of the instant filing to its FT-NT customers and interested State Commissions.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18091 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-058]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 20, 1994.

Take notice that on July 15, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet Nos. 7 and 8, to be effective October 1, 1993.

WNG states that the purpose of this filing is to comply with a Commission order dated July 5, 1994, in Docket Nos. RP89-183-057, et al. The order required WNG to make a refund to Union Pacific Fuels and file with the Commission a revised refund report to reflect the refund and the revised take-or-pay/GSR offset within 15 days thereafter. The revised direct bill amounts are reflected on the tendered tariff sheets.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 27, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-18092 Filed 7-25-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5016-2]

Public Water System Supervision Program; Program Revision for the Territory of Guam

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the Territory of Guam (Guam) is revising its approved Public Water System

Supervision Program. Guam has adopted (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations promulgated by EPA on July 8, 1987 (52 FR 25690) and corrected on July 1, 1988 (53 FR 25108); (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534); (3) a revised drinking water regulation for total coliform bacteria which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27544); and (4) a drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27486). EPA has determined that these four sets of state program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the Territory of Guam prior to this notice.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 25, 1994, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective August 25, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Guam Environmental Protection Agency,

Territory of Guam, D-107 Harmon Plaza, 130 Rojas Street, Harmon, GU 96911; and EPA, Region IX, Water Management Division, Drinking Water Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Su Cox, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1855.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-18191 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5016-3]

Public Water System Supervision Program; Program Revision for the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the Commonwealth of the Northern Mariana Islands (CNMI) is revising its approved Public Water System Supervision Program. CNMI has adopted (1) A revised drinking water regulation for total coliform bacteria which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27544); and (2) a drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27486). EPA has determined that these two sets of state program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the Commonwealth of the Northern Mariana Islands prior to this notice.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 25, 1994, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional

Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective August 25, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following offices: Division of Environmental Quality, Commonwealth of the Northern Mariana Islands, Morgan Building in San Jose, Saipan, MP 96950; and EPA, Region IX, Water Management Division, Drinking Water Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Su Cox, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1855.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-18190 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5016-1]

Public Water System Supervision Program; Program Revision for the Republic of Palau

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the Republic of Palau (Palau) is revising its approved Public Water System Supervision Program. Palau has adopted (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations promulgated by EPA on July 8, 1987 (52 FR 25690) and corrected on July 1, 1988

(53 FR 25108); (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534); (3) a revised drinking water regulation for total coliform bacteria which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27544); and (4) a drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27486). EPA has determined that these four sets of state program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the Republic of Palau prior to this notice.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 25, 1994 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective August 25, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following offices: Palau Environmental Quality Protection Board, Republic of Palau, P.O. Box 100, Koror, PW 96940; and EPA, Region IX, Water Management Division, Drinking Water Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT:

Su Cox, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1855.

(Sec. 1413 of the Safe Drinking Water Act as amended [1986]; and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-18188 Filed 7-25-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5015-9]

Public Water System Supervision Program; Program Revision for the Territory of American Samoa

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the Territory of American Samoa (Samoa) is revising its approved Public Water System Supervision Program. Samoa has adopted (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations promulgated by EPA on July 8, 1987 (52 FR 25690) and corrected on July 1, 1988 (53 FR 25108); (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (53 FR 41534); (3) a revised drinking water regulation for total coliform bacteria which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 (54 FR 27544); and (4) a drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water which corresponds to the National Primary Drinking Water Regulations promulgated by EPA on June 29, 1989 [54 FR 27486]. EPA has determined that these four sets of state program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the Territory of American Samoa prior to this notice.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 25, 1994, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional

Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination become effective August 25, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

EFFECTIVE DATES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following offices: American Samoa Environmental Protection Agency, Territory of American Samoa, Executive Office Building, Pago Pago, AS 96799; and EPA, Region IX, Water Management Division, Drinking Water Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Su Cox, EPA, Region IX, and the San Francisco address given above or by telephone at (415) 744-1855.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-18169 Filed 7-27-94; 8:45 am]

BILLING CODE 5560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.**

The FDIC has determined that the proceeds which can be realized from the

liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736-3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims: The Early Bank, #2507, Early, Texas.

Dated: July 20, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-18119 Filed 7-25-94; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Amcore Financial, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial Inc.*, Rockford, Illinois; to acquire Rockford Mercantile Agency, Inc., Rockford, Illinois, and the Tucson, Arizona office of Professional American Collections, Inc., North Aurora, Illinois, and thereby acquire certain assets of A/R Management, Ltd., Oconomowoc, Wisconsin, and thereby engage in the activity of operating a collection agency, pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18126 Filed 7-25-94; 8:45 am]

BILLING CODE 6210-01-F

Commerce Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commerce Bancorp, Inc.*, Cherry Hill, New Jersey; to acquire up to 20 percent of the voting shares of Independence Bancorp, Inc., Ramsey, New Jersey, and thereby indirectly acquire Independence Bank of New Jersey, Ramsey, New Jersey.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Salt Creek Valley Bancshares, Inc.*, Laurelville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Salt Creek Valley Bank, Laurelville, Ohio.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Commercial Bancorp, Inc., Obion, Tennessee, and thereby indirectly acquire The Commercial Bank, Obion, Tennessee.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Superior Bancorporation, Ltd.*, Superior, Wisconsin; to become a bank holding company by acquiring 80.05 percent of the voting shares of Community Bank and Trust Company, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18127 Filed 7-25-94; 8:45 am]

BILLING CODE 6210-01-F

INTRUST Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the

Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. INTRUST Financial Corporation, Wichita, Kansas; to merge with First Moore Bancshares, Inc., Moore, Oklahoma, and thereby indirectly acquire The First Bank, Moore, Oklahoma.

In connection with this application, Applicant also has applied to acquire First Moore Insurance Agency, Inc., Moore, Oklahoma, and thereby engage in acting as agent for the sale of credit and related life, accident and health,

and involuntary unemployment insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18129 Filed 7-25-94; 8:45 am]

BILLING CODE 6210-01-F

St. Francis Capital Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Correction

This notice corrects a notice (FR Doc. 94-17495) published on page 36766 of the issue for Tuesday, July 19, 1994.

Under the Federal Reserve Bank of Chicago heading, the entry for St. Francis Capital Corporation, Milwaukee, Wisconsin is withdrawn.

Board of Governors of the Federal Reserve System, July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18128 Filed 7-25-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Total Hip Replacement

Notice is hereby given of the NIH Consensus Development Conference on "Total Hip Replacement," which will be held September 12-14, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. on September 12, 8 a.m. on September 13, and at 9 a.m. on September 14.

More than 800,000 artificial hip joints have been implanted in Americans. The successful replacement of deteriorated and severely injured hips has permitted continued mobility and independent living for many people who would otherwise be disabled. New technology for prosthetic devices for the hip and improved surgical techniques have decreased the risk and improved the immediate outcome of hip replacement surgery. These advances have also led to long-term success of the artificial hip.

Questions remain, however, concerning which materials and prosthetic designs work best for specific groups of patients and which surgical techniques yield the best long term outcomes. Issues exist regarding the optimal approach for replacement (revision) surgery. Clarification also is needed regarding how to select patients for these procedures and how to improve the useful lifetime of an artificial hip.

This conference will bring together specialists from the fields of orthopedic surgery, epidemiology, rehabilitation and physical medicine, biomechanics and biomaterials, geriatrics, and rheumatology.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

- What are the current indications for total hip replacement?
- What are the design and surgical considerations relating to a replacement prosthesis?
- What are the responses of the biological environment?
- What are the expected outcomes?
- What are the accepted approaches and outcomes for revision of a total hip replacement?
- What are the most productive directions for future research?

On the final day of the meeting, the consensus panel chairperson will read the draft statement to the conference audience and invite comments and questions.

Advance information on the conference program and conference registration materials may be obtained from: Debra Steward, Technical Resources, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770-3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning September 14, 1994, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1-800-NIH-OMAR (1-800-644-6627).

Dated: July 14, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94-18071 Filed 7-25-94; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service**Omnibus Budget Reconciliation Act of 1993 Delegation of Authority**

Notice is hereby given that in furtherance of the delegation of authority of June 30, 1994 by the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 1928 of Title XIX of the Social Security Act as added by Section 13631 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), as amended hereafter, excluding subsections 1928(a)(2)(B) and 1928(c)(2)(ii). This delegation also excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon date of signature. It is to be carried out in cooperation with the Health Care Financing Administration. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 30, 1994.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 94-18108 Filed 7-25-94; 8:45 am]

BILLING CODE 4150-19-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Public and Indian Housing**

[Docket No. N-94-3753; FR-3669-N-02]

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance: Amendment and Extension of Deadline

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment to NOFA and extension of deadline.

SUMMARY: On May 13, 1994, HUD announced the availability of \$25 million for Fiscal Year 1994 under the Public and Indian Housing Tenant Opportunities Program (TOP) (59 FR 25248). The Department is amending that NOFA to clarify that after applications are scored and ranked,

awards may be made out of rank order, based on considerations of geographical diversity and diversity in the size and type of housing development. In addition, other changes are made in the rating factors to credit any Resident Council/Resident Management Corporation/Resident Organization (RCs/RMCs/ROs) that has made an effort, but has been denied the opportunity, to develop a partnership with a public or Indian housing authority (referred to as a "HA"). The modified scoring criteria will account for an HA's unwillingness to engage in such a partnership. Because of this change in the rating factors, the deadline for applications also is being extended. Finally, the Department is correcting an error in the number of points to be awarded to the high score under one of the rating criteria for Additional Grants.

DATES: Applications must be submitted by 4:00 p.m., local time, on August 25, 1994. The application deadline will be firm as to date and time.

FOR FURTHER INFORMATION CONTACT:

Christine Jenkins or Barbara J. Armstrong, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410. Telephone Number (202) 708-3611. All Indian applicants may contact Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4140, Washington, D.C. 20410. Telephone Number (202) 708-1015. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 for information on the program. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Under section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the requirements of 24 CFR 12.12, the Department is extending the deadline for submitting applications for funds made available under the NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance until 30 days from today's publication of amendments to the NOFA. An eligible RC/RMC/RO or NRO/RRO/SRO, as defined in the NOFA, may submit an application by the date indicated in this notice. The Department discourages the amendment of applications already submitted,

except to the extent warranted by the changes made in this notice. Any Basic Grant applicant that has already submitted an application under the NOFA as published earlier may revise its application to address the changes to the third rating factor ("Evidence that the RC/RMC/RO has a Partnership with the HA") made by this amendatory notice. All submissions must be received by the appropriate HUD office by the date and time specified in this notice.

Accordingly, FR Doc. 94-11609, NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance, published at 59 FR 25248 (May 13, 1994), is amended as follows:

1. On page 25248, in column 1, the paragraph headed "DATES:" is revised to read as follows:

DATES: Application kits may be requested beginning May 13, 1994. The deadline for submission of completed applications is 4:00 p.m., local time, on August 25, 1994. The application deadline will be firm as to date and time.

2. On page 25253, in column 1, at the end of the paragraph headed "J. Selection Process", the following new text is added:

* * * All applications will be reviewed, evaluated and scored by a Grants Management Team. Upon completion of the review, all applications will then be placed in an overall nationwide ranking order and funded until all funds are exhausted, except that HUD may fund grants out of rank order based on geographical diversity and diversity in size and type of housing development (developments that include family high-rise buildings of five or more stories or those that include only low-rise buildings).

3. On page 25253, in the first column, under the heading "K. Rating Factors—Basic Grant Applicants", the third rating factor is revised to read as follows:

(3) Evidence that the RC/RMC/RO has a Partnership with the HA (20 points):

- A high score (15-20 points) is received where the RC/RMC/RO provides a letter of support (e.g., actual letter or board resolution) from the local HA that states its support of the RC/RMC/RO, as well as a description of what assistance the HA will undertake on behalf of the RC/RMC/RO.

- A medium score (6-14 points) is received where either: (i) the RC/RMC/RO provides a letter of support from the HA that does not state the activities for which the HA will provide assistance; or (ii) the RC/RMC/RO provides detailed

documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.

• A low score (0-5 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain such support, but generally mentions either support or obstacles encountered in attempting to build a partnership with the HA.

4. On page 25253, in the second column, under the Section L, Rating Factors—Additional Grant Applicants, the number of points indicated in parentheses as being available for a high score under the rating factor headed "(1) Describe the Goals and Objectives of the RC/RMC/RO (25 points):" is revised to read "(16-25 points)".

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: July 21, 1994.

Joseph H. Shuldiner,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-18261 Filed 7-22-94; 11:48 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[ES-915-04-4720-02-241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paper Work Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Office at the telephone listed below.

Comments and suggestions on the proposal should be made directly to the Bureau clearance office and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395-7340.

Title: Cadastral Survey 1994 Customer Questionnaire.

Abstract: Respondents supply information for determining the level of satisfaction, customers values, and areas where improvements could be made in

providing products and services by the Bureau of Land Management's Cadastral Survey program.

Bureau form number: 9600-39.

Frequency: Biyearly

Description of respondents:

Individuals; local, county, and state governments; and other Federal agencies requiring land surveying services and spatial land information on public lands.

Estimated time of completion: .25 hour.

Annual responses: 1000.

Annual burden hours: 250 hours.

Bureau clearance officer (Alternate):
Marsha A. Harley (202) 452-5014.

Dated: June 10, 1994.

Tom Walker,

Acting Assistant Director for Support Services.

[FR Doc. 94-18165 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-84-M

[UT-020-04-4370-05]

Notice of Land Closure; Utah

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of land closure to all travel.

SUMMARY: Notice is hereby given that public lands as listed below at the mouth of Butterfield Canyon, Salt Lake County, are closed to all foot bicycle, horseback and motorized travel effective immediately and until this Notice is rescinded. The closure is necessary to provide for health and safety of the public and to protect the public resources in accordance with 43 CFR 8364.1 and 8360.0-7. The public land affected by this closure contains a total of 67.25 acres within Salt Lake Meridian, Township 3 South, Range 2 West, Section 32, SW ¼ being more particularly described as follows:

Beginning at a point which is the section corner common to sections 31 and 32 of T. 3 S., R. 2 W., and sections 5 and 6 of T. 4 S., R. 2 W., SLM; thence east along the section line common to sections 32 and 5 a distance of 1607 feet; thence north on a line parallel to the west section line of 32 a distance of 1823 feet to a point on the south edge of the Butterfield Canyon Road; thence westerly along the south edge of said road a distance of approximately 1608 feet to a point on the section line between sections 31 and 32, which point is 1603 feet north of the section corner common to sections 31, 32, 5, and 6; thence south along the section line between Section 31 and 32 a distance of 1603 feet to the point of beginning.

This closure does not restrict travel by government agencies or private enterprises including current BLM contractors conducting official duties. Violation of this regulation is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT:
Gary Weiser, Team leader for Technical and Field Support, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, *(801) 977-4300.

Dated: July 15, 1994.

Deane H. Zeller,

District Manager.

[FR Doc. 94-18077 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-020-4191-03]

Intent to Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Twin Creeks Mine project, Humboldt County, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and to 43 CFR 3809, the Bureau of Land Management (BLM) will be directing the preparation of an EIS for the proposed expansion of a gold mine in Humboldt County, Nevada. This EIS will be prepared by contract and funded by the proponent, Santa Fe Pacific Gold Corporation. Public meetings will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and Santa Fe Pacific Gold Corporation will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held August 9, 1994 at the Humboldt County Library in Winnemucca, Nevada; and on August 10, 1994 at the Airport Plaza Hotel on 1981 Terminal Way, Reno, Nevada. Both meetings will be held from 7-9 p.m. each night. Written comments on the Plan of Operations and the scope of the EIS will be accepted until September 9, 1994. The Draft EIS is expected to be completed by spring of 1995, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, 705 E. 4th Street, Winnemucca, NV 89445; ATTN: Gerald Moritz, Project Coordinator.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623-1500.

SUPPLEMENTARY INFORMATION: Santa Fe Pacific Gold Corporation of Albuquerque, New Mexico has submitted to the Winnemucca District Office of the BLM, a POO for expansion of their existing gold mine, the Twin Creeks Mine (TCM). The POO describes proposed expansion and consolidation of TCM mining operations in Humboldt County, approximately 35 miles northeast of Winnemucca, Nevada. This mining operation had previously been divided into Goldfields Operating Company's Chimney Creek Mine and Santa Fe's Rabbit Creek Mine. A total of approximately 931 million tons of oxide overburden and interburden; 534 million tons of sulfide overburden and interburden; 737 million tons alluvium overburden; 60 million tons of subgrade ore; 33 million tons of sulfide mill grade ore; 9 million tons oxide mill grade ore; and 60 million tons leach grade material may be excavated during the 20 year mine life. These amounts may vary depending on the price of gold during mining operations. The proposed expansion would result in an additional disturbance on approximately 1,500 acres. Existing surface disturbance for all mine facilities would be about 4,144 acres. Existing key production facilities include mine pits, barren rock piles, ore crushing, grinding, heap leach pads, solution ponds, gold extraction and refining equipment, and tailings disposal facilities. Nonprocessing ancillary facilities to support the mining activities include administration, laboratory, warehouse, maintenance shop buildings, fuel, oil, reagent and water storage facilities and other small structures required for operations.

The EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, wild horses, air quality, aesthetic resources, cultural resources, paleontological resources, land use, access, recreation, social and economic values related to expansion.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of

Decision, which is subject to appeal under 43 CFR part 4.

Dated: July 18, 1994.

Robert J. Neary,

Acting District Manager, Winnemucca.

[FR Doc. 94-18143 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-HC-M

[OR-091-00-4210-05: GP4-195; OR 47339]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 21 S., R. 1 W.

Sec. 35: Lot 2

Containing 0.28 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Jerry D. and Carol Risener using the direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate since the land has been inadvertently occupied by a portion of the Risener's storage shed and yard for several years and direct sale will resolve the unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with Section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a nonrefundable \$50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. A quitclaim deed will be issued subject to all valid existing rights and reservations of record.

DATES: On or before September 9, 1994, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P. O. Box 10226, 2890 Chad Drive, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Kellie Steiner, Eugene District Office, at (503) 683-6952.

Date of Issue: July 15, 1994.

Wayne E. Elliott,

Acting District Manager.

[FR Doc. 94-18142 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-33-P

[ES-962-4950-10-4041] ES-046889, Group 96, Arkansas

Notice of Filing of Plat of the Dependent Resurvey and Subdivision of Sections

The plat of the dependent resurvey of a portion of the east boundary, portion of the subdivisional lines, and the survey of the subdivision of certain sections, Township 15 North, Range 20 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 12, 1994.

The survey was made upon request submitted by the National Park Service.

All inquiries or protest concerning the technical aspects of the survey must be

sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 12, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$2.75 per copy.

Dated: July 19, 1994.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 94-18154 Filed 7-25-94; 8:45 am]

BILLING CODE 4310-GT-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 145X)]

Norfolk Southern Railway Company—Abandonment

Exemption—In Muscogee County, GA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 7.4 miles of rail line from milepost 90.0 at Meyer to milepost 97.4 at Columbus, in Muscogee County, GA.

NS has certified that: (1) no local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 1994, unless stayed pending reconsideration. Petitions to stay that do

not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by August 5, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 15, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 29, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 20, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-18178 Filed 7-25-94; 8:45 am]

BILLING CODE 7035-01-P

¹ A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible to permit the Commission to review and act on the request before the exemption's effective date.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32515]

Tarantula Corporation—Continuance in Control Exemption—Fort Worth & Dallas Belt Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts noncarrier holding company Tarantula Corporation (Tarantula) from the prior approval requirements of 49 U.S.C. 11343-11344 for its continuance in control of Fort Worth & Dallas Belt Railroad Company (FW&DB) on FW&DB's becoming a class III rail carrier. FW&DB is acquiring rail line from the St. Louis Southwestern Railway Company. Tarantula currently controls class III rail carriers Fort Worth & Western Railroad Company and Fort Worth & Dallas Railroad Company. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on August 25, 1994. Petitions for stay must be filed by August 5, 1994. Petitions to reopen must be filed by August 15, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32515 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) petitioner's representative, Kevin M. Sheys, Oppenheimer Wolff & Donnelly, Suite 400, 1020 19th Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927-5316 or 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 15, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-18177 Filed 7-25-94; 8:45 am]

BILLING CODE 7035-01-P

Release of Waybill Data

The Commission has received a request from the University of Massachusetts, Department of Economics for permission to use certain data from the Commission's 1987, 1988, 1989, 1990, 1991, 1992 and 1993 (Aug. 1994) ICC Waybill Samples. A copy of the request (WB445-6/30/94) may be obtained from the ICC Office of Economics and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economics and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927-6196.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-18176 Filed 7-25-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE**Notice of Lodging of Consent Decree Pursuant to the Clean Water Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 15, 1994 a proposed Consent Decree in *United States of America v. Aerodynamic Plating Co., Inc.*, CV-94-4750-WDK(Ex), was lodged with the United States District Court for the Central District of California.

The proposed Consent Decree resolves the United States' claims against Aerodynamic Plating Co., Inc., under Section 309 (b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d). The Complaint alleged that Aerodynamic violated Section 307 of the Clean Water Act, 33 U.S.C. 1317, by introducing pollutants into the County Sanitation District of Los Angeles' publicly owned treatment works in violation of pretreatment standards.

Under the proposed Consent Decree, Aerodynamic will install new pretreatment equipment, modify existing pretreatment equipment, modify operations, conduct training for both buildings, conduct additional self-monitoring and reporting, pay a civil penalty of \$7,500 within three (3) years of entry in settlement of the United States' claims, pay NRDC's attorneys' fees and costs of \$17,500 within one (1) year of entry, and pay the Santa Monica Bay Restoration Project \$10,000 within two (2) years of entry in settlement of

NRDC's claims. Aerodynamic is subject to stipulated penalties for failures to comply with the terms of the proposed Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America v. Aerodynamic Plating Co., Inc.*, DOJ Ref. No. 90-5-1-1-4104.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, California, 90012, or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, N.W., Washington, D.C. 20004 (Tel.: (202) 347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, N.W., Box 1097, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of Seven Dollars and Seventy-five Cents (\$7.75) (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 94-18147 Filed 7-25-94; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. All American Pipeline Company*, Civil Action No. 92-0444-RG (Tx) C.D. Calif., was lodged on July 25, 1994, with the United States District Court for the Central District of California. This is a civil action against All American Pipeline Company under Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b), for violation of provisions of the Act for the prevention of significant deterioration of air quality ("PSD"), including a preconstruction review program for new major emitting facilities, 42 U.S.C. 7475 and 7479(1), and of the regulations for

New Source Performance Standards ("NSPS") applicable to owners and operators of stationary gas turbines, 40 C.F.R. §§ 60.1-60.18 and 60.330-60.335.

The violation of the PSD requirement consisted of failure to obtain a pre-construction installation permit for construction of the Cadiz Pump Station. The violations of the NSPS regulations involved: failure to provide written notice of the date of commencement of construction; failure to provide written notice of the anticipated date of startup; failure to provide written notice of the actual date of startup of the station; and failure to conduct performance tests on the gas turbines at the station. The Complaint sought civil penalties and injunctive relief to ensure future compliance with the PSD and NSPS regulations. Under the Consent Decree, All American Pipeline will pay a civil penalty of \$714,000. All American is required by the Consent Decree to retrofit three natural gas turbines with a dry, lean-premixed combustion system to reduce discharges of NO_x (as NO₂). In addition, in lieu of paying additional penalties of \$186,000, All American Pipeline will undertake a Supplemental Environmental Project that involves removing from operation three natural gas-fueled internal-combustion injection-pump engines at the station and replacing those with not more than two natural gas-fueled industrial engines that burn more efficiently, at a cost of at least \$1,000,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. All American Pipeline Company*, DOJ Ref. #90-5-2-1-1640.

The proposed consent decree may be examined at the office of the United States Attorney, room 7516, Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$5.75 (25 cents per page

reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

*Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 94-18145 Filed 7-25-94; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Healthcare Open Systems and Trials Corporation

Notice is hereby given that, on June 16, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Healthcare Open Systems and Trials Corporation ("HOST") has filed written notifications 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 3M, Murray, UT; AHIMA Washington Office, Washington, DC; American Hospital Association, Chicago, IL; American Organization of Nurse Executives, Chicago, IL; Ameritech, Hoffman Estates, IL; Center for Healthcare Automation Limited, Chicago, IL; COASTCOM, Alameda, CA; Computer-Based Patient Record Institute, Chicago, IL; Connecticut Hospital Research & Education Foundation, Inc., Wallingford, CT; Digital Equipment Corporation, Marlboro, MA; Health Communications Services, Inc., Glen Allen, VA; Hewlett-Packard Company, Andover, MA; IMS America, Plymouth Meeting, PA; Integrated Medical Systems, Dallas, TX;

International Teleconferencing Association, McLean, VA; K. Sue Kwentus Consulting, Onancock, VA; Lawrence Berkeley Laboratory, Berkeley, CA; Lawrence Livermore National Laboratory, Livermore, CA; Microelectronics & Computer Technology Corporation, Austin, TX; Motorola Incorporated, Schaumburg, IL; Project Management Consultants, Edgewood, MD; Ruf Corporation, Olathe, KS; San Antonio Health Care Partnership, San Antonio, TX; Sprint Corporation, Overland Park, KS; Texas Children's Hospital, Houston, TX; TransQuick, Inc., Atlanta, GA; UT Health Science Center, San Antonio, San Antonio, TX; Virginia's Center for Innovative Technology, Herndon, VA; West Virginia's Statewide Health Information Network, Charleston, WV; and Windsor Regional Cancer Centre, Windsor, Ontario, CANADA.

HOST will be a comprehensive program for prototyping and testing healthcare information technologies. Trials will initially be conducted on functioning systems developed by others to establish benchmarks for system performance ratings. HOST will sponsor research projects to develop new technologies where gaps appear in existing technologies. Testing will also be conducted at community sites within single and multiple healthcare systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-18144 Filed 7-25-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firms—	Location	Date received	Date of petition	Petition No.	Articles produced
D&I Sportswear (ACTWU)	Linden, NJ	07/05/94	06/20/94	30,056	Blouses, skirts and jackets.
McClure Manufacturing (ILGWU)	Elijay, GA	07/05/94	06/23/94	30,057	Womens' blue jeans.
Lederle Laboratories(ICWU)	Pearl River, NY	07/05/94	06/24/94	30,058	Bio-chemicals.
CogniSeig Development, Inc (Wkrs) ..	Houston, TX	07/05/94	06/23/94	30,059	Computer software.
Northrop Corp (Wkrs)	Pico Rivera, CA	07/05/94	06/19/94	30,060	Nuclear weapons.
Philips Lighting Co (IBT)	Meadowlands, PA ..	07/05/94	06/22/94	30,061	Distribute lighting products.
Williams Apparel (Wkrs)	Burns, TN	07/05/94	06/14/94	30,062	Ladies blue jeans.
Woolrich, Inc (Co)	Woolrich, PA	07/05/94	06/16/94	30,063	Men's and women's sportswear.
Woolrich, Inc (Co)	Avis, PA	07/05/94	06/16/94	30,064	Men's and women's sportswear.
Woolrich, Inc (Co)	Blanchard, PA	07/05/94	06/16/94	30,065	Men's and women's sportswear.
Woolrich, Inc (Co)	Broomfield, CO	07/05/94	06/16/94	30,066	Men's and women's sportswear.
Washington Steel Corp (Wkrs)	Washington, PA	07/05/94	06/22/94	30,067	Flat rolled stainless steel.
Thorsby Associates Corp (ILGWU)	Thorsby, AL	07/05/94	06/24/94	30,068	Women and childrens coats.

APPENDIX—Continued

Petitioner: Union/workers/firms—	Location	Date received	Date of petition	Petition No.	Articles produced
Smartscan, Inc (Wkrs)	Boulder, CO	07/05/94	06/16/94	30,069	Digital maps.
Kasmark & Marshall, Inc (Co)	Luzerne, PA	07/05/94	06/17/94	30,070	Stained glass windows and products.
Elmer Manufacturing Co (ILGWU)	Elmer, NJ	07/05/94	06/20/94	30,071	Ladies gowns.
Cyprus Bagdad Copper Co (Co)	Bagdad, AZ	07/05/94	06/21/94	30,072	Copper and Molybdenum concentrate.
Compressor Pump & Engine Machine (Wrks).	Casper, WY	07/05/94	06/24/94	30,073	Repair energy related equipment.
Cominco Metals, Magmont Mine (USWA).	Bixby, MO	07/05/94	07/05/94	30,074	Copper, zinc ores.
Land O'Lakes (Wkrs)	Dalbo, MN	07/05/94	06/23/94	30,075	Cheddar cheese.
Friskies Pet Care Products (Wkrs)	Plymouth, MA	07/05/94	06/20/94	30,076	Rawhide dog treats.
Oxford of Dawson (Co)	Dawson, GA	07/05/94	07/05/94	30,077	Men's and boys' sport and dress shirts.
Vygen Corp (Wkrs)	Ashtabula, OH	07/05/94	06/17/94	30,078	Polyvinyl chloride resin.

[FR Doc. 94-18105 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,496]

**Electronix Servicenter, Irving, TX;
Notice of Negative Determination
Regarding Application for
Reconsideration**

By an application dated June 20, 1994, a company official requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on May 25, 1994 and published in the *Federal Register* on June 14, 1994 (59 FR 30617).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the subject firm closed in August, 1993. The facility repaired VCRs, CD players, camcorders and computers; however some computer systems were produced mainly for the radio broadcasting industry.

It's claimed that the facility's customers could purchase imported assembled units from domestic suppliers.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for computer systems. This test is generally demonstrated

through a survey of the workers' firm's customers. The Department's customer survey shows that none of the respondents imported computer systems. The customers further stated that they have not replaced or installed other systems like those of the subject firm.

With respect to the repair services, they do not constitute the production of an article within the meaning of the Trade Act of 1974. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of July 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94-18097 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,694]

**Fort Vancouver Plywood Co.,
Vancouver, WA, Notice of Affirmative
Determination Regarding Application
for Reconsideration**

On June 21, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject

firm. The Department's Negative Determination was issued on June 9, 1994 and was published in the *Federal Register* on June 30, 1994 (59 FR 33787).

The company has submitted new information which allows the Department to continue the investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of July 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94-18098 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-30-M

**Employment and Training
Administration**

**Investigations Regarding Certifications
of Eligibility To Apply for Worker
Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 11th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
GenCorp Automotive (IUE)	Ionia, MI	07/11/94	06/15/94	30,079	Auto parts.
Double B. Drilling Corp (Wkrs)	Kingfisher, OK	07/11/94	06/30/94	30,080	Contract oil well drilling.
Pyle National, Inc (SEIU)	Chicago, IL	07/11/94	06/30/94	30,081	Electrical connectors.
Deran Holding Co., Inc (Wkrs)	Cambridge, MA	07/11/94	06/22/94	30,082	Chocolate candy.
Adams-Millis (Co)	High Point, NC	07/11/94	06/29/94	30,083	Socks.
Adams-Millis (Co)	Kernersville, NC	07/11/94	06/29/94	30,084	Socks.
Tenneco Gas Pipeline Co (Wkrs)	Houston, TX	07/11/94	06/30/94	30,085	Gas pipeline.
Ron Herren, Inc (ILGWU)	Elsberry, MO	07/11/94	06/30/94	30,086	Ladies sportswear.
Walport USA (Wkrs)	Elizabeth, NJ	07/11/94	06/19/94	30,087	VHS tapes.
Value Merchants, Inc (Wkrs)	Milwaukee, WI	07/11/94	06/27/94	30,088	Retail store.
Sara Lee Knit Products (Co)	Martinsville, VA	07/11/94	06/27/94	30,089	Fabric, sweatsuits, office and distribution.
Sara Lee Knit Products (Co)	Midway, GA	07/11/94	06/27/94	30,090	Fabric, sweatsuits, office and distribution.
Sara Lee Knit Products (Co)	Martinsville, VA	07/11/94	06/27/94	30,091	Fabric, sweatsuits, office and distribution.
Sara Lee Knit Products (Co)	Martinsville, VA	07/11/94	06/27/94	30,092	Fabric, sweatsuits, office and distribution.
Lipe Rollway Corp (Co)	Liverpool, NY	07/11/94	06/22/94	30,093	Bearings.
Creative Contractors (Co)	Vineland, NJ	07/11/94	06/28/94	30,094	Ladies' sportswear.
Brad Hagood Farms (Co)	Lubbock, TX	07/11/94	06/08/94	30,095	Raw short staple cotton.
Conoco, Inc., Explor & Prod (Co)	Houston, TX	07/11/94	06/30/94	30,096	Oil exploration and production.
Conoco, Inc., Explor & Prod (Co)	Casper, WY	07/11/94	06/30/94	30,097	Oil exploration and production.
Conoco, Inc., Explor & Prod (Co)	Lafayette, LA	07/11/94	06/30/94	30,098	Oil exploration and production.
Conoco, Inc., Explor and Prod (Co)	Midland, TX	07/11/94	06/30/94	30,099	Oil exploration and production.
Conoco, Inc., Explor and Prod (Co)	Ponca City, OK	07/11/94	06/30/94	30,100	Oil exploration and production.
Conoco, Inc., Explor and Prod (Co)	Corpus Christi, TX	07/11/94	06/30/94	30,101	Oil exploration and production.
Conoco, Inc., Explor and Prod (Co)	Alexander, ND	07/11/94	06/30/94	30,102	Oil exploration and production.
Conoco, Inc., Explor and Prod (Co)	West Hope, ND	07/11/94	06/30/94	30,103	Oil exploration and production.
Index, The Design Firm (Wkrs)	Houston, TX	07/11/94	06/28/94	30,104	Interior design services.
Champion Parts, Inc (IBEW)	Beech Creek, PA	07/11/94	06/30/94	30,105	Rebuilt auto parts.
Champion Parts, Inc, Carburetor Div (IBEW)	Lock Haven, PA	07/11/94	06/30/94	30,106	Rebuilt auto parts.

[FR Doc. 94-18099 Filed 7-25-94; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-29,147]

General Tire & Rubber Co., Mayfield, KY; Notice of Negative Determination On Reconsideration

On June 24, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former worker of the subject firm. The union submitted the names of additional customers. The notice was published in the *Federal Register* on July 6, 1994 (59 FR 34653).

The Department's initial denial was based on the fact that the "contributed importantly" test of the Group

Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's declining customers. The Department's survey showed that none of the respondents reported increased purchases of imported tires during the relevant period to the petition.

The investigation findings show that only three major customers with declining purchases were serviced out of the Mayfield plant in 1993. None of these had increased purchases of imported tires in the relevant period.

On reconsideration, the company submitted sales data for the list of customers submitted by the union. Most of the additional customers had increased purchases of tires from General Tire in 1993 compared to 1992.

The one customer with declining purchases of tires from the subject firm was included in the Department's initial survey and was found to have decreasing import purchases, as well, in 1993 compared to 1992.

Further findings on reconsideration show declining company imports in 1993 compared to 1992.

The fact that the Mayfield workers were certified for TAA earlier under petition TA-W-24,573 would not provide a basis for a certification in a later time period. Each petition is investigated on its own merits and in the period in which it was filed.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for

adjustment assistance to workers and former workers of General Tire, Inc., in Mayfield, Kentucky.

Signed at Washington, DC, this 15th day of July 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94-18100 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 203-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of

Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than August 5, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than August 5, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C-4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of July, 1994

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner; Union/workers/firm—	Location	Date received at Governor's office	Petition No.	Articles produced
Parker Hannifan; Parker Seal (Wkrs) GenCorp; Reinforced Plastic Division (Wkrs).	Berea, KY Ionia, MI	07/05/94 07/05/94	NAFTA-00169 NAFTA-00170	O-rings and rubber gaskets. Reinforced fiberglass automotive grill opening panels.
Coltee Industries, Inc.; Menasco Overhaul Division (Wkrs).	Burbank, CA	07/06/94	NAFTA-00171	Repair and overhaul of aircraft landing gear.
American Cyanamid; Lederie (ICW)	Pearl River, NY	06/28/94	NAFTA-00172	Bulk biochemical production— declomycin.
Chock Full O Nuts' Greenwich Mills (Wkrs).	Mebane, NC	07/07/94	NAFTA-00173	Sugar based beverage powders.
Keyes Fibre Company; Van Leer Corporation (UPI).	Sacramento, CA	07/08/94	NAFTA-00174	Packaging for foodstuffs.

[FR Doc. 94-18101 Filed 7-25-94; 8:45 am]
BILLING CODE 4510-30-M

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Pub. L. 92-463. Pursuant to Section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below.

TIME AND PLACE: The meeting will be on Wednesday, August 10, 1994 from 9 a.m. to 3 p.m. in Room N-3437 A-D, U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

The Commission is seeking proposals and options to deal with the problems identified in its Fact Finding Report related to issues of employee participation in the workplace.

The Fact Finding Report identifies some of the facts and questions relevant to these issues at varying points.

The Commission invites the views of interested parties about the problems cited above that are reported to arise under current law and the recommendations they would make to deal with these problems.

PUBLIC PARTICIPATION: The meeting will be open to the public.

It will be in session from 9 a.m. until 3 p.m. when it will adjourn. Seating will be available to the public on a first-come, first-served basis. Disabled individuals wishing to attend should

contact the Commission no later than August 1, 1994, if special accommodations are needed.

The Commission welcomes by August 4 written statements of proposals to deal with the issues identified above. The Commission may schedule, time permitting, the authors of such statements for a brief presentation and questions on August 10, if they indicate they would like to appear, in addition to organizational representatives invited to present proposals to the Commission. Individuals who wish to submit written statements should send 15 copies on or before August 4, to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-9148.

Signed at Washington, DC this 20th day of July 1994.

Robert B. Reich,
Secretary of Labor.

[FR Doc. 94-18096 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-23-M

[TA-W-27,959]

**Pennzoil Sulphur Company A/K/A
Pennzoil Company, Pecos, TX;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on December 31, 1992 and published in the *Federal Register* on January 13, 1993 (58 FR 4186).

At the request of the State Agency, the Department reviewed the certification for workers on the subject firm. The investigation findings show that the claimants' wages are reported under an unemployment insurance (UI) tax account for Pennzoil Company, not Pennzoil Sulphur Company. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-27, 959 is hereby issued as follows:

"All workers of Pennzoil Sulphur Company, Pecos, Texas, also known as Pennzoil Company, Pecos, Texas who became totally or partially separated from employment on or after October 26, 1992, through two years from the date of the initial certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of July, 1994.

Violet L. Thompson,
Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-18102 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-30-M

**Notice of Determinations Regarding
Eligibility To Apply for Worker
Adjustment Assistance and NAFTA
Transitional Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of July, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker
Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations of the firm.

TA-W-29,809; *Rowe International, Inc., Whippany, NJ*

TA-W-29,850; *Beaver Dam Products Corp., Beaver Dam, WI*

TA-W-29,859; *ITW Produx, Inc., Warrensville Heights, OH*

TA-W-29,869; *McCord Winn Textron, Winchester, MA*

TA-W-29,777; *Sandvik Special Metals, Kennewick, WA*

TA-W-29,791; *TK Valve & Manufacturing, Hammond, LA*

TA-W-29,719; *BASF Corp., Lodi, NJ*

TA-W-29,510 & TA-W-29,510A; *Winters Industries, Canton, OH*

TA-W-29,511; *Winters Industries, Alliance, OH*

TA-W-29,841; *Season-All Industries, Inc., Indiana, PA*

TA-W-29,673; *Leco Corp./ Technical Ceramics Div.—Dept 34, Augusta, GA*

TA-W-29,674, TA-W-29,675; *Leco Corp., Technical Ceramics Div., Departments 35 & 39, Grovetown, GA*

TA-W-29,719; *Cargill, Inc., Cargill Flour Milling, Buffalo, NY*

TA-W-29,625; *Parker Berteau Aerospace Group, Moorpark, CA*

TA-W-29,620, TA-W-29,621, TA-W-29,622, TA-W-29,623, TA-W-29,624; *Parker Berteau Aerospace Group, Irvine, CA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,912; *Fruit of the Loom, Osceola, AR*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,828; *Trico Industries, Inc., Bradford, PA*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,842; *Ford New Holland, Memphis, TN*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,679 & TA-W-29,679A; *Southwest Royalties, Inc, Ira, TX and Monahans, TX*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,935; *American Microsystems, Inc., Pocatello, ID*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

**Affirmative Determinations for Worker
Adjustment Assistance**

TA-W-29,888; *Alcan Aluminum Corp., Alcan Ingot, Henderson, KY*

A certification was issued covering all workers separated on or after April 12, 1993.

TA-W-29,611; *Natalie Fashions, Palmerton, PA*

A certification was issued covering all workers separated on or after March 2, 1993.

TA-W-29,852; *Pope & Talbot, Inc., Port Gamble, WA*

A certification was issued covering all workers separated on or after April 13, 1993.

TA-W-29,913; *Western Consultants, Inc., Headquartered in Denver, CO & Operating in the Following States: A; Co., B; TX*

A certification was issued covering all workers separated on or after April 20, 1993.

TA-W-29,844; *Chevron Corp., Chevron Petroleum Technology Co, La Habra, CA and Operating in the Following Locations: A; San Ramon, CA and B; New Orleans, LA*

A certification was issued covering all workers separated on or after April 18, 1993.

TA-W-29,706; *Washington Steel Corp., Massillon, OH*

A certification was issued covering all workers separated on or after March 22, 1993.

TA-W-29,724; Standard Products Co., Campbell Plastics Div., Schenectady, NY

A certification was issued covering all workers separated on or after March 28, 1993.

TA-W-29,688; Star Street Ventures, El Dorado, KS

A certification was issued covering all workers separated on or after March 15, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of July, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-000125; Wells Lamont Corp., Portland Glove Co., Carlton, OR

The investigation revealed that criteria (3) & criteria (4) were not met. A survey of major customers that decreased purchases from Wells Lamont, Portland Glove Co revealed that most of the respondents did not import leather gloves or leather palm work gloves from Canada or Mexico. Customers who reported imports relied on imports from Canada/Mexico for only a small proportion of their total

requirement during 1993 and the first five months of 1994.

NAFTA-TAA-00120; Walker Manufacturing Co., Hebron, OH

The investigation revealed that criteria (3) & criterion (4) were not met. A survey conducted with customers purchasing exhaust systems from Walker Manufacturing, Hebron, OH revealed that customers did not decrease purchases from Walker and increase imports of exhaust systems from Canada or Mexico in the relevant period.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00119; Desoto, Inc., Stone Mountain, GA

A certification was issued covering all workers of Desoto, Inc., Stone Mountain, GA separated on or after December 8, 1993.

NAFTA-TAA-00122; Pacific Sound Resources, Inc., Seattle, WA

A certification was issued covering all workers of Pacific Sound Resources, Seattle, WA separated on or after December 8, 1993.

NAFTA-TAA-00124; S&H Fabricating & Engineering, Inc., Sanford, FL

A certification was issued covering all workers of S&H Fabricating & Engineering, Inc., Sanford, FL separated on or after December 8, 1993.

NAFTA-TAA-00127; Zurn Industries, Inc., Zurn Energy Div., Erie, PA

A certification was issued covering all workers of Zurn Industries, Energy Div., Erie, PA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of July, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 15, 1994.

Violet L. Thompson,
Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-18103 Filed 7-25-94; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-29,802]

Western Geophysical Company, A/K/A Halliburton Company, A/K/A Western Atlas International, Inc.; Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on May 31, 1994 and published in the Federal Register on June 14, 1994 (59 FR 30618). The certification was amended on June 15, 1994 and that notice was published in the Federal Register on June 28, 1994 (59 FR 33306).

At the request of the State Agency, the Department again reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages are reported under unemployment insurance (UI) tax account for Western Atlas International, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-29,802 is hereby issued as follows:

All workers of Western Geophysical Company, Houston, Texas (the successor-in-interest firm to Halliburton Geophysical Services) who had wages reported under Western Atlas International, Inc., Houston, Texas for UI tax account purposes and who had become totally or partially separated from employment on or after April 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of July, 1994.

Violet L. Thompson,
Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-18104 Filed 7-25-94; 8:45 am]
BILLING CODE 4510-13-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-93]

Entela, Inc.; Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on Entela, Inc. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and

Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Entela, Inc. (ENT) which made application pursuant to 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: Entela, Inc., 3033 Madison SE., Grand Rapids, Michigan 49548.

Background

Entela, Inc. was originally founded in 1974 as a Michigan Corporation specializing in structural steel inspection. In 1981, equipment and personnel were added to initiate an in-house materials laboratory. This was followed by a formation of certification programs within Entela, Inc.

The original company as founded is Entel Engineering Services with departments in structural engineering, field service inspection, asbestos inspection, and geotechnical engineering. Rapid growth in its laboratory division led to the formation of Entela Laboratories, which is a testing consulting company providing services to the manufacturing industry. The services offered at Entela Laboratories include metals chemistry, simulated environmental testing, plastics/non-metals testing, product testing, electrical/electronics testing, metallurgy, mechanical engineering, third party certification programs, metrology, and calibration. As of July 1992, Entela, Inc. employed over 75 individuals and had two facilities, located in Grand Rapids, Michigan and Taipei, Taiwan. This recognition, however, does not extend to the Taiwan facility.

Entela, Inc.'s initial application, dated July 31, 1992 (Ex. 2A) was amended by letter dated February 9, 1993 (Ex. 2D) to apply for recognition for an additional standard. The application was then amended three additional times by letters dated February 11, 1993 (Ex. 2E), May 19, 1993 (Ex. 2G), and November 30, 1993 (Ex. 2I), to its present form. The final on-site review report (Ex. 3A), consisting of an on-site evaluation of ENT's Grand Rapids testing facilities and administrative and technical practices, conducted from February 8 through 11, 1993 [Ex. 3A(1)] and the corrective action taken by Entela, Inc. [Ex. 3A(2)], and the OSHA staff

recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of ENT's application together with a positive preliminary finding was published in the *Federal Register* on March 3, 1994 (59 FR 10180-10185). Interested parties were invited to submit comments.

There were 36 responses to the *Federal Register* notice of the ENT application and preliminary finding (Docket No. NRTL-2-93), all of which agreed with OSHA's preliminary determination.

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that ENT does have testing equipment and facilities appropriate for the areas of recognition it seeks. The laboratory has available all the general test equipment required to perform the testing required by the standards. If any unique pieces of additional equipment are necessary, ENT will obtain them as required through an ENT approved source.

ENT's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. Environmental conditions in the laboratory are adequately controlled for the type of testing performed in the laboratory.

OSHA has determined that Entela, Inc. has appropriate written test procedures, and calibration and quality control programs to enable it to adequately perform appropriate testing.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias. Entela, Inc. meets these criteria.

ENT's application as well as the on-site review report indicate that ENT does maintain effective procedures for producing credible findings and

reports that are objective. The laboratory maintains a system for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples or the results of the measurement.

The specific ongoing programs the laboratory is involved with that identify the records required to be maintained for an investigation were followed. These programs use ANSI/UL Standards, ASTM test procedures, the Quality Control Manual (Ex. 2J), Third Party Certification Program (TPCP) Manual, (Ex. 2H), Client Test Procedures, and Departmental Operational Procedures. These procedures contain construction or testing parameters to be met by the product being evaluated and, as required, the chronological order of evaluation. Where appropriate, the test engineer provides a narrative report along with the test data to document compliance of a product with the standard. Standardized tests that are frequently run have a standard test data sheet available that contains the necessary information for the laboratory technician.

Sample test and evaluation procedures and reports for the NRTL Program activities were reviewed. These sample reports include narrative descriptions. The test procedure format and scope are identified in the Third Party Certification Program Manual, and describe the content and scope for the Standard Operational Procedure for the program. The laboratory has developed a generalized processing procedure for the product classes of electrical appliances and lighting products in final form, and in draft form for flammability testing.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manual.

The certification reports contain the following: Name and location of submitter and factory; title, number, and date of standard used for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications; and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance. The Quality Assurance Manual and the Third Party Certification Program Manual identify the minimum information and reporting

format required for an investigation. Most reports followed the required format, and ENT is taking appropriate action to assure that all reports will do so in the future. Entela has documented specific procedures for the recording of any deviations and the associated technical rationale, or for the modification of testing protocol.

The present policy is to utilize a technical committee and standards experts to determine the appropriate standard in evaluating a product. Standard interpretations are developed by consensus of the technical committee. The Project Manager distributes technical advisory letters describing standards policy on interpretation or deviation decisions to all parties affected. The laboratory personnel are members of various organizations which develop standards applicable to their on-going programs in the automotive flammability, metallurgical, quality, electrical and chemical testing areas.

In addition, the laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

A technical committee and standards experts determine the appropriate standard or standards to be utilized in evaluating the product. Disagreements between the applicant and the laboratory regarding standards applicability are resolved using the Entela Inc., Third Party Certification Committee, technical experts, and input from the standards-writing organization. The decision of the laboratory regarding which standard is applicable is final.

The TPCP Manual addresses the interpretation of these standards and the appeals procedure available to a client, when there is a disagreement with that interpretation. The TPCP Committee interprets the section of the standard, which are also available for distribution to interested parties. The mechanism for dealing with consumer inquiries and complaints is also adequately addressed in the TPCP Manual.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: Testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. ENT has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up

procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

Entela presently performs follow-up inspections at various facilities for programs outside of the NRTL program, which have demonstrated its capability in this area. Written procedures are in place for the various programs. For example, the TPCP Manual, which is presently used in the Government Services Administration (GSA) Furniture Certification Program, identifies the various steps, policies and procedures that will be used in the NRTL Program. A separate manual is presently used in Entela's Certified Automotive Parts Association (CAPA) Program. The Nuclear Program is covered under the Quality Manual.

The Entela, Inc. follow-up inspection procedure for the NRTL program requires quarterly inspections on an unannounced basis at the manufacturing facility.

This program is designed to assure that:

1. The Entela, Inc. mark is applied only to certified products;
2. That the terms of the agreement with the manufacturer are adhered to when the Entela Inc. mark is used;
3. Defects noted during previous inspections have been corrected;
4. Document control procedures and support staff training should provide the assurance that all facility assessment records are on file.

NRTL factory inspections will be performed at the rate of at least four inspections per factory per year. The frequency varies with product volumes, types of products, and the manufacturer's prior record.

When products fail to meet the requirements, the Quality Services Division takes action to either have the manufacturer correct the defect immediately, quarantine stock until the product can be reworked or reevaluated by the Entela testing engineer, or remove the Entela, Inc. mark from the product.

Entela, Inc. has a standard follow-up inspection form that will be used to document the findings at the manufacturing site. The inspector or inspecting engineer will use this form along with the follow-up inspection file for that manufacturing site and product to evaluate the product.

Engela, Inc. has a pre-qualification checklist for the evaluation of a manufacturing facility that will be used prior to the factory labeling of any products in the NRTL Program, as well as the Follow-Up Service Inspection Report. The TPCP Manual identifies the procedures required for the selection of product samples to test.

Entela, Inc.'s Quality Services Division will monitor products in the field, when prompted by either factor anomalies or complaints, and investigate field complaints. Entela, Inc. reserves the right to utilize safety related public notification and mandatory recall procedures. All consumer complaints are forwarded to the Quality Services Director, Vice President, or President, as appropriate.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendor of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

OSHA believes, based upon an examination of the application with particular reference to Exhibits 2B and 2J, that Entela, Inc. is independent within the meaning of section 1910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI, UL test standards for which ENT has applied to test products, to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards

developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that Entela, Inc. has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, Entela, Inc. is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

ENT has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electric Cabinets and Boxes
ANSI/UL 67—Electric Panelboards
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 94*—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 141—Garment Finishing Appliances
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
UL 213—Rubber Gasketed Fittings for Fire Protection Service
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 325—Door, Drapery, Louver, and Window Operators and Systems
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 482—Portable Sun/Heat Lamps

ANSI/UL 484—Room Air Conditioners
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508**—Electric Industrial Control Equipment
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544—Electric Medical and Dental Equipment
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 817—Cord Sets & Power-Supply Cords
ANSI/UL 863—Electric Time-Indicating and Recording Appliance
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 873—Electrical Temperature-Indicating and Regulating Equipment
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 998—Humidifiers
ANSI/UL 1004***—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1012—Power Supplies
ANSI/UL 1026—Electric Household Cooking and Food-Serving Equipment
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1230—Amateur Movie Lights
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1286—Office Furnishings
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1459—Telephone Equipment
ANSI/UL 1570—Fluorescent Lighting Fixtures

ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

Notes:

- *—Exclusive of radiant panel testing.
- **—Limited to equipment of no greater than 500 amperes.
- ***—Limited to motors rated no greater than one-half horsepower.

Entela, Inc. must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition applies only to work done at the Grand Rapids facility;

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to ENT's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ENT has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ENT shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ENT agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ENT shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

ENT will continue to meet the requirements for recognition in all areas where it has been recognized; and

ENT will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on July 26, 1994 and

will be valid for a period of five years from that date, until July 26, 1999, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington DC this 19th day of July 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94-18107 Filed 7-25-94; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before September 9, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency

records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (NI-AFU-94-8). Facilitative records relating to Acquisition Awards.

2. Department of Housing and Urban Development (N1-207-93-4). Procurement office files on grants and other forms of assistance.

3. Department of Justice, Antitrust Division (N1-60-93-18). Housekeeping and facilitative files of the Assistant Attorneys General and Deputy Assistant Attorneys General, and files of Special Assistants.

4. Department of State, U.S. Mission to the Organization of American States (N1-84-94-6). Routine, facilitative, and duplicative records. Policy documentation scheduled for transfer to the National Archives.

5. Department of State, Bureau of Inter-American Affairs (N1-59-93-41). Routine, facilitative, and duplicative records. Policy documentation scheduled for transfer to the National Archives.

6. National Archives and Records Administration (N2-107-94-2). Routine records segregated from files of the

Secretary of War in the National Archives.

7. National Archives and Records Administration (N2-131-94-1). Seized corporate records accumulated by the Office of Alien Property.

8. United States Information Agency (N1-306-94-3). Routine and facilitative records of the Office of Personnel.

9. United States Information Agency (N1-306-94-4). Routine and facilitative records of the Management Plans and Analysis staff.

10. United States Attorneys and Marshals, United States Attorney for the District of Columbia (N1-118-94-1). Reading files and routine administrative documentation.

Dated: July 13, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-18078 Filed 7-25-94; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94-047)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 25, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and

Budget, Paperwork Reduction Project (2700-0009), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie Berry, NASA Reports Officer, (202) 358-1368.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit federal agencies or employees, non-profit institutions, small businesses or organizations.
Number of Respondents: 125.
Responses Per Respondent: 20.
Annual Responses: 2,500.
Hours Per Response: .25.
Annual Burden Hours: 500.
Number of Recordkeepers: Included above.
Annual Hours Per Recordkeeping: Included above.
Annual Recordkeeping Burden Hours: Included above.
Total Annual Burden Hours: 675.
Abstract-Need/Uses: Reporting is required under contract provisions.

Dated: July 18, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94-18054 Filed 7-25-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources: Panel B Section) to the National Council on the Arts will be held on August 16-18, 1994 from 9:00 a.m. to 5:30 p.m. in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on August 16 for opening remarks and a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 5:30 p.m. on August 16 and from 9:00 a.m. to 5:30 p.m. on August 17-18 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given

in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: July 13, 1994.

Yvonne M. Sabine,

Director Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-18148 Filed 7-25-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Appointments to the Office of the Inspector General Performance Review Board for the Senior Executive Service

The U.S. Nuclear Regulatory Commission (NRC) Office of the Inspector General (OIG) has appointed the following individuals as members of the NRC/OIG Performance Review Board (PRB).

The following individuals are appointed as members of the NRC/OIG PRB responsible for making recommendations to the Inspector General on performance appraisal ratings and performance awards for Senior Executives:

Appointees

Craig Beauchamp, Assistant Inspector General for Investigations, Office of the Inspector General, Department of Agriculture

Donald Mancuso, Assistant Inspector General for Investigations, Office of the Inspector General, Department of Defense

William D. Hager, Assistant Inspector General for Investigations, Office of the Inspector General, National Aeronautics and Space Administration

Dated at Rockville, Maryland, this 19th day of July, 1994.

David C. Williams,

Inspector General.

[FR Doc. 94-18114 Filed 7-25-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Company; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Georgia Power Company (the licensee) for amendments to Facility Operating License Nos. DPR-57 and NPF-5 issued to the licensee for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia. A Notice of Consideration of Issuance of this amendment was not published in the **Federal Register**.

The licensee's application of June 7, 1994, requested temporary changes to the Operating Licenses and Appendices A to Hatch, Units 1 and 2, that would allow the planned testing at Plant Hatch to demonstrate the capability to operate the plant up to a core power level of 2558 MWt. This testing is part of the overall power uprate program and is intended to evaluate the physical effects of increasing the licensed plant power level. The total duration time above the current operating limit for the testing on each unit is not to exceed 30 cumulative days. Specifically, the proposed Technical Specification (TS) changes are:

1. Revise the Unit 1 and 2 operating licenses and the Unit 1 TS Bases for limiting safety system settings to allow each unit to be operated above the current license limit for the maximum steady state reactor core thermal power level of 2436 MWt. This change will allow testing of the plant to be performed up to 2558 MWt, 105% of the current maximum steady state power level.

2. Revise the high pressure scram TS 2.2A.1.a limiting safety system setting and TS 3.1.A (Table 3.1-1, Item 4) limiting condition for operation (LCO) for Unit 1 and TS 2.2.1 (Table 2.2.1-1, Item 3) limiting safety system setting for Unit 2 from a maximum of 1054 psig to a maximum 1065 psig. The cumulative total of time spent with each unit

operating with the revised high pressure scram setpoint is not to exceed 35 days.

3. Revise the average power range monitor rod block TS 3.2.G (Table 3.2-7, Item 3) LCO for Unit 1 and TS 3.3.5 (Table 3.3.5-2, Item 1.a) LCO for Unit 2 from a maximum of 0.58W + 50% - 0.58 delta W to a maximum of 0.58W + 53% - 0.58 delta W. The cumulative total of time spent with each unit operating with the revised average power range monitor rod block setpoint is not to exceed 35 days.

4. Revise the low low set safety/relief valve arming TS 3.2.N (Table 3.2-14, Item 1) LCO and TS 4.6.H.2 surveillance requirement for Unit 1 and TS 3.3.3 (Table 3.3.3-2, Item 5.a) LCO and TS 4.4.2.2 surveillance requirement for Unit 2 from a maximum of 1054 psig to a maximum of 1065 psig. The cumulative total of time spent with each unit operating with the revised low low set safety/relief valve arming setpoint is not to exceed 35 days.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed amendment by letter dated July 20, 1994.

By August 26, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated June 7, 1994, and (2) the Commission's letter to the licensee dated July 20, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of item (2) may be obtained upon

request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Des.

Dated at Rockville, Maryland, this 20th day of July 1994.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-3, Division of Reactor Projects—II/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-18113 Filed 7-25-94; 8:45am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Excavation Damage Prevention; Workshop

AGENCY: National Transportation Safety Board.

ACTION: Notice of Workshop; Excavation Damage Prevention.

SUMMARY: The National Transportation Safety Board (NTSB) and the Office of Pipeline Safety of the U.S. Department of Transportation will hold a 2-day workshop on September 8 and 9 to identify new ideas and approaches for preventing excavation-caused damage to buried facilities such as pipelines and telecommunication cables. The workshop will be held at the Sheraton Washington Hotel, 2660 Woodley Road NW., Washington, DC (202-328-2000).

The workshop will provide experts from across the Nation the opportunity to come together to develop new excavation safety initiatives and to identify current accident prevention activities that should be expanded nationwide. Participants will consider elements essential for operating effective one-call notification systems, excavation damage prevention responsibilities of excavators and buried facility operators, and ways the States should administer sanctions for damage prevention programs.

The workshop is open to everyone. Representatives from pipeline companies, telephone companies, other buried facility operators, railroads, excavation equipment operators/contractors, and Federal, State, and local public works and government officials are expected to attend the workshop.

Anyone wishing to comment on any aspect of excavation damage prevention programs may send this information to Charles Batten, Pipeline Division, National Transportation Safety Board, Washington, DC 20594. Papers should be submitted with a disk in either WordPerfect (5.2 or lower) format or

ASCII format. A copy of the workshop's proceedings will be prepared and available at a later date.

Participants may obtain more detailed information or register for the workshop by calling Ms. Angela Fenwick at 202/382-0670.

FOR FURTHER INFORMATION CONTACT:

Larry Jackson, Acting Chief, Pipeline Division, Office of Surface Transportation Safety, National Transportation Safety Board, Washington, DC 20594, (202) 382-0670.

Dated: July 20, 1994.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 94-18058 Filed 7-25-94; 8:45 am]

BILLING CODE 7533-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Acquisition Regulation (FAR) Rewrite

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

ACTION: Extension of public comment period.

SUMMARY: On July 6, 1994 a notice was published requesting comments on proposed approaches to the rewrite of the Federal Acquisition Regulation as recommended by the report of the National Performance Review. It is the intent of this notice to extend the period of time for submitting public comments.

DATES: To ensure consideration, comments must be received at the address, as provided below, no later than 5:00 p.m. on September 5, 1994.

ADDRESSES: Mail comments to the following address: Susan E. Alesi, Special Assistant for Regulations, Office of Management and Budget, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9001, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Susan E. Alesi at 202-395-6803.

SUPPLEMENTARY INFORMATION: In response to a request from the public, the period of time for submitting comments is extended by 30 days until September 5, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94-18060 Filed 7-25-94; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34407; File No. SR-CBOE-94-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Block Order Discounts on Transaction Fees

July 19, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 is proposing to establish discounts on transaction fees that members pay the CBOE on public customer orders of block size. Although the rule change became effective as of the July 7, 1994 filing date, it is applicable to eligible transactions effected as of July 1, 1994.

The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish discounts on transaction fees that members pay under the CBOE's fee schedule on public

customer orders of "block" size. For purposes of the fee discount, a block transaction is a single order consisting of 500 or more option contracts relating to the same underlying security. Multi-part customer orders such as spreads and straddles are eligible for discounts as well. On such orders, the total contract size, rather than the size per leg, determines whether the order will be considered of block size for discount purposes. To be eligible for the discount, all legs of a multi-part order must be executed on the same trading day and trade tickets for each leg must contain a common data reference.

Under the terms of the discount, an eligible order of 500 to 999 contracts will receive a 15 percent discount from the scheduled CBOE transaction fee. An eligible order of 1,000 or more contracts will receive a 25 percent discount. Discounts will be computed and credited to the applicable account at The Options Clearing Corporation automatically if the submitted trade data meet the eligibility parameters. Where errors occur in data entry, a discount ordinarily would not be generated, and the member that submitted the trade would need to make a written request to the Exchange for the applicable discount.²

Because the CBOE's transaction fees are assessed as per-unit fees under the Exchange's fee schedule, fees on public customer orders of block size can be sizable in comparison to fees on small orders. The sizable CBOE transaction fee on block orders can create a disincentive to trade at the CBOE. Accordingly, the discount is intended to enhance the attractiveness of the CBOE's markets for customer orders of block size and is structured to improve the CBOE's ability to compete for such orders with futures markets and over-the-counter markets.

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

² The member would receive the applicable discount automatically upon making such written request. Telephone conversation between Michael Meyer, Schiff Hardin & Waite, and Thomas McManus, Division of Market Regulation, Commission (July 19, 1994).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, and Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-94-22, and should be submitted by August 16, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-18132 Filed 7-25-94; 8:45 am]
BILLING CODE 8010-01-M

¹ 15 U.S.C. 78s(b)(1) (1982).

³ 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-34409; File No. SR-CHX-94-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to its Net Capital Requirements

July 20, 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 6, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 17, 1994, the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.¹ On July 19, 1994, the CHX submitted to the Commission Amendment No. 2 to the proposed rule change.² 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 CHX proposes to amend Rule 3 of Article XI, Rule 15 of Article XXXIV, Rule 1(d) of Article I and Interpretation and Policy .01 under Rule 3 of Article XXXVI of the Exchange's Rules relating to net capital and aggregate indebtedness.³ The Exchange requested accelerated approval of the proposed rule change.⁴

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

¹ See letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated May 13, 1994. Amendment No. 1 made certain clarifying changes to the proposal.

² See letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, SEC, dated July 19, 1994. Amendment No. 2 requested accelerated approval of the proposed rule change.

³ The term "net capital," as used in the CHX proposal, means net capital as defined by Commission Rule 15c3-1. Rule 15c3-1 defines net capital as the net worth of a broker or dealer, adjusted by certain adjustments prescribed in Rule 15c3-1. See 17 CFR 240.15c3-1(c)(2) (1994).

⁴ See Amendment No. 2, *supra* note 2.

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

Pursuant to recent amendments to Commission Rule 15c3-1,⁵ on April 1, 1994, the Exchange's specialists became subject to the Commission's net capital rule.⁶ Accordingly, effective April 1, 1994, these specialists must have a minimum net capital of \$100,000 (\$75,000 until July 1, 1994) under the aggregate indebtedness method and,⁷ under the alternative method, equal to a minimum of \$250,000 (\$200,000 until July 1, 1994).⁸

Prior to the Commission's recent amendments to the net capital rule, the only capital requirements applicable to specialists or market makers were Exchange rules, specifically, Article XI, Rule 3(b). Because the Commission has now set forth a requirement that, in most cases, is higher than the Exchange's current requirements, the Exchange is filing this proposed rule change to delete its rules relating to specialist and market maker capital requirements (Article XI, Rule 3(b)) and to delete appropriate cross references to this Rule.

In addition, the Exchange is amending Interpretation and Policy .01 to Rule 3 of Article XXXVI relating to the capital requirement of the Designated Primary Market Maker ("DPM") of the Chicago Basket ("CXM").⁹ This amendment is needed because of the increase in

⁵ 17 CFR 240.15c3-1 (1994).

⁶ See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

⁷ The aggregate indebtedness standard under Rule 15c3-1 states that no broker or dealer, other than one that elects the Alternative Standard, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer). See 17 CFR 240.15c3-1(a)(1)(i) (1994).

⁸ Rule 15c3-1(a)(1)(ii) contains the alternative standard, which states in part, that a broker or dealer shall not permit its net capital to be less than the greater of \$250,000 or 2 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3-3. See 17 CFR 240.15c3-1(a)(1)(ii) (1994).

⁹ The following language is proposed to be added to Interpretation and Policy .01 to Rule 3: The DPM capital requirement (as the term "capital" or "net capital" is defined for specialists in SEC Rule 15c3-1) shall be the greater of (i) \$150,000 or (ii) the capital requirement imposed on specialists by SEC Rule 15c3-1.

required regulatory capital levels. The Exchange believes that the DPM's capital requirement should not fluctuate based on these changes to the Commission's net capital rule, however, the rule should be flexible in the event that the Commission increases specialists' capital requirements at a future date.¹⁰ Thus, the Exchange is imposing a capital requirement on the DPM of the greater of (i) \$150,000 or (ii) the capital requirement imposed by Commission Rule 15c3-1. Under both alternatives, "capital" should be calculated using Commission Rule 15c3-1 for specialists.¹¹

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest by amending Exchange Rules to correspond to the Commission's amendments to Rule 15c3-1.

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

Written comments on the proposed rule change were neither solicited nor received.

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.,

¹⁰ On August 11, 1993, the Commission amended Rule 15c3-1, to among other things, make the Commission's net capital rule applicable to certain specialists that are currently exempt from the rule (the amended Rule makes the Commission's net capital rule applicable to all specialists other than certain options market makers). See Securities Exchange Act Release No. 32737, *supra* note 6.

¹¹ As a result of the amendments to the Commission's net capital rule that became effective April 1, 1994, Exchange equity specialists are required to comply generally with the provisions of the Commission's early warning notification procedures as codified in Section 17a-11 under the Act.

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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-94-10 and should be submitted by [insert date 21 days from date of publication].

Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CHX has requested the Commission grant accelerated approval to its proposal because the Commission has already implemented its changes to its net capital rule (SEC Rule 15c3-1).¹² The Commission finds that the CHX's amendments to its net capital requirements for specialists are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 11(b) of the Act.¹³ The Commission believes that the CHX's amendments are consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the rule change is consistent with Section 11(b) of the Act, and Rule 11b-1 thereunder,¹⁴ which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. The rule change is consistent with the Rule 11b-1(a)(2)(i) requirement that the rules of a national securities exchange that permit a member to register as a specialist and to act as a dealer include, among other things, adequate minimum capital requirements in view of the markets for securities on such exchange.

The rules of the CHX, in addition to the rules set forth under this Act, impose certain obligations upon

specialists, including, but not limited to, the maintenance of fair and orderly markets.¹⁵ Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange. Generally, specialists are under an affirmative obligation to trade for their own accounts when such transactions are necessary to the public interest to minimize an actual or reasonably anticipated imbalance between supply and demand in the Exchange market, and contribute to continuity and depth in their specialty stocks.¹⁶ To ensure that specialists fulfill these obligations, it is important that they maintain an adequate amount of capital.

The importance of specialists' net capital as it relates to the quality of Exchange markets was highlighted during the October 1987 Market Break. In the Division of Market Regulation's ("Division") report on the 1987 Market Break, the Division reviewed, among other things, specialists' ability to maintain fair and orderly markets and minimum capital requirements imposed by the exchanges. During the 1987 Market Break, most exchange specialists were exempt from the Commission's net capital rule, and therefore, were only required to maintain a minimum amount of capital as determined by the rules of their exchange. In this respect, the Division stated its concern that the minimum capital requirements imposed by the exchanges on specialists did not reflect the actual capital needed to ensure the maintenance of fair and orderly markets in different types of securities.¹⁷ Accordingly, as a result of the Division's concerns regarding the availability of capital for specialists, today's more volatile market conditions, and the state of the exchanges' specialist surveillance and monitoring system, the Division began to examine the ramifications of eliminating the specialist exemption from the SEC's net capital rule and applying the net capital rule to all specialists.¹⁸

The Commission believes that amending Articles I, XI, XXXIV, and XXXVI to delete outdated Exchange specialist capital requirements, and thereby conform the CHX's rules to the SEC's net capital rules,¹⁹ and adopting

a net capital requirement for DPMs that equals or exceeds the SEC's net capital requirement is consistent with recent amendments to SEC Rule 15c3-1 under the Act, as well as a positive step toward procuring stronger capital foundations for specialists on the CHX floor.

The Commission believes that the amendments are consistent with Section 6(b)(5) of the Act in that the increased reserves of specialist net capital should help to ensure that Exchange specialists have greater access to the capital necessary for the maintenance of fair and orderly markets in their registered securities. In the Commission's release amending the SEC's net capital rule to make the rule applicable to certain specialists, the Commission stated that it did not believe that sufficient reasons still exist to exempt specialists other than options market makers from the capital rule and the overall uniform, minimum financial responsibility which results from its application. The Commission further stated that application of the net capital rule to specialists other than options market makers is necessary to provide reasonable assurance that specialists are maintaining minimum levels of liquid capital. More significantly, the Commission believes that application of the rule will provide significant monitoring and consistent reporting benefits.²⁰ By assuring that specialists have capital sufficient to perform their market making responsibilities, the proposal should provide additional protection for the Exchange, member organizations, and public investors.

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 CHX to amend the Exchange's current net capital rule to conform to Rule 15c3-1 of the Act. In addition, the Commission previously noticed for comment and approved similar filings of the Pacific Stock Exchange, Inc. ("PSE"), and Philadelphia Exchange, Inc. ("Phlx").²¹

¹² See generally Article XXX, Rule 1, Paragraph II(C)(6) of the CHX Rules. See also Rule 11b-1 under the Act.

¹³ See Article XXX, Rule 1, Paragraph II(B) of the CHX Rules.

¹⁴ See Division of Market Regulation, The October 1987 Market Break, February 1988, at 4-66 to 4-67. See also Market Analysis of October 13 and 16, 1989, A-Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, December 1990, at 4, 16 and 33.

¹⁵ See 1987 Market Break, *supra* note 17 at 4-68.

¹⁹ The Commission's net capital rule, as codified in SEC Rule 15c3-1, is applicable to all specialists, which includes equity market makers, except options market makers.

²⁰ See *supra* note 6.

²¹ See 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 PSE and Phlx, respectively.

¹² See Amendment No. 2, *supra* note 2.

¹³ 15 U.S.C. 78f(b)(5) and 78k(b) (1988).

¹⁴ 17 CFR 240.11b-1 (1994).

No comments were received on those proposals.

It is therefore ordered, pursuant to Section 19(b)(2)²² that the proposed rule change as amended (SR-CHX-94-10) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-18134 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34395; File No. SR-NYSE-94-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Charges for New Electronic Products and a Reduction of Charges for Private Lines and Broker Booth Telephone Extensions

July 18, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 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 NYSE plans to implement, as of July 1, 1994, charges for new electronic products and a reduction of charges for Private Lines and Broker Booth telephone extensions. The full text of these new and revised charges is available at the NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to establish charges for the new Trading Floor equipment developed through the Exchange's Integrated Technology Plan (ITP) and to reduce charges on private lines and broker booth extensions. The ITP is a multi-year project which entails retrofitting the existing Trading Floor with state-of-the-art technology and expanding the existing network which supports that technology. New technology will be provided to enhance the operations at the Specialist's Post and Broker's Booth, bring Wireless Voice Communications to the Floor and set the stage for Hand-Held Wireless Data Communications. This new technology will improve the Exchange's service levels, speed, accuracy and the flexibility of its response to customer requests.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the 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 not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4

thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission 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 principle office of the NYSE. All submissions should refer to File No. SR-NYSE-94-25 and should be submitted by August 16, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-34410; International Series Release No. 689; File No. SR-PSE-94-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to a Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Listing and Trading Options and Long-Term Options on the PSE Israel Index

July 20, 1994.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 1994, the Pacific Stock Exchange ("PSE"

²² 15 U.S.C. 78s(b)(2) (1988).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1933).

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 Exchange. The PSE filed Amendment No. 1 to the proposed rule change on June 27, 1994³ and Amendment No. 2 on June 28, 1994.⁴ 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 PSE proposes to list for trading options and long-term options ("Index LEAPS") on the PSE Israel Index ("Israel Index"). The text of the proposed rule change is available at the Office of the Secretary, PSE, 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 Exchange 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 PSE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

³ In Amendment No. 1, Exchange proposes to: (1) Reconfigure the Index so that it is initially composed of 12 components; (2) provide that the Index will be equal dollar-weighted instead of capitalization-weighted, as originally proposed; and (3) provide that any security added to the Index must be a security that is traded in the United States either on a securities exchange or as a National Market security traded through NASDAQ (as defined herein). See Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated June 24, 1994. ("Amendment No. 1").

⁴ In Amendment No. 2, the PSE proposes: (1) To maintain the Index so that at least 85% of the Index, by weight, and at least 80% of the number of components of the Index are eligible for standardized options trading pursuant to PSE Rule 3.6; (2) to clarify that any replacement securities will be stocks or ADRs representing Israeli companies; and (3) to consider the market capitalization, liquidity, volatility, and name recognition of proposed replacement securities for the Index. See Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated June 28, 1994. ("Amendment No. 2").

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to trade options and Index LEAPS on the PSE Israel Index, a new narrow-based stock index developed by the Exchange. The Index is equal dollar-weighted,⁵ is presently composed of 12 component securities,⁶ and is designed to reflect the performance of the Israeli economy in general.

Index Design

Of the 12 components of the Index, one presently trades on the New York Stock Exchange, one presently trades on the American Stock Exchange, and ten (including one American Depository Receipt ("ADR"))⁷ representing 8.33% of the weight of the Index as of May 31, 1994 are National Market securities traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"). The 11 non-ADR components of the Index are listed for trading only in the United States. For the one ADR component, more than 50% of the combined worldwide trading volume for the ADR and the underlying security occurs in the United States through NASDAQ. The Exchange believes, therefore, that options on the Index should not raise the types of surveillance concerns that may be raised by options on an index of non-U.S. traded securities.

As of May 31, 1994, the securities comprising the Index ranged in market capitalization from a low of \$59.03 million to a high of \$1.22 billion, with an average capitalization of \$386 million. As of that date, over 90% of the number of stocks in the Index, and over 90% of the weight of the Index, met the Exchange's initial listing requirements for standardized options trading pursuant to PSE Rule 3.6.

Calculation

The Index is calculated using an equal dollar-weighting methodology designed to ensure that each of the component

securities is represented in approximately an equal dollar amount in the Index. The following is a description of how the equal dollar-weighting methodology works. As of the market close on May 31, 1994, a portfolio of stocks was established representing an investment of \$83,333 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value of the sum of the assigned number of shares of each of the stocks in the Index, divided by the Index divisor. Each quarter, following the close of trading on the third Friday of January, April, July, and October, the Index will be adjusted by changing the number of whole shares of each component stock so that each component is again represented in equal dollar amounts. The Exchange has chosen to rebalance the Index 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 equal dollar-weighting feature of the Index. If necessary, a divisor adjustment will be made when the rebalancing occurs to ensure continuity of the value of the Index. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange does not believe that there will be investor confusion regarding the adjustments because they will be done on a regular and timely basis, with adequate notice given. An information circular will be distributed to all Exchange members notifying them of the quarterly changes. This circular will also be 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 News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index a description of the equal dollar-weighting methodology.

As noted above, the number of shares of each component stock in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a

⁵ See Amendment No. 1, *supra* note 3.

⁶ The component securities of the Index are: Ampal-American Israel Corp.; Bio Technology General Corp.; Converse Technology Inc.; ECI Telecom Ltd.; Electronics for Imaging Inc.; Elscint Ltd.; Geotek Communications Inc.; ILS. Intelgent Information System; Netmanage Inc.; Sapiens International Corp.; Scitex Corp.; Tadiran Ltd.; and Teva Pharmaceutical Industries (ADR). *Id.*

⁷ An ADR is a negotiable receipt which is issued by a depository, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country.

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 merger or consolidation. 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 new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the Index value.

The value of the Index will be calculated by the PSE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by the Exchange. The Exchange will establish a benchmark of 200 for the Index when it begins disseminating the Index. If a component stock of the Index is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation.

Maintenance

The Index will be maintained by the Exchange. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index will be reviewed on approximately a monthly basis by the PSE staff. The Exchange may change the composition of the Index at any time or from time to time to reflect the changes affecting the components of the Index or the Israeli economy generally. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), the Exchange will replace that component with an Israeli stock or ADR⁸ that is traded on a U.S. securities exchange or that is a National Market security traded through the facilities of NASDAQ.⁹ In such circumstances, the PSE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock.¹⁰ The Exchange will most likely maintain twelve stocks in the Index at all times.¹¹

⁸ See Amendment No. 2, *supra* note 4.

⁹ See Amendment No. 1, *supra* note 3.

¹⁰ See Amendment No. 2, *supra* note 4.

¹¹ The Exchange will notify the Commission of changes in the number of components in the Index. Prior to increasing the number of components of the Index to more than 16 or decreasing the number of components to less than 9, the Exchange will submit a rule filing pursuant to Section 19 of the Act and Rule 19b-4 thereunder.

Long-Term Index Options

In addition to Index options on the Index, the Exchange also proposes to list long-term Index option series ("LEAPS") as provided in PSE Rule 6.4(d).

Exercise and Settlement

Index options will have European-style exercise and will be A.M.-settled.¹² The proposed Index options would expire on the Saturday following the third Friday on the expiration month, so that the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Strike Prices

The Exchange intends to introduce Index options series with expirations up to one year in duration at five-point strike price intervals. With respect to Index LEAPS, strike prices with as wide as 25 or 50 point intervals may be used. If, however, the value of the Index falls below 200, the Exchange will use strike prices at two and one-half point intervals.

Exchange Rules Applicable

Except as modified in the proposal, PSE Rule 7, and Rules 7.3(b) and (c), in particular, will be applicable to Index options. Index option contracts based on the Index will be subject to position limits of 7,500 contracts on the same side of the market pursuant to PSE Rule 7.6(a). For purposes of position and exercise limits, Index LEAPS will be aggregated with Index options on a one-for-one-basis. The Exchange represents that it has the necessary systems capacity to support new option series that would result from the introduction of Index options and Index LEAPS.

Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

¹² A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-94-15 and should be submitted by August 16, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-18133 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

¹³ 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-34404; File No. SR-PHILADEP-90-03]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Order Approving a Proposed Rule Change Relating to Implementation of an Automated Balance Certificate Program on a Temporary Basis*

July 19, 1994.

On September 28, 1990, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PHILADEP-90-03) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ to establish an automated program for the transfer between PHILADEP and its transfer agents of certain securities maintained and controlled by PHILADEP. Notice of the proposal was published in the Federal Register on November 14, 1990.² On May 24, 1991, PHILADEP amended the proposal to change the name of the program from A Prompt Transfer Service to Fully Automated Securities Transfer Reconciliation Accounting Control System ("FASTRACS").³ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on a temporary basis through December 30, 1994. The program will be limited to three transfer agents for the duration of the temporary approval period.

I. Description

PHILADEP is establishing an automated program for the transfer of certain securities between PHILADEP and its transfer agents. Under PHILADEP's program, PHILADEP and the transfer agents participating in the program will use a master balance certificate⁴ to evidence the number of securities of a particular issue

transferred into or out of PHILADEP and through the transfer agents. The transfer agents will have custody of the securities in the form of balance certificates registered in PHILADEP's nominee name. The balance certificates will be adjusted daily to reflect PHILADEP's withdrawal and deposit activity.

Previously, if a participant requested the withdrawal of one hundred shares of a security from PHILADEP, PHILADEP would send an electronic or written instruction to the transfer agent followed by a physical transfer of the shares from PHILADEP to the transfer agent. The transfer agent would reissue the shares in the requested name and would send the shares back to PHILADEP. Using the FASTRACS program, an electronic instruction will immediately effectuate the withdrawal transfer, eliminating the extra step of physically transferring the security from PHILADEP to the transfer agent.

For issues eligible for FASTRACS, PHILADEP will deliver to participating transfer agents nominee and/or non-nominee certificates⁵ for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue. The transfer agent will retain possession of the balance certificates, holding them in a secured area at all times, and PHILADEP will be provided a sample balance certificate for each issue.

PHILADEP will deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the transfer of the non-nominee certificates into the name of Philadep & Co. PHILADEP also will instruct the transfer agent to include the securities evidenced by the non-nominee and/or nominee certificates in the balance certificate for the issue represented by such balance certificate. PHILADEP also may issue instructions to the transfer agent to register the transfer of securities evidenced by a balance certificate to a name other than Philadep & Co. or to issue a certificate to a name other than Philadep & Co.

After issuing a balance certificate, the transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day it will evidence the number of securities equal to the previous

balance plus any securities received from PHILADEP to be registered in the name of Philadep & Co. less any transfers and issuance of certificates in a name other than Philadep & Co. The transfer agent will confirm in writing, on a daily basis or other periodic basis as PHILADEP may reasonably request, the number of securities evidenced by each balance certificate.

The obligations of the FASTRACS transfer agents and PHILADEP will be set forth in a Balance Certificate Agreement ("Agreement") executed by each FASTRACS transfer agent and PHILADEP.⁶ The Agreement provides that all shares or units or the amount of any obligations evidenced by the balance certificate which come into possession of the transfer agent pursuant to FASTRACS will be the sole property of PHILADEP. The transfer agent will not obtain any legal or equitable right, title, or interest in or to such securities evidenced by the balance certificates.

The Agreement also provides that upon request from PHILADEP, the transfer agent will be obligated to deliver, within twenty-four hours, all securities evidenced by a balance certificate. If the transfer agent determines that any security held by it is lost, destroyed, stolen, or otherwise unaccounted for, the transfer agent must notify PHILADEP immediately and issue a replacement certificate.

The Agreement provides that the transfer agent must maintain an insurance policy in the form of a customary bankers blanket bond to cover any securities received from PHILADEP or held by the transfer agent pursuant to FASTRACS. The bond must be in the maximum amount of one hundred million dollars. The Agreement further states that the transfer agent must provide annually to PHILADEP's satisfaction evidence that such blanket bond or comparable plan of insurance is

⁶ If a transfer agent employs a processor to perform the transfer agent's duties in FASTRACS, the transfer agent and processor must enter into a separate agreement obligating the processor to perform the duties described in the Balance Certificate Agreement. The transfer agent must notify PHILADEP if there is any material change to the terms of the agreement between the transfer agent and processor, if there is a termination or anticipated termination of the agreement, or if there is a breach of the agreement or an event that will affect or might reasonably be expected to affect the processor's ability to perform any of its obligations under the agreement. PHILADEP will only permit a transfer agent to employ a processor as its agent if the transfer agent represents and warrants that it will bear any and all liability and responsibility for all securities held by, all actions taken by, and all obligations assigned to the processor with the same force and effect as if the securities were held by, or the actions taken by, or the obligations were of the transfer agent.

¹ 15 U.S.C. 78(b)(1) (1988).

² Securities Exchange Act Release No. 28598 (November 7, 1990), 55 FR 47595.

³ Letters from Sharon Metzker Richmond, Law Clerk, PHILADEP, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission (May 24, 1991).

⁴ For the purpose of FASTRACS, "balance certificate" shall mean a certificate registered in the name Philadep & Co. which evidences (i) record ownership by Philadep & Co. of the number of shares or units of the issue shown from time to time on the records of the issuer thereof or (ii) the duties of the issuer thereof to perform the obligations shown from time to time on the records of the issuer thereof, which records are maintained by Transfer Agent, as being evidenced by such certificate, which certificate shall be retained by Transfer Agent. Balance Certificate Agreement, Dec. 3, 1992, Bank of N.Y.-Philadelphia Depository Trust Co., Section 1(a).

⁵ For the purpose of FASTRACS, the term "nominee certificates" shall mean a security of an issue registered in the name of Philadep & Co. The term "non-nominee certificate" means a security of an issue registered in a name other than Philadep & Co. Balance Certificate Agreement, Nov. 24-Dec. 3, 1992, Bank of N.Y.-Philadelphia Depository Trust Co., Sections 1(ii) (g) and (h).

in full effect.⁷ When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provide adequate insurance coverage or require coverage from the carrier to cover losses that occur while in transit to and until received by PHILADEP. The amount of coverage must be equal to or exceed 110% of the fair market value of the securities shipped. The transfer agent is not obligated to deliver shares evidenced by balance certificates within twenty-four hours of such a request from PHILADEP if the aggregate value of the shares to be delivered exceeds the amount of the bankers blanket bond. The transfer agent will instead deliver or make available the certificates as promptly as possible.⁸

Instructions from PHILADEP to register the transfer of securities evidenced by a balance certificate in a name other than PHILADEP will constitute a presentation of the balance certificate to the transfer agent under applicable law. The same warranties that would apply if PHILADEP physically presented the balance certificate to the transfer agent will be applicable in this balance.

II. Discussion

The Commission believes that PHILADEP's proposal is consistent with Section 17A of the Act⁹ and specifically with Section 17A(b)(3) (A) and (F).¹⁰ Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

Under PHILADEP's proposed rule change an electronic instruction will replace the physical transfer of securities between PHILADEP and the transfer agent. The proposal should help alleviate the inefficiencies associated with the physical transfer of securities and should help reduce the possibility of loss while securities are in transit between PHILADEP and the transfer agent. The transfer of securities will be faster and more efficient with the likely effect of reducing costs related to the

preparation of written instructions and delivery of the securities. PHILADEP's proposed rule change also will help PHILADEP fulfill its safekeeping obligations by allowing PHILADEP to maintain securities in a form which should reduce the chances of loss and theft.

PHILADEP's proposed rule change requires that the transfer agent be insured by a customary bankers blanket bond which will cover any securities received from PHILADEP and/or held by the transfer agent or processor on behalf of PHILADEP under the Agreement. Where balance certificates have an aggregate current market value in excess of the maximum value of the bankers blanket bond, the transfer agent will not create or maintain certificates in excess of that value, other than any balance certificate, prior to delivery to PHILADEP. These insurance requirements will better enable PHILADEP to safeguard securities which are at the transfer agent or are in transit from the transfer agent to PHILADEP and should aid in the safekeeping of securities with a market value in excess of the bankers blanket bond.

PHILADEP's proposed rule change will improve and facilitate a safer and more effective mechanism for the transfer of securities between PHILADEP and its transfer agents and is therefore consistent with the requirements of section 17A of the Act. For the reasons stated above, the Commission is approving PHILADEP's proposed rule change on a pilot basis through December 30, 1994. The temporary approval will provide PHILADEP the opportunity to continue testing the FASTRACS program in order to collect data for the Commission to review.¹¹

III. Conclusion

The Commission finds that PHILADEP's proposal is consistent with the requirements of the Act and particularly with section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PHILADEP-90-03) be, and hereby is, approved through December 30, 1994.

¹¹ Currently, PHILADEP is conducting tests with one transfer agent and expects to add and complete testing with two additional transfer agents by the end of 1994. Upon successful completion of the tests with the three transfer agents, PHILADEP will file a proposed rule change under section 19(b)(2) of the Act to seek permanent approval of the FASTRACS program.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-18135 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34400; File No. SR-Phlx-91-45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 to a Proposed Rule Change Relating to the Responsibility to Make Ten-Up Markets

July 19, 1994.

On December 1, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to clarify several aspects and provide for more stringent enforcement of its Ten-Up ("ten-up") rule.

The proposed rule change was published for comment and appeared in Securities Exchange Act Release No. 30298 (Jan. 28, 1992), 57 FR 4233. No comments were received on the proposal. On July 13, 1994, the Phlx filed Amendment No. 1 to the proposal.³

On July 18, 1994, the Phlx filed Amendment No. 2 to the proposal.⁴ This order approves the proposal.

I. Description of the Proposal

The Phlx's Options Floor Procedure Advice ("OFPA") A-11, entitled "Responsibility to Make Ten-Up Markets," requires specialists and Registered Options Traders ("ROTs") to fill certain eligible customer orders at the best market to a minimum of ten contracts. The Phlx proposal includes

¹² 17 CFR 200.30-3(a)(12) (1993).

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1991).

³ See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 13, 1994. This letter supersedes the previous letter dated May 31, 1994.

⁴ See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 18, 1994. The language submitted originally by the Phlx prohibited unbundling "for the primary purpose of availing upon the ten-up market requirement." In the amendment the Phlx clarified the language of the rule to prohibit any such action for the purpose of attaining ten-up guarantees by removing the word "primary" which originally preceded "purpose."

⁷ The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to PHILADEP.

⁸ Before delivering to PHILADEP certificates with an aggregate current market value in excess of the maximum amount of the blanket bond, the transfer agent may not create or maintain certificates, other than any balance certificate, having a value in excess of the blanket bond.

⁹ 15 U.S.C. 78q-1 (1988).

¹⁰ 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

several changes to OFPA -11. First, the Phlx's proposal redefines ten-up eligible orders as "Public customer market or marketable limit orders * * *," rather than "non-contingent public customer market or marketable limit orders." Second, the proposal provides that a broker seeking to fill a customer order with respect to a displayed quotation must avail upon the displayed market immediately or it may be revised. Specifically, the amendment states that once the crowd market has been sought, the screen market (if superior) is available and may be revised if it is not availed upon immediately. Third, the proposal prohibits members from unbundling customer orders, or soliciting customers to unbundle orders, for the primary purpose of availing upon the ten-up market requirement. The Phlx notes that this provision underscores the fact that the ten-up guarantee is offered only to certain smaller orders.

The proposal also requires floor brokers to make a reasonable effort to determine whether an order is for the account of a customer or a broker-dealer. If the order is for the account of a broker-dealer, the floor broker must advise the crowd of the fact before bidding/offering on behalf of the order or executing the order. The Phlx explains that this amendment focuses on requiring disclosure of broker-dealer orders while such orders are in the crowd. Since disclosure need not be made prior to the time the broker-dealer requests the market from the crowd, it is only necessary that disclosure be made prior to working the order (by bidding or offering on behalf of the order) or, in the alternative, prior to executing the order. The Phlx believes that requiring disclosure at that time will result in a greater inclination by specialists to guarantee more than the minimum ten-up amount. Since the Phlx's policy on the options floor requires that volume guarantees made for automated systems also applies to hand-held orders, the Phlx believes that knowing whether a hand-held order is for the account of a broker-dealer is a matter directly related to the level of volume guarantees through the Phlx's Automated Options Market ("AUTOM") system.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the

requirements of Section 6(b)(5).⁵ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

In approving the Phlx's ten-up rule in June 1987,⁶ the Commission found that it was designed to benefit public customers by increasing the size of orders for which they can be assured executions to a minimum depth of ten contracts at the best bid or offer as quoted by a specialist or ROT. The Rule also is intended to encourage options specialists and ROTs to become more competitive in making size markets. Although the Commission carefully scrutinizes discriminatory order execution practices, the Commission believes that limiting the ten-up rule for public customers furthers the purposes of the Act. The intent of the ten-up rule is to encourage options specialists and ROTs to become more competitive in making markets thereby contributing to a more free and open market. However, the incentive for market makers and ROTs to benefit public customers through the ten-up rule is contingent on the assurance that these market makers volume guarantees will not be exhausted by competitors to the detriment of public customers, as the ten-up rule was designed by the options exchanges for the benefit of public customers.

The Commission believes that requiring the identification of broker-dealer orders prior to bidding or offering on behalf of the order or execution should improve the quality of the Phlx's options markets and enhance market depth because trading crowd participants may be more inclined to provide greater volume guarantees to public customers than the minimum ten-up contract requirement. In this context, we note that the Phlx's proposal would not require disclosure at the time a floor broker is probing the market. This ensures that floor brokers will be able to ascertain the best quote in the crowd irrespective of whether the order is for the account of a broker-dealer or public customer. Additionally, the Commission believes unnecessary delays in trading occasioned by the market maker's need to inquire as to the account status of orders represented on the floor will be reduced or minimized.

The proposal also requires a broker attempting to fill a customer order entitled to a ten-up guarantee to execute the order upon the displayed market immediately after the crowd market has been sought, assuming the displayed market is better than the crowd. The Commission believes this requirement will encourage brokers to act promptly once the crowd market has been sought or risk a revision of the screen-based market.

In addition, the proposal would prohibit members from unbundling customer orders for the purpose of availing upon the ten-up market. The Commission believes this requirement will help to ensure the integrity and fairness of the Phlx's markets in that it prevents abuse of the Phlx's execution guarantees. Such abuse can result in increased risk to the Phlx specialists who are required to fill these trades and can potentially result in misleading market information with respect to legitimate trading interest. Moreover, unbundling of orders solely to take advantage of the ten-up guarantee is contrary to the intent of the rule to facilitate guarantee is contrary to the intent of the rule to facilitate guaranteed execution at the best bid or offer for small public customer orders.

The Commission finds good cause for approving Amendments No. 1 and 2 to the Exchange's proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. Amendment No. 1 eliminates the term "for accounts other than broker-dealer accounts" from OFPA A-11, which was proposed in the original filing, thereby bringing OFPA-A-11 into conformity with existing Phlx Rule 1033(a). Because the amendment simply retains the term "public customer," which is currently used in the Rule, the Commission does not believe it raises any substantive issue.⁷ Moreover, the Commission believes the proposed change will clarify the applicability of the Phlx's ten-up rule which will benefit investors without impairing specialist's and ROT's ability to provide market depth and liquidity. Amendment No. 2 to the proposed rule prohibits unbundling of customer orders for the purpose of availing upon the ten-up guarantee.⁸ Because the original purpose already prohibited unbundling, Amendment No. 2 does not raise any substantive issues. Therefore, the Commission finds that no new or unique regulatory issues are raised by

⁵ 15 U.S.C. 78(b)(5) (1982).

⁶ See Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120 (June 17, 1987).

⁷ This proposed rule change does not affect the definition of "public customer," which will be the subject of a separate Phlx proposal.

⁸ See *supra* note 4.

Amendments No. 1 and 2. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendments No. 1 and 2 to the Exchange's proposal on an accelerated basis.

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, D.C. 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, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1994.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Phlx-91-45) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-18076 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 20419; 812-9004; International Series Release No. 690]

Berliner Handels—und Frankfurter Bank; Notice of Application

July 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Berliner Handels—und Frankfurter Bank ("BHF-Bank").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: BHF-Bank seeks an order to permit registered management investment companies for which BHF-Bank or Zivnostenska Banka acts as foreign custodian or subcustodian (other than investment companies registered under section 7(d)) ("Investment Company") maintain their foreign securities and other assets in the custody of Zivnostenska Banka in the Czech Republic.

FILING DATE: The application was filed in May 13, 1994 and amended on July 15, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Bockenheimer Landstrasse 10, 60323 Frankfurt, Germany.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942-0573, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. BHF-Bank is a commercial bank organized under the laws of the Federal Republic of Germany ("Germany"). BHF-Bank is engaged in a broad range of banking, financial, corporate, and investment services. As a part of its services to international investors and financial institutions including Investment Companies and their custodians, BHF-Bank offers custody and subcustody services through a network of correspondent banks worldwide.

2. Zivnostenska Banka, a 40 percent owned direct affiliate of BHF-Bank, is engaged in the business of commercial banking.

It currently offers all services connected with the settlement and safekeeping of securities purchased in the Czech Republic, including all recordkeeping and registration operations, the preparation of securities transaction reports and account statements, and the transmittal to its customers of any notices of corporate actions in accordance with the standard practice prevailing in the Czech Republic.¹

3. BHF-Bank seeks an order under section 6(c) exempting BHF-Bank, Zivnostenska Banka, and Investment Companies and their custodians from section 17(f). The order would let BHF-Bank, as custodian or subcustodian for Investment Companies, and Investment Companies and their custodians, maintain foreign securities, cash, and cash equivalents of such Investment Companies in the custody of Zivnostenska Banka in the Czech Republic.

Applicant's Legal Analysis—

1. Section 17(f) requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including banks having an aggregate capital, surplus, and undivided profits of at least \$500,000. As defined in section 2(a)(5), "bank" includes (a) a banking institution organized under the laws of the United States, (b) a member bank of the Federal Reserve System, and (c) any other banking institution or trust company doing business under the laws of any state or of the United States, (i) a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, (ii) which is supervised and examined by state or federal authorities having supervision over banks, and (iii) which is not operated for the purpose of evading the Act. Therefore, the only foreign entities that are permitted by section 17(f) to serve as custodians for

¹ For purposes of this application, foreign securities are defined as: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; or (b) securities issued or guaranteed by the government of the United States or by any state or political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or any state thereof which have been issued and sold primarily outside the United States.

⁹ 15 U.S.C. § 78s(b)(2) (1982).

¹⁰ 17 CFR § 200.30-3(a)(12) (1991).

registered management investment companies are the overseas branches of U.S. banks.

2. Rule 17f-5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f-5(c)(2)(i) defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. \$200,000,000.

3. Applicant is an eligible foreign custodian in Germany under the requirements of rule 17f-5, since it has shareholders' equity well in excess of \$1.5 billion, is organized and existing under the laws of Germany, and is authorized and regulated in Germany as a bank by the federal banking supervisory authority

(Bundesaufsichtsamt fuer das Kreditwesen) and Germany's central bank (Deutsche Bundesbank).

4. Zivnostenska Banka satisfies all of the requirements of rule 17f-5 except the shareholders' equity requirement. It is organized and existing under the laws of the Czech Republic and is authorized and regulated in the Czech Republic as a bank by the Czech national bank (Ceska Narodni Banka). Absent exemptive relief, Zivnostenska Banka cannot serve as a custodian for Investment Company assets.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding Zivnostenska Banka will satisfy the requirements of rule 17f-5 in all respects other than Zivnostenska Banka's level of shareholders' equity.

2. BHF-Bank, any Investment Company, and any custodian for an Investment Company will deposit assets with Zivnostenska Banka only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which Zivnostenska Banka fails to satisfy the requirements of rule 17f-5 (and during which such assets remain deposited with Zivnostenska Banka). Each Agreement will be a three-party agreement among BHF-Bank, Zivnostenska Banka, and the Investment Company or the custodian for an Investment Company pursuant to which BHF-Bank or Zivnostenska Banka, as the case may be, will undertake to provide specified custody services. If BHF-Bank is to provide such services, the Agreement will authorize BHF-Bank to

delegate to Zivnostenska Banka such of the duties and obligations of BHF-Bank as will be necessary to permit Zivnostenska Banka to hold in custody the Investment Company's assets. If Zivnostenska Banka is to provide services directly, no such delegation will be necessary. However, in either case, the Agreement will provide that BHF-Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Zivnostenska Banka of its responsibilities under the Agreement to the same extent as if BHF-Bank had itself been required to provide custody services under the Agreement. Further, the Agreement will provide that, in the event of a loss, an Investment Company may pursue a claim for recovery against BHF-Bank, regardless of whether Zivnostenska Banka acted as BHF-Bank's delegate or as direct custodian or subcustodian.

3. BHF-Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f-5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-18136 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20413; 812-8404]

Cambridge Series Trust, et al.; Notice of Application

July 18, 1994

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

SUMMARY: Cambridge Series Trust, Cash Resource Trust, and Mentor Series Trust (collectively, the "Trusts"), Cambridge Investment Advisors, Inc. ("Cambridge Advisors"), Cambridge Distributors, Inc. ("Cambridge Distributors"), Charter Asset Management, Inc. ("Charter"), Commonwealth Investment Counsel, Inc. ("Commonwealth"), Wellesley Advisors, Inc. ("Wellesley"), and Wheat, First Securities, Inc. ("Wheat First").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting a conditional exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting certain open-end management investment companies

to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on May 14, 1993, and amended on December 5, 1993, April 18, 1994 and July 15, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. On August 12, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 901 East Byrd Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 942-0571, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is an open-end management investment company registered under the Act and each is a series company. Each existing or future series of the Trusts are referred to herein as the "Funds."

2. Cambridge Distributors, a wholly-owned subsidiary of WFS Financial Corporation, Inc. ("WFSC"), serves as principal underwriter for Cambridge Series Trust and Cash Resource Trust. Wheat First, a wholly-owned subsidiary of WFSC, serves as principal underwriter to Mentor Series Trust. Cambridge Advisors, a wholly-owned subsidiary of Investment Management Group, Inc. ("Investment Management"), which in turn is a wholly-owned subsidiary of WFSC, serves as investment manager to

Cambridge Series Trust and Cash Resource Trust. Charter, a wholly-owned subsidiary of Investment Management, serves as investment adviser and administrator to Mentor Growth Fund, a series of Mentor Series Trust. Commonwealth, a wholly-owned subsidiary of Investment Management, serves as a sub-adviser to each of the series in the Cash Resource Trust. Lastly, Wellesley, a wholly-owned subsidiary of Investment Management, serves as investment adviser to the Mentor Strategy Fund, a series of the Mentor Series Trust.

3. Applicants request that any order also apply to shares of any future open-end investment company advised by Cambridge Advisors, Charter, Commonwealth, or Wellesley or an entity controlled by, or under common control with any of them, or for which Cambridge Distributors or Wheat First or any entity controlled by or under common control with either of them serves as principal underwriter and that (a) hereafter becomes part of the same group of investment companies as that term is defined in rule 11a-3 under the Act, and (b) issues classes of shares that are identical in all material respects to the shares described in this application.¹

4. Pursuant to a prior order, the Cambridge Series Trust Funds currently offer two classes of shares, Class A and Class B, which have the same characteristics as the corresponding Classes A and B described below.² Pursuant to another order, the Funds of the Mentor Series Trust (other than the Mentor Short-Duration Income Fund) currently offer their shares subject to a CDSL.³ Each of those Funds will rely on the exemptive order granted pursuant to this application. The Funds of the Cash Resources Trust are money market

funds and offer their shares at net asset value.

5. Applicants seek an order to permit each of the Funds to offer multiple classes of shares (the "Multiple Class System"). The Funds initially will issue four classes of shares ("Class A," "Class B," "Class C," and "Class D").

6. Class A shares will be offered at net asset value plus a front-end sales load. Class A shares also will be subject to a CDSC of up to 1% under certain circumstances described below. In addition, Class A shares would be subject to a non-rule 12b-1 shareholder servicing expense of up to .25% of the average daily net assets of the class annually.

7. Class B shares will be offered without a front-end sales load, but subject to a CDSC at an expected rate of up to 1% on redemptions within the first year after purchase. In addition, the shares will bear rule 12b-1 distribution fees of up to .75% (.50% in the case of some Funds) and a non-rule 12b-1 shareholder servicing expense of up to .25% of the average daily net assets of the class annually.

8. Class C shares would be sold subject to a CDSC, as described below. In addition, Class C shares will bear rule 12b-1 distribution fees of up to .75%, and a non-rule 12b-1 shareholder servicing expense of up to .25% of the average daily net assets of the class annually. Class C will automatically convert into Class A shares after a specified period (currently expected to be six years) from the date of purchase.

9. Class D shares will be offered without any sales loads or rule 12b-1 fees. Class D shares also will bear certain other expenses that may be lower than the comparable expenses borne by Class A, Class B, and Class C shares. These expenses are of three types: (a) administrative services fees, (b) transfer agency fees, and (c) Blue Sky and prospectus costs. Class D shares will be offered only to certain qualified institutional investors that wish to make very large investments. Investors eligible to purchase Class D shares include tax qualified employee benefit plans, endowments, foundations, and other tax-exempt organizations and certain insurance company separate accounts.⁴

10. In the case of certain Funds, the administrative service fee may be

charged at a higher annual percentage rate of the average daily net assets of the Class A, Class B, Class C shares than of the Class D shares. This fee will be payable to an administrator approved by the Trustees pursuant to an administrative services agreement with each Fund, in consideration of certain administrative personnel, facilities, and services furnished by the administrator, including (among others) shareholder relations services and oversight and supervision of the activities of the Fund's transfer agent. These services do not include investment advisory services or distribution services, which are provided separately under the Fund's investment advisory and distribution agreements with its principal underwriter or investment adviser. Class A, Class B, and Class C shareholders will be offered an array of services that are not likely to be available to all Class D shareholders, such as automatic investment plans, systematic withdrawal plans, rights of accumulation, sales load discounts for quantity purchases, and letter of intent purchase arrangements.

11. Applicants also seek to issue additional classes of shares. The terms of these classes may differ from the Class A, Class B, Class C, and Class D shares only in the following respects: (a) the impact of the disproportionate payments made under the rule 12b-1 distribution plan and the shareholder services plan, and any "Identifiable Class Expenses" which are limited to (i) transfer agency fees attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) administrative services fees payable under each class's respective administration services agreement, if any, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to rule 12b-1 plans except as provided in condition 2 below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of a Fund; and (e) the fact that only certain classes will have a conversion feature. Shares of different classes also may be sold under different sales arrangements and have different minimum investment amounts.

¹ Certain existing investment companies within the same group of investment companies, as defined in rule 11a-3, have not signed the application and currently do not intend to rely on the requested relief. In the future, such investment companies may rely on any order granted pursuant to this application if they determine to create multiple classes of shares in compliance with the requirements and conditions therein.

² See Federated Securities Corp., Investment Company Act Release Nos. 17645 (Aug. 2, 1990) (notice) and 17715 (Aug. 30, 1990) (order). Applicants represent that the Cambridge Series Trust had assessed a 1% redemption fee in reliance on a staff no-action position expressed in Flag Investors Fund, Inc. (pub. avail. Oct. 1, 1984). Applicants acknowledge that they may not rely on Flag after March 22, 1994 and that any fee charged upon redemption to cover distribution expenses after such date must be provided for in an exemptive order.

³ See Southeastern Growth Fund, Inc., Investment Company Act Release Nos. 14480 (Apr. 22, 1985) (notice) and 14550 (May 31, 1985) (order). Mentor Short-Duration Income Fund shares are offered without any sales loads.

⁴ The minimum initial investment amount is \$1,000 for Class A, Class B and Class C shares and \$1,000,000 for Class D shares. These amounts may be changed from time to time, but it is anticipated that, even if the specific amounts change, the Class A, Class B, and Class C shares would continue to have a low minimum investment, while Class D shares would have a much higher minimum investment.

12. The net asset value of all outstanding shares of all classes of a Fund will be computed by allocating gross income and expenses to each class based on the net assets attributable to each class, except for rule 12b-1 fees, shareholder servicing expenses, and Identifiable Class Expenses.

13. Class C shares and shares of classes created in the future which are identical in all material respects to the Class C shares, will automatically convert into Class A shares or shares or classes created in the future which are identical in all material respects to the Class A shares, after a specified period (not to exceed six years) following the purchase date as provided below. Class C shares acquired by exchange from Class C shares of another Fund will convert into Class A shares based on the time of the initial purchase. Class C shares purchased through the reinvestment of dividends and other distributions paid in respect of Class C shares will convert into Class A shares at the same time as the shares with respect to which they were purchased are converted. The conversion of Class C shares to Class A shares is subject to the continuing availability of a ruling from the Internal Revenue Service or an opinion of counsel that such conversions will not constitute taxable events for federal tax purposes. There can be no assurance that such ruling or opinion will be available, and the conversion of Class C shares to Class A shares will not occur if such ruling or opinion is not available. In such event, Class C shares would continue to be subject to higher expenses than Class A shares for an indefinite period.

14. Applicants expect that shares of each Fund may be exchanged for shares of the same respective class in any other Fund, without payment of an additional sales charge. In addition, shares of each class may in the future be exchangeable for shares of money market funds in the Wheat First/Cambridge fund group which are not covered by this application. All exchange privileges applicable to each class will comply with rule 11a-3 under the Act.

15. Applicants also seek an order to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC on redemptions of certain shares.

16. Class A shares purchased in an amount greater than a specified amount (currently expected to be \$1 million) would be subject to a CDSC 1% for redemptions made within four years from the date of purchase. In addition, Class A shares would be subject to a CDSC at an expected rate of up to 1% on shares purchased without a sales

charge with the proceeds from the redemption or sale of shares of another investment company (which redemption did not result in the payment by the investor of a CDSC), and redeemed within a specified period (currently expected to be four years) from the date of purchase. Applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee, or other charge in connection with the redemption of shares of such other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load, fee, nor other charge was imposed upon the redemption, and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a deferred sales load, fee, or other charge in connection with the redemption of shares.

17. Class B shares will be subject to a CDSC at a fixed rate (currently expected to be 1%) on shares redeemed during the first year after purchase. Class C shares will be subject to a variable rate CDSC (declining over time) for a period of several years after purchase. Applicants currently expect that the percentage of the CDSC generally will vary from 6% for redemptions made during the first year from initial purchase to 1% for redemptions made during the sixth year from purchase.

18. No CDSC would be imposed with respect to: (a) redemptions of shares that were purchased more than a specified number of years prior to the redemptions; (b) shares derived from reinvestment of dividends or capital gain distributions; or (c) the amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

19. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if

any, being imposed at the lowest possible rate. In addition, redemption requests placed by shareholders who own shares of more than one class will be satisfied first by redeeming the shareholder's shares of the class or classes not subject to a CDSC, unless the shareholder has specifically elected to redeem shares which are subject to a CDSC.

20. The CDSC would be waived for the following redemptions: (a) Following the death or disability, as defined in section 72(m) (7) of the Internal Revenue Code of 1986, of a shareholder if redemption is made within one year of death or disability of a shareholder, (b) in connection with distributions pursuant to a systematic withdrawal plan established by a Fund, (c) in connection with a lump-sum or other distributions following retirement, separation of service (except in the case of an IRA) or, in the case of an IRA of Keogh Plan or a custodial account purchase to section 403(b) (7) of the Code, after attaining age 59½, (d) in connection with involuntary redemptions of shares in accounts with low balances, (e) resulting from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code or from the death or disability of the employee, and (f) of shares bought by (i) a Fund's Trustees or retired Trustees (or their family members), current and retired employees (and their families) of a Fund's investment adviser or principal underwriter and their affiliates, partnerships or trusts in which any of the foregoing has an interest, (ii) registered representatives and other employees (and their families) of broker-dealers having sales agreements with a principal underwriter of a Fund or its affiliates, (iii) employees (and their families) of financial institutions having sales or servicing agreements with a principal underwriter of a Fund or its affiliates, (iv) financial institution trust departments investing a minimum amount, as specified in the fund's prospectus, in a Fund or in funds within the same family of funds (as such term is defined in rule 11a-3 under the Act), (v) clients of administrators of tax-qualified plans having purchase agreements with the principal underwriter of a Fund or its affiliates, (vi) employee benefit plans of companies with a minimum number of employees as specified in the applicable Fund's prospectus, (vii) pension or profit-sharing plans sponsored by a Fund's principal underwriter or an affiliate or of which the principal underwriter or an affiliate serves as plan fiduciary, (viii) wrap accounts for the

benefit of clients of financial planners offering shares of the Fund pursuant to written agreements between such financial planners and a Fund's principal underwriter or an affiliate, and (ix) tax-qualified plans when proceeds from repayments of loans to participants are invested (or reinvested) in Funds within the same family of funds. If the Funds waive or reduce a CDSC, such waiver or reduction will be uniformly applied to all offerees in the category specified.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 18(f), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1, to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge, or no sales charge at all.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the disproportionate payments made under the rule 12b-1 distribution plan and the shareholder services plan, and any Identifiable Class Expenses which are limited to (i) transfer agency fees attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing

materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) administrative services fees payable under each class's respective administrative services agreement, if any, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to rule 12b-1 plans except as provided in condition 2 below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of a Fund; and (e) the fact that only certain classes will have a conversion feature.

2. If a Fund implements any amendments to its rule 12b-1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b-1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), shares of the class that will convert (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with Condition 6, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the investment adviser or principal

underwriter of the Trust in question. The Purchase Class shares sold after the implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

4. The Trustees of the Trusts, including a majority of the independent Trustees, shall have approved the Multiple Class System prior to the implementation of the Multiple Class System by a particular Fund. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for determining that the Multiple Class System is in the best interests of both the Funds and their respective shareholders.

5. The initial determination of the Identifiable Class Expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Identifiable Class Expenses, rule 12b-1 fees and shareholder servicing fees shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

6. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Trust's investment adviser and principal

underwriter will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the investment adviser and the principal underwriter at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Trusts will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a class of shares will be used to support any distribution or servicing fee charged to shareholders of such class of shares. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

8. Each shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1.

9. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, and on the same day and will be in the same amount, except that fee payments made under the rule 12b-1 plans relating to a particular class of shares will be borne exclusively by such class and except that any Identifiable Class Expense and shareholder servicing expenses will be borne exclusively by the applicable class of shares.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants (and such report has been filed with the SEC as an exhibit to the application) that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will

render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, any Assistant Director, and any Regional Administrator or Associate and Assistant Administrator. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the various classes of shares and the proper allocation of expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. The applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

12. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. Each Trust's principal underwriter will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

16. Applicants acknowledge that the grant of the requested exemptive order will not imply Commission approval or authorization of or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b-1 plans or shareholder services plans in reliance on the order.

17. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988), as the rule is currently proposed and as it may be repropounded, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-18075 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC-20418; 812-8374]

The First Trust Special Situations Trust et al.; Application

July 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The First Trust Special Situations Trust (the "Rollover Trust"), and Nike Securities L.P. ("Nike").

RELEVANT ACT SECTIONS: Order requested under sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Applicants seek an order to permit certain offers of exchange of units of a terminating Rollover Trust series for units of subsequently offered Rollover Trust series.

FILING DATE: The application was filed on April 29, 1993 and amended on July 22, 1993 and July 12, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and servicing applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary: SEC, 450 5th Street NW., Washington, DC 20549. Applicants: 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney (202) 942-0570, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Rollover Trust will consist of a series of unit investment trusts (the "Series") registered under the Act. The units representing undivided interests in each Series will be registered under the Securities Act of 1933. Nike sponsors the Rollover Trust and numerous other unit investment trusts (the "Sponsor"). Applicants also request relief for subsequent series of the Rollover Trust sponsored by Nike or a sponsor controlled by or under common control with Nike.

2. Each Series will pursue an investment objective which is consistent with a specified investment philosophy. The first Series of the Rollover Trust will be the Target Equity Trust, Value Ten Series (the "Value Ten Series"). The Value Ten Series' objective will be to provide an above-average total return through a combination of dividend income and capital appreciation by investing in a portfolio consisting of common stocks of a specified number of companies in the Dow Jones Industrial Average having the highest dividend yield (the "Equity Securities") as of the opening of business on the day prior to the Series' initial date of deposit.¹ Future Series of the Rollover Trust may be similar to the Value Ten Series or may consist of Series with a different investment philosophy, a different number of common stocks, or a different duration. The Sponsor intends to maintain a secondary market for the units of each Series, although it is not obligated to be so.

3. Each Series will terminate on a date (the "Mandatory Termination Date") which is a specified term (e.g., one, three or five years) after the Series' initial date of deposit. Commencing on the Mandatory Termination Date, Equity Securities will be sold in connection with termination of the Series. The Sponsor will determine the manner, timing and execution of the sale of the Equity Securities. A specified number of days prior to the Mandatory Termination Date of the Trust, the trustee will provide notice thereof to all unit holders.

4. Absent an election discussed below, unit holders will receive a cash distribution evidencing their *pro rata* share of the proceeds from the liquidation of the Equity Securities in the Series. Unit holders who own at least a specified number of units (e.g., 2,500 units), however, may elect to receive a distribution of Equity Securities in connection with the termination of the Trust.

5. Unit holders may elect alternatively to have all of their units redeemed in kind on a predetermined date prior to the Mandatory Termination Date, and to have the distributed Equity Securities sold by the trustee, and the proceeds of such sale reinvested in the units of a new Series (the "Reinvestment Trust Series") at a reduced sales charge. The option of unit holders to make such

¹ The Rollover Trust has exemptive relief to permit its series to invest up to 10% of a series' assets in securities of issuers that derived more than 15% of their gross revenues from securities related activities. See, Investment Company Act Release Nos. 19864 (Nov. 12, 1993) (notice) and 19940 (Dec. 8, 1992) (order).

election is referred to as the "Rollover Option" and unit holders making such election are referred to as "Rollover Unit Holders". The portfolio of the Reinvestment Trust Series will contain a specified number of common stocks selected by the Sponsor pursuant to the same investment philosophy which was followed in selecting the common stocks in the terminating Series. The number of common stocks in the Reinvestment Trust Series and the approximate duration of the Reinvestment Trust Series will be the same as those of the terminating Trust Series.

6. The applicable sales charge upon the initial investment in the Rollover Trust will be 3.6% of the public offering price while the reduced sales charge applicable to Rollover Unit Holders will be no more than 2.0% of the public offering price.

Applicants' Legal Analysis

1. Section 11(a) requires SEC approval of an offer to exchange securities between open-end investment companies if the exchange occurs on any basis other than the relative net asset values of the securities to be exchanged. Section 11(c) makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange.

2. Applicants represent that Rollover Unit Holders will not be induced or encouraged to participate in the Rollover Option through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and claims that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Rollover Option. Applicants further believe that the Rollover Option is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

If the requested order is granted, applicants agree to the following conditions:

1. Whenever the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that:

(a) No such notice need to be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of a rollover; and

(b) No notice need to be given if, under extraordinary circumstances, either

(i) There is a suspension of the redemption of units of the Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) A Reinvestment Trust Series temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. The sales charge collected at the time of any rollover shall not exceed 2.0% of the public offering price of the unit being acquired on each rollover.

3. The prospectus of each Reinvestment Trust Series and any sales literature or advertising that mentions the existence of the Rollover Option will disclose that the Rollover Option is subject to modification, termination or suspension.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-18137 Filed 7-25-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26087]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 15, 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 15, 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.

National Fuel Gas Company (70-8143)

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York, 14203, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a) and 10 of the Act and Rule 42 thereunder.

NFG requests authorization to enter into one or more interest rate swaps, plus interest rate caps, collars and floors (together with swaps, "Derivative Instruments") through December 31, 1994 in notional amounts that in the aggregate will not exceed \$350 million.

NFG requests authorization to make fixed-to-floating and floating-to-fixed swaps. Under the former, NFG would agree to make payments to a counterparty, payable periodically at a floating rate of interest calculated on an agreed notional principal, in return for payments based upon the same notional amount but at a fixed rate of interest. Under the latter, NFG would agree to make payments to a counterparty, payable periodically at a fixed rate of interest calculated on an agreed notional principal, in return for payments based upon the same notional amount but at a floating rate of interest.

The effective interest rate that NFG may pay on fixed rate debt obtained in a floating-to-fixed rate swap, inclusive of any intermediary fee would not exceed 200 basis points over the yield on U.S. Treasury obligations bearing maturities comparable to the term of the swap.

In a fixed-to-floating rate swap, the fixed rate to be received by NFG is calculated as that rate of interest that sets the net present value of the forward curve for the short-term index to zero, plus the bid/ask spread. That is, the fixed rate chosen will be a rate that discounts the floating interest payments expected by the market to be paid by NFG over the life of the swap to an amount that equals the present value of the fixed interest payments to NFG, exclusive of the bid/ask spread.

The term of a fixed-to-floating interest rate swap would vary from one month to forty years, while the term of a floating-to-fixed interest rate swap would vary from nine months to forty years. The cost of terminating an

interest rate swap before the end of the term could be substantial, but NFG anticipates it would not exceed more than ten percent of the notional principal amount of the swap.

Each time NFG issues debentures or medium-term notes, the proceeds are lent to one or more of its subsidiaries at an all in cost that is equal to the coupon on the debt plus the amortization of the underwriters or agents' fees. Similarly, each interest rate swap, cap, floor, collar "or option" would "directly relate" to then outstanding debt so that the financial effect of such instrument would be allocated to the subsidiary on whose behalf the underlying debt was issued.

To protect against adverse interest rate changes on floating rate debt, NFG may purchase one or more interest rate caps. NFG may additionally sell an interest rate floor to either lower the cost of the debt underlying the floor or, in conjunction with an interest rate cap, to lower the cost of the cap. As with interest rate swaps, payments or receipts associated with a cap, collar, floor will be allocated to the subsidiary for whose benefit the underlying debt was issued.

Consolidated Natural Gas Company (70-8365)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a post-effective amendment under Sections 6(a) and 7 of the Act and Rule 54 thereunder to its declaration previously filed under Sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By order dated April 14, 1993 (HCAR No. 26026) ("Order"), the Commission authorized CNG to issue and sell on or before June 30, 1996 up to \$400 million principal amount of debentures ("Debentures") in one or more series at a price, exclusive of accrued interest, which would be not less than 98% nor more than 101% of the principal amount and at an interest rate which would be a multiple of $\frac{1}{8}$, $\frac{1}{10}$, or $\frac{1}{20}$ of 1%. The Debentures would mature in not more than thirty years and would be issued in accordance with the indenture between CNG and Chemical Bank, as Trustee, dated May 1, 1971 ("Indenture"). As of this date, CNG has sold no Debentures.

CNG now proposes to amend its Indenture by adding a new section 4.02 ("Section 4.02"). Section 4.02 would allow CNG to reserve the right, without the consent of the holders of future debenture issues sold under the Order, to amend sections 6.06 and 6.07 of the Indenture. Section 4.02 states:

The Company reserves the right, subject to appropriate corporate action, but without consent, approval or other action by holders of debentures of any series created after May 1, 1994, to make such amendments to the Indenture, as heretofore supplemental and amended, as shall be necessary in order to amend Section 6.06 and 6.07 thereof so as to modify or eliminate the provisions or requirements of such Sections, or any part thereof and the definition of any term used in either of such Sections or related thereto, as the Company may determine in its sole discretion.

Section 6.06 essentially provides that funded debt, as defined in the Indenture, cannot be incurred and subsidiary preferred stock cannot be issued unless: (1) The consolidated income available for interest and subsidiary preferred stock dividends of CNG and its subsidiary companies for any 12 consecutive months within 15 months immediately preceding the date additional funded debt is incurred is not less than two and one-half times the sum of the total annual interest charges and the total subsidiary preferred stock dividends, assuming the incurrence of such additional funded debt or issuance of such preferred stock, as the case may be; and (2) after giving effect to the incurring of the additional funded debt and issuance of preferred stock, the sum of the outstanding consolidated debt of CNG and its subsidiary companies and the amount of outstanding subsidiary preferred stock shall not be more than 60% of the consolidated net tangible assets of CNG and its subsidiaries. Section 6.07 provides that a subsidiary company of CNG cannot incur funded debt or issue preferred stock to a third party unless funded debt and preferred stock of the subsidiary company will not exceed 60% of the total capitalization of the subsidiary, and the principle amount of funded debt and amount of preferred stock of all subsidiary companies of CNG shall not exceed 15% of consolidated net tangible assets.

CNG contends that its credit and ability to raise debt financing would not be adversely affected if the provisions of Sections 6.06 and 6.07 were excluded from the Indenture and a relaxing or elimination of the provisions of such sections would allow significantly greater flexibility in CNG's use of funded debt.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94-18131 Filed 7-25-94; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2731]

South Dakota (And Contiguous Counties in Minnesota); Declaration of Disaster Loan Area

Brookings and Codington Counties and the contiguous counties of Clark, Day, Deuel, Grant, Hamlin, Kingsbury, Lake, and Moody in South Dakota, and Lincoln and Pipestone Counties in Minnesota constitute a disaster area as a result of flooding caused by excessive rainfall which occurred on June 17, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 12, 1994 and for economic injury until the close of business on April 14, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, 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 physical damage are 273106 for South Dakota and 273206 for Minnesota. For economic injury the numbers are 829600 for South Dakota and 829700 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 14, 1994.

Erskine B. Bowles,
Administrator.

[FR Doc. 94-18064 Filed 7-25-94; 8:45 am]

BILLING CODE 8025-01-M

Delegation of Authority

AGENCY: Small Business Administration.
ACTION: Notice Delegating Loan Approval Authority to Specific Agency Field Personnel.

SUMMARY: This notice delegates authority to a specific Small Business Administration (SBA) field person to approve SBA guaranteed and economic development loans. This authority is based upon the education, training, and experience of such person and is meant to expedite Agency action in processing loan applications.

EFFECTIVE DATE: This notice is effective July 8, 1994.

FOR FURTHER INFORMATION CONTACT:

John R. Cox, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Tel. (202) 205-6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published in the *Federal Register*, a final rule amending § 101.3-2 of part 101, Title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices (56 FR 65821). Previously § 101.3-2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training. The December 19, 1991, publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional, district, or branch office, based upon education, training, or experience, by publication of a notice in the *Federal Register*.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guarantee up to 90% of a loan depending upon total loan amount. Further, SBA has certain authority to make direct loans and economic development (503/504) loans. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels of authority in light of their additional education, training, or experience allow for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and more accurate processing, while the Agency is served by quality lending and, in the case of

guaranteed loans, better relations with its participating lenders.

This notice delegates authority to a specific SBA official to approve guaranteed and direct and 503/504 loan applications, as well as to undertake other loan related activities based upon experience. The SBA Officer-in-Charge of the Camden Post-of-Duty has successfully completed training courses offered by the Agency. Such training in conjunction with his extensive experience qualifies him to better analyze and process loan applications and justifies delegating loan approval authority.

No standard delegated authority to approve SBA guaranteed and direct loans and 503/504 loans exists for a post-of-duty office. This notice establishes the authority to approve each type of SBA loan at \$250,000 and the authority to decline each type of SBA loan at \$750,000 for the Camden Post-of-Duty Office and only for that post-of-duty office.

This delegation of authority is specific to the incumbent and continues only so long as he remains in such position.

Dated: July 8, 1994.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 94-18067 Filed 7-25-94; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0199]

First Legacy Fund, Inc.; Issuance of a Small Business Investment Company License

On March 5, 1993, a notice was published in the *Federal Register* (58 FR 12623) stating that an application had been filed by First Legacy Fund, Inc., 1400 34th Street, NW, Washington, DC, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business April 4, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0199 on July 14, 1994, to First Legacy Fund, Inc. to operate as a small business investment company.

The Licensee will be wholly owned by Jonathan Leddecky and will have \$3 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 18, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-18065 Filed 7-25-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2040]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

SUMMARY: Under the Refugee Act of 1980, persons who have fled their country of origin and cannot return because of a well-founded fear of persecution may apply at selected embassies abroad for refugee status in the U.S. The law requires that successful refugee applicants be sponsored by private non-profit voluntary agencies for the initial period of resettlement in the U.S. (8 USC 1522(b)), and the sponsoring agencies need biographical information on each applicant in order to place him/her in an appropriate resettlement site. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing collection in use without OMB control number
Originating office—Bureau of Population, Refugees, and Migration
Title of information collection—Refugee Biographic Data Sheet
Frequency—On occasion.
Respondents—Aliens seeking refugee status in the U.S.
Estimated number of respondents—120,000

Average hours per response—1/2 hour.
Total estimated burden hours—60,000.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be

directed to (OMB) Jefferson Hill (202) 395-3176.

Dated: July 4, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94-18150 Filed 7-25-94; 8:45 am]

BILLING CODE 4710-24-M

Office of the Secretary

[Public Notice 2039]

Delegation of Authority No. 120-4 Assistant Secretary for Administration

By virtue of the authority vested in me as Secretary of State by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, and by Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 393, 41 U.S.C. Chapter 4), as amended, I hereby delegate to the Assistant Secretary of State for Administration the following authorities and functions:

1. The Assistant Secretary for Administration is authorized to exercise all duties, responsibilities, and powers of the Secretary with respect to Department procurement.

2. The Assistant Secretary for Administration is hereby designated to act as Head of the Agency with respect to procurement. The Assistant Secretary for Administration shall:

a. Prescribe and publish the Department of State Acquisition Regulation (48 CFR Chapter 6) and other directives pertaining to procurement including, but not limited to, those incorporated in 48 CFR Chapter 6.

b. To the extent permitted by law, make all determinations and findings required by statute or regulation to be made by the Head of the Agency.

3. The authority delegated herein shall be exercised in accordance with the applicable limitations and requirements of the Federal Property and Administrative Services Act, as amended; the Federal Acquisition Regulation (48 CFR Chapter 1); the applicable portions of the Federal Property Management Regulations (41 CFR Chapter 101); as well as other relevant statutes and regulations.

4. The Assistant Secretary for Administration is authorized to redelegate to qualified employees of the Department any of the authority delegated under items 1 and 2.

5. This delegation supplements Department of State Delegation No. 120 (34 FR 18095) dated October 30, 1969.

Dated: June 23, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94-18151 Filed 7-25-94; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of TSP, Inc.; for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94-7-25) Docket 49605.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding TSP, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 4, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49605 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: July 20, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94-18121 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Noise Exposure Map Notice, Friedman Memorial Airport, Hailey, Idaho

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by Friedman Memorial Airport (SUN) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193)

and 14 CFR Part 150 is in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the Friedman Memorial Airport noise exposure map is July 1, 1994.

FOR FURTHER INFORMATION CONTACT; Dennis Ossenkop, FAA, Airports Division, ANM-611, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map for Friedman Memorial Airport is in compliance with applicable requirements of Part 150, effective July 1, 1994.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAA) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by SUN. The specific map under consideration is Figure 1.1 in the addendum of the submission. The FAA has determined that the map for Friedman Memorial Airport is in compliance with applicable requirements. This determination is effective on July 1, 1994. FAA's determination on an airport operator's noise exposure map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR Part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure map and of the FAA's evaluation of the map are available for examination at the following locations: Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, D.C. Federal Aviation Administration, Airports Division, ANM-600, 1601 Lind Avenue SW., Renton, Washington, 98055-4056 Friedman Memorial Airport, Hailey, Idaho.

Question may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, July 1, 1994.

David A. Field,

Acting Manager, Airports Division, ANM-600, Northwest Mountain Region.

[FR Doc. 94-18180 Filed 7-25-94; 8:45am]

BILLING CODE 4910-13-M

Acceptance of Noise Exposure Maps for Glendale Municipal Airport, Glendale, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its

determination that the noise exposure maps submitted by the city of Glendale, Arizona for Glendale Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 5, 1994.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Environmental Specialist, AWP-611.2, Planning Section, Western-Pacific Region, Federal Aviation Administration, Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Street Address: 15000 Aviation Boulevard, Room 3012, Hawthorne, California, Telephone: 310/297-1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Glendale Municipal Airport are in compliance with applicable requirements of Part 150, effective July 5, 1994.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Glendale, Arizona. The specific maps under consideration are the 1994 and 1999 Noise Exposure Maps (Exhibits 1 and 2, respectively) located after Page vi in the Noise Exposure Map portion of the submission. The FAA has determined that these maps for Glendale

Municipal Airport are in compliance with applicable requirements. This determination is effective on July 5, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, D.C. 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Mr. Timothy F. Ernster, Deputy City Manager, City of Glendale, Municipal Complex, 5850 West Glendale Avenue, Glendale, Arizona 85301.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on July 5, 1994.

Herman C. Bliss,
Manager, Airports Division, AWP-600,
Western-Pacific Region.

[FR Doc. 94-18181 Filed 7-25-94; 8:45 am]
BILLING CODE 4910-13-M

[4910-13]

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting, which was previously scheduled for August 16, 1994, at 1 p.m., will be held on August 15, 1994 at 9 a.m. (Please note change of date and time.)

ADDRESSES: The meeting will be held at Helicopter Association International, 1635 Prince Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS-850), 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267-8150; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on August 15, 1994, at 9 a.m., at the Helicopter Association International offices on 1635 Prince Street, Alexandria, VA. The agenda for this meeting will include a progress report from the part 103 (Ultralight Vehicles) Working Group and discussions concerning the IFR Fuel Requirements/Destination and Alternate Weather Minimums Working Group and the acceptance of the VHF Navigation and Communications task.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10

calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on July 19, 1994.

Ron Myres,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-18182 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Recreational Trails Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Recreational Trails Advisory Committee, as authorized by the National Recreational Trails Fund Act (the Act) (sections 1301 through 1303 of the Intermodal Surface Transportation Efficiency Act of 1991; Pub. L. 102-240, 105 Stat. 1914, 2064). The focus of the meeting will be to review the utilization of National Recreational Trails funds by States, and make recommendations for changes in Federal policy to advance the purposes of the Act. Discussion topics will include project planning, streamlining the project development process, alternative funding sources for State trail programs, and trail research.

DATES: The meeting will be August 24, 1994, from 8:30 a.m. to 5 p.m. m.t., and August 25, 1994, from 8:30 a.m. to 2 p.m. The meeting is open to the public.

ADDRESSES: The meeting will be held at Colorado State Parks, 1313 Sherman St., Room 618, Denver, CO 80203, (303) 866-3437.

FOR FURTHER INFORMATION CONTACT: Christopher B. Douwes, Federal Highway Administration, Intermodal Division, HEP-50, (202) 366-5013; or John K. Kraybill, Office of the Chief Counsel, HCC-31, (202) 366-1367; 400 Seventh St., 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.

(Sections 1301 through 1303, Pub. L. 102-240, 105 Stat. 1914, 2064; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 18, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94-18123 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-22-P

National Highway Traffic Safety Administration

[Docket No. 94-63, Notice 1]

Vehicle Safety Information for Consumers

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

ACTION: Notice of public meetings; request for comments.

SUMMARY: This notice announces that NHTSA will be holding four public meetings to seek the public's guidance on the types of vehicle safety information that consumers desire, how best to generate that information, and how best to provide the information to consumers. Specifically, NHTSA is interested in public comments on the possibility of providing consumers with information on vehicle performance in a variety of crash modes, e.g., not only frontal, but also side impact and rollover. In addition, NHTSA seeks comments that would aid in determining which method or methods of providing this information would best serve the goal of educating prospective vehicle purchasers regarding the safety performance of their vehicles.

DATES: Public Meetings: Public meetings to hear public views and comments will be held in Des Moines, Iowa, on August 4, 1994, from 7:00 p.m. to 9:00 p.m.; in San Diego, California, on August 18, 1994, from 4:30 p.m. to 7:00 p.m.; in Tampa, Florida, on September 8, 1994, from 4:30 p.m. to 7:00 p.m.; and in Washington, DC, on October 6, 1994, from 9:30 a.m. to 12 noon.

It is requested that those persons wishing to make oral presentations at any of the public meetings contact Vincent R. Quarles at the address or telephone number listed below within 7 days prior to the date of that public meeting.

Written Comments: Written comments may be submitted to the agency and must be received on or before October 21, 1994.

ADDRESSES: Public Meetings: The public meetings will be held at the following locations:

The August 4 meeting will be in the Iowa Supreme Court Chambers, Main Floor—North Wing of the State Capitol, Des Moines, Iowa.

The August 18 meeting will be in the San Diego County Schools Headquarters, 6401 Linda Vista, Suite #800, San Diego, California.

The September 8 meeting will be in the Auditorium for District 7 of the Florida State Department of Transportation, 11201 N. McKinley Drive, Tampa, Florida.

The October 6 meeting will be in the Federal Aviation Administration Auditorium, 800 Independence Avenue, SW., Washington, DC.

These facilities are accessible to persons with disabilities.

Written Comments: All written comments must refer to the docket and notice numbers above and be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Vincent R. Quarles, Office of Market Incentives, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street, SW., Washington, DC 20590, 202-366-4805.

SUPPLEMENTARY INFORMATION:

In Brief

NHTSA will hold a series of informal public meetings. The meetings will be focused on seeking answers to the following four questions:

- What kind of safety information is useful to you when purchasing a car or truck?
- How can the government provide this information more effectively to you? (Brochures? Toll-free phone numbers? Personal computer bulletin boards? Public Service announcements? Other means?)
- In what formats, media, locations, and languages would you like to receive auto safety information?
- How could this information be presented so that it is easily understood by consumers?

NHTSA will use the answers to these questions to decide whether we need to refine the information this agency makes available to consumers and how the agency makes that information available.

Background

NHTSA is the agency in the Federal government that is responsible for improving motor vehicle safety. The agency believes that one means of improving motor vehicle safety is to ensure that purchasers of new vehicles have relevant safety information.

In recent years, there has been increased public interest in motor vehicle safety. Increased safety belt usage, reduced levels of alcohol-impaired driving, and attention to vehicle safety attributes, such as air bags and antilock brakes, are evidence of this trend.

Several recent studies have reaffirmed increasing consumer concern for safety

and the desire to have additional information on new vehicles. In a December 1993 joint report, the American Association of Retired Persons and the Consumer Federation of America reported on a survey to determine the extent of consumer interest in receiving independent information about selected products before making a purchase. The survey measured interest in receiving information on 27 products or services, ranging from long distance phone service to the purchase of a home. Of those indicating great interest in receiving information, more desired information on new cars (83 percent) than any other product. The survey also indicated a need to target the dissemination of information to specific audiences, as women desired more information than men, Blacks more than Hispanics or Whites, those with less education more than those with a higher education, and, particularly for new cars, young adults more than any other age group.

In a survey conducted for Prevention magazine in November 1993, safety was reported as the most important attribute that consumers value when buying a new car, but they are often confused about vehicle safety. For example, many consumers believe incorrectly that air bags are likely to inflate accidentally or trap a person in a vehicle and that the highways are becoming less safe.

Both of the above studies confirm strong consumer demand for additional information to consumers about new vehicle safety.

Statutory Authority

NHTSA has extensive statutory authority under the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) and Motor Vehicle Information and Cost Savings Act (Cost Savings Act) regarding the provision of vehicle safety performance information to consumers. This authority can be used to require motor vehicle manufacturers to provide consumers with safety performance information that has been developed through testing by either the agency or by the manufacturers themselves.

The Vehicle Safety Act, which was enacted in 1966, authorizes NHTSA to require vehicle manufacturers to generate and provide safety performance information to prospective purchasers of new vehicles. Currently, NHTSA requires manufacturers to provide consumers with information on vehicle stopping distance, truck-camper loading, tire quality grading and utility vehicle handling and stability. (See 49 CFR 575.) On June 28, 1994 (59 FR

33254), the agency proposed that information on vehicle resistance to rollover also be provided to consumers.

The Coast Savings Act, enacted in 1972, includes, among other things, requirements for the development and distribution of comparative information on the crashworthiness of motor vehicles. In 1978, the New Car Assessment Program (NCAP) was created to partially fulfill this requirement. NCAP test results evaluate the crash protection provided to front seat occupants by a vehicle's occupant protection devices. NCAP crash tests currently evaluate frontal crash protection only. Vehicles are crashed into a fixed barrier at 35 mph, which is equivalent to a head-on collision between two identical vehicles each moving at 35 mph. Instrumented dummies register forces and impacts during the crash. That information is used by NHTSA to predict potential head, chest and leg injuries. In prior years, NHTSA also provided information on the integrity of the fuel system and the ability of windshields to enhance occupant protection. Approximately 35-40 passenger vehicles (cars, pickup trucks, vans, and sport utility vehicles) are tested each year in NCAP, and the test results are made available to the public through news releases, and publication in popular consumer magazines.

NCAP in NHTSA's most popular and successful vehicle safety consumer information program, based on the volume of calls to the agency, media attention, and the use of NCAP data by numerous consumer and insurance organizations. Several manufacturers have informed the agency that they view it important to perform well in the NCAP tests, even though there is no regulatory requirement to do so. The decline in the injury scores in NCAP tests over time for all manufacturers, as reported in Report on the Historical Performance of Different Auto Manufacturers in the New Car Assessment Program Tests, NHTSA, August 1993, can be attributed partially to NCAP.

Report to Congress

In order to provide interested parties with NHTSA's most recent public statements on the provision of vehicle safety information, the agency believes it would be useful to summarize a recent report to Congress which is relevant to this subject. On December 8, 1993, in response to the House and Senate Appropriations Committees, the agency submitted a report to Congress on NCAP. This report, which is

available in NHTSA's public docket, sets forth:

- The results of an 18-month study to assess consumer and media needs and preferences for better understanding and more effective use of NCAP data. These included a summary of several consumer focus group and media studies. These studies indicated that consumers and the media desire comparative safety information on vehicles, a simplified NCAP format to better understand and utilize the crash test results, and expansion of NCAP to include other crash modes, such as side crashes and rollovers. Plans for implementing the findings of these studies are included in that report.

- Studies of real-world crashes versus NCAP crash tests. These studies conclude that NCAP test conditions approximate real-world crash conditions covering a major segment of the frontal crash safety problem. NHTSA also concluded that there is a significant correlation between NCAP results and real-world fatality risks for restrained drivers. In high-speed frontal crashes, fatality risks to restrained drivers of cars that perform well in NCAP may be as much as 30 percent lower than fatality risks to restrained drivers of cars that do not perform well in NCAP. A more detailed report on this subject, titled Correlation of NCAP Performance with Fatality Risk in Actual Head-On Collisions has been published by the agency, and is also available in the NHTSA public docket. Public comments were separately sought on that report (see 59 FR 1586, January 11, 1994).

The December 1993 congressional report also includes a review of NCAP historical performance and the following future goals:

- Reach a larger population with simplified data that will assist consumers in their vehicle purchases.
- Expand the collection of safety information by utilizing the additional injury-measuring capabilities of the more advanced Hybrid III dummy.
- Expand NCAP to provide comparative side impact information to consumers along with the frontal NCAP information.
- Monitor rollover safety activities to determine the potential for providing consumers with comparative information on levels of protection in a rollover crash and on vehicle roll stability.

January 3, 1994, Request for Comments

NHTSA published a notice in the Federal Register on January 3, 1994, (59 FR 104), to request comments on whether NHTSA should convene a

public meeting to review and discuss NCAP issues. Comments were solicited on:

(1) The desirability and need for such a public meeting; and

(2) The topics for consideration if a meeting is conducted. Suggested topics included all items that were discussed in the Congressional report and others, such as—

(A) Additional frontal crash modes and/or higher frontal test speeds,

(B) Additional injury measures,

(C) Whether crashworthiness assessment programs should precede or follow the rulemaking process, and

(D) Review of the simplified NCAP format.

Response to January 3, 1994, Request for Comments

Comments were received from three automobile manufacturers (Toyota, Volkswagen (VW), and Volvo), two automobile manufacturer associations (Association of International Automobile Manufacturers (AIAM), and the American Automobile Manufacturers Association (AAMA)), the Insurance Institute for Highway Safety (IIHS), and four other interest groups (Advocates for Highway and Auto Safety (Advocates), Center for Auto Safety (CFAS), Institute for Injury Reduction, and Public Citizen).

All commenters supported a public meeting. Toyota opposed the expansion of NCAP, urging the agency instead to provide consumers with information on specific vehicle safety features. VW stated that NCAP expansion is premature, while Volvo said that vehicle safety is more complex than can be represented by single tests at a single speed, etc. Conversely, Advocates, CFAS, and IIHS favor expansion of NCAP to other crash modes and speeds.

The automobile industry generally felt that new NCAP activities, such as different test speeds, injury criteria, or crash modes, should be preceded by rulemaking notices to amend existing, or to add new, safety standards regulating the same aspect of performance. However, Advocates argued that NCAP-type consumer information programs should precede formal rulemaking.

In comments on the new "star" rating system, a system intended to translate complex, quantitative test dummy "injury" readings into an easily understood format, Toyota questioned the validity of combining head and chest dummy injury readings into a single measure. VW stated that it found the new rating system more acceptable than the previous format. IIHS had reservations about the new star system

because it believes that consumers may not fully understand that it can only be used to compare vehicles in the same weight class. CFAS stated that the system could be improved and should also reflect leg injuries.

Several comments were provided on using additional or different injury criteria. Toyota and VW stated that the biofidelity of additional injury levels has not been established. IIHS said NHTSA needs to reassess its current NCAP injury criteria, given the widespread use of air bags. CFAS suggested using the additional injury-predicting capability of the Hybrid III test dummy.

CFAS also suggested that NHTSA publish make/model Fatal Accident Reporting System data, which includes the effects of who is driving the vehicle and where and how it is driven—as compared to NCAP which is a pure vehicle rating—and consider providing consumer information on window stickers. It also suggested that NHTSA define the audience for NCAP data.

Public Meetings

To take advantage of the heightened consumer interest in safety, as well as in response to the public comments to its January 3, 1994, notice, the agency believes it is timely to convene a series of public meetings to discuss what types of vehicle safety information consumers desire, and how that information can best be provided. The agency is holding several meetings in geographically dispersed locations, to obtain participation from diverse groups. In particular, NHTSA points to the above-mentioned surveys and CFAS' suggestion that the agency define its audience for vehicle safety information. These meetings are consistent with and responsive to Secretary Peña's Strategic Plan for the Department of Transportation. In that Plan, the Secretary established goals and objectives to promote safe and secure transportation, to put people first and to develop continuous customer feedback to refine the services we are providing. These public meetings constitute a portion of NHTSA's activities to implement the Secretary's Plan.

In a Notice of Proposed Rulemaking to provide rollover stability information, published June 28, 1994 (59 FR 33254), the agency is also seeking to provide expanded vehicle safety information to consumers prior to their purchasing a vehicle. The agency believes that window stickers, or other types of point-of-sale information (such as consumer brochures, access to information via personal computers, FAX-back machines, and other current technology)

may be an effective means of reaching prospective vehicle purchasers. But other means, such as providing information at other central locations, such as libraries, may also be desired. (It should be noted that the agency has previously proposed that NCAP frontal crash information be provided on vehicle window stickers, see 46 FR 7025, January 22, 1981.) The agency also wishes to point out that it may not need to continue to conduct NCAP activities, if point-of-sale or other forms of information are provided by manufacturers, because the current type of NCAP test would simply duplicate manufacturer-conducted tests. NHTSA encourages participants to focus attention on these issues.

The agency wants the public meetings to have the maximum possible level of public participation from a cross-section of the local community. A special effort will be made to attract average citizens who may not normally be inclined to participate in these meetings, but whose views will be especially valuable in this process. The meetings will be purposely informal to encourage participation and candid comments. The meetings have also been scheduled at times that are more convenient for average citizens.

While advance notice of those desiring to participate in the meetings is requested, it is not required. NHTSA will attempt to provide sufficient time for all individuals desiring to participate to do so.

Public Comments

The agency invites written comments from all interested parties. The agency notes that participation in the public meeting is not a prerequisite for the submission of written comments. It is requested but not required that 10 copies of each written comment be submitted.

No comment may exceed 15 pages. (40 CFR 553.21). Attachments may be submitted in addition to the 15-page maximum comment. This limitation is intended to encourage commenters to present concise arguments.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation, 49 CFR part 512.

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. NHTSA will continue to file relevant information in the docket as it becomes available, after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard.

Persons making oral presentations at a public meeting are requested, but not required, to submit 25 written copies of the full text of their presentation to Vincent R. Quarles no later than two days before the meeting. Presentations should be limited to five minutes. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public meetings will be prepared and also placed in the NHTSA docket as soon as possible after the meetings. A schedule of the persons or groups making oral presentations at a particular meeting will be available at the beginning of that public meeting.

To facilitate communication, NHTSA will provide auxiliary aids to participants as necessary, during the meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications, devices for deaf persons (TDDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), should contact Vincent R. Quarles at (202) 366-4805 no later than 10 days before the meeting at which they wish to make a presentation.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: July 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-18120 Filed 7-21-94; 11:17 am]

BILLING CODE 4910-59-M

[Docket No. 94-46; Notice 2]

Determination that Nonconforming 1988 Volkswagen Golf Passenger Cares Are Eligible for Importation

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

ACTION: Notice of determination by NHTSA that nonconforming 1988 Volkswagen Golf passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Volkswagen Golf passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Volkswagen Golf), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that

it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland (Registered Importer R-90-006) petitioned NHTSA to determine whether 1988 Volkswagen Golf passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on June 2, 1994 (59 FR 28589) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 80 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Volkswagen Golf not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Volkswagen Golf originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-18122 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Notice No. 94-7]

Safety Advisory; High Pressure Aluminum Seamless and Aluminum Composite Hoop-Wrapped Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: RSPA is aware of ruptures involving two DOT-3AL cylinders made of aluminum alloy 6351-T6. Cylinder ruptures pose a risk of death, serious personal injury, and property damage. The purpose of this notice is to advise owners of certain cylinders made of aluminum alloy 6351-T6 to follow the precautionary measures outlined in this notice. RSPA also seeks information on ruptures involving other cylinders made of aluminum alloy 6351-T6.

FOR FURTHER INFORMATION CONTACT:

Charles H. Hochman or Gopala K. Vinjamuri, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: RSPA has been notified of the rupture of two DOT-3AL aluminum cylinders made of aluminum alloy 6351-T6. The first cylinder rupture occurred in Deer Park, Texas. This cylinder was manufactured in 1977 and was part of a self-contained breathing apparatus (SCBA) unit. It ruptured while being filled to its marked service pressure of 2216 pounds per square inch gauge (psig). The second cylinder rupture occurred in North Miami, Florida. This cylinder was manufactured in 1982 and was part of a self-contained underwater breathing apparatus (SCUBA) unit. It ruptured while being filled to its marked service pressure of 3000 psig. The person filling the SCUBA cylinder sustained serious

injury. In both ruptures, a piece of the cylinder neck separated from the cylinder.

RSPA estimates that approximately seven million cylinders have been manufactured using aluminum alloy 6351-T6. RSPA presently does not know which cylinders among this population have the potential for similar failure. Cylinders made of aluminum alloy 6351-T6 are known to be susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder. Extensive research, testing and analysis have been performed on cylinders made of aluminum alloy 6351-T6 to determine any correlation between SLC and the probability of rupture. Findings indicated that cylinders with a marked service pressure below 4000 psig failing due to SLC would leak and not rupture. Present data are inconclusive as to why the two cylinders noted here ruptured instead of leaked. RSPA is continuing to investigate the incidents.

Aluminum cylinders are widely used in industrial, medical, SCUBA and SCBA services. Aluminum alloy 6351-T6 has been used in the manufacture of the following DOT high pressure cylinders:

1. Cylinders (seamless aluminum) marked "DOT 3AL", including those marked with "DOT 3AL" above or near one of the following exemption or special permit numbers:

6498
7042
8107
8364
8422

2. Composite cylinders (aluminum-lined with hoop-wrapped, fiber-reinforced plastic) marked with one of the following exemption numbers:

7235
8023
8115

To RSPA's knowledge, no cylinders have been manufactured under the exemption or special permit numbers listed above, except DOT-E 7235, since 1984. Any cylinder marked with one of these exemption or special permit numbers most likely is made of aluminum alloy 6351-T6. (DOT-E 7235 cylinders are discussed more fully below.) If in doubt, contact the cylinder manufacturer or distributor to identify the material of construction.

The primary domestic manufacturers of DOT-3AL cylinders currently in service are Luxfer USA; Walter Kidde Co.; Cliff Impact Division of Parker Hannifan Corporation; and Catalina Cylinders, a division of Aluminum Precision Products Inc. Luxfer USA is the only manufacturer of DOT-E 7235 cylinders. Between 1987 and 1989, Luxfer USA discontinued using alloy 6351-T6 and changed to alloy 6061-T6 for DOT-3AL cylinders and DOT-E 7235 cylinder liners. Cylinders manufactured from alloy 6061-T6 are not believed to be susceptible to SLC; therefore, they are not subject to this advisory notice. According to Luxfer USA data, the following types of cylinders stamped as manufactured by Luxfer USA before the dates indicated below likely are made from alloy 6351-T6.

DOT	Service and type cylinder	Part no.	Date mfd.
CO₂			
Spec. 3AL	1.2 and 1.5 lb	C1.2, C1.5	1-89
Do	2.18 lb	C2-18	11-88
Do	10 lb	C10	8-88
Do	5 lb	C5	6-88
Do	15 lb	C15	11-87
Do	20 and 35 lb	C20, C35	4-88
Do	50 lb	C50	2-88
SCBA			
Do	7, 8 and 13 cu. ft	L7, L8, L13	9-87
Do	13.3 cu. ft	L13-30	5-88
Do	15 cu. ft	L15	1-89
Do	26 cu. ft	L26	2-88
Do	45 cu. ft	L45	11-87
SCUBA			
Do	30 and 63 cu. ft	S30, S63	5-88
Do	40 cu. ft	S40	6-88
Do	50 and 92 cu. ft	S50, S92	4-88
Do	72 and 100 cu. ft	S72, S100	8-87
Do	80 cu. ft	S80	1-88
Do	80.8 cu. ft	S80.8	5-87
Medical O₂			
Do	C	M9	1-88

DOT	Service and type cylinder	Part no.	Date mfd.
Do	D and E	MD, ME	12-87
	Industrial		
Do	22 and 150 cu. ft	N22, N150	5-88
Do	33 cu. ft	N33	11-88
Do	60 and 122 cu. ft	N60, N122	12-87
Do	88 cu. ft	N88	12-88
Do	Service Pressures 2016 and 3000 psig		8-89
E-7235	Service Pressure 4500 psig		See below.

All Walter Kidde DOT-3AL cylinders, of which production ceased in January 1990, are made of alloy 6351-T6. Cliff Impact DOT-3AL cylinders were made from alloy 6351-T6 before July 1990, at which time Cliff Impact changed to alloy 6061-T6. Catalina Cylinders did not produce any DOT-3AL cylinders from alloy 6351-T6; therefore, cylinders manufactured by Catalina are not subject to this notice.

Until determined otherwise, any DOT-3AL or DOT-E 7235 cylinder should be assumed to be made of alloy 6351-T6, if it was:

1. Manufactured by Luxfer USA before the applicable date listed in the chart above;
2. Manufactured by Cliff-Impact before July 1990;
3. Manufactured by any other company in the United States, excluding Catalina, before February 1990; or
4. Manufactured outside the United States.

For aid in determining whether a cylinder is constructed with alloy 6351-T6, contact the cylinder manufacturer or distributor. RSPA will provide further information as it becomes available.

Any person who owns, uses, fills or retests an affected cylinder should take the following precautions:

1. Do not fill the cylinder to greater than the marked service pressure, except during a hydrostatic test.
2. Do not fill a cylinder that is beyond its required retest date.
3. Do not use a SCUBA or SCBA cylinder that is beyond its required retest date.
4. Whenever you remove the cylinder valve, visually inspect the interior of the cylinder neck and shoulder area for cracks. Any evidence of a crack or crack-like defect may require further evaluation. Contact the cylinder retester, distributor or manufacturer for the procedure to be used in performing the visual inspection and for rejection criteria. For guidance on inspecting Luxfer USA cylinders, contact Luxfer USA Limited, Customer Service Department, PO Box 5300, Riverside CA 92517, telephone (909) 684-5110.

RSPA wishes to reiterate two previous advisories it has issued regarding DOT-E 7235 cylinders. On August 15, 1985, RSPA published an exemption-related notice [Notice 85-4, 50 FR 32944] to alert users that any cylinder marked DOT-E 7235, with a service pressure of 4500 psig and not equipped with a neckring was required to be removed from service by October 1, 1985. On March 24, 1993, RSPA published a safety advisory notice [Notice 93-8, 58 FR 15895] after being notified of the rupture of a cylinder authorized under DOT-E 7235 that had not been fitted with a neckring. Cylinders properly fitted with the required neckring are not susceptible to rupture. That notice stated in part:

Persons finding cylinders without the required neckring should immediately take the following precautions.

1. If a cylinder has been filled, its entire contents should be vented in order to relieve internal pressure.
2. The vented cylinders should be segregated from all other cylinders by being placed in a secured area and marked conspicuously with a tag bearing the notation "Do Not Use" or similar warning.
3. Under no circumstances should any of the cylinders in question be sold or otherwise transferred, filled, refilled or used for any purpose.

Once the above procedures have been taken, persons finding cylinders without neckrings should contact the company, or distributor from whom they were purchased, for their disposition.

Any person who is aware of the rupture of any DOT-3AL cylinder or any other cylinder manufactured from aluminum alloy 6351-T6, whether the incident was domestic or foreign, is requested to contact RSPA as soon as possible.

Issued in Washington, DC on July 20, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94-18192 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 18, 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.

Financial Management Service (FMS)

OMB Number: 1510-0028

Form Number: POD 134

Type of Review: Extension

Title: Release Form

Description: This form is used by eligible recipients of a postal savings account of a deceased depositor to transfer their rightful share to another person.

Respondents: individuals or households

Estimated Number of Respondents: 20

Estimated Burden Hours Per Response: 30 minutes

Frequency of Response: On occasion, Other (as needed)

Estimated Total Reporting Burden: 10 hours

Clearance Officer: Jacqueline R. Perry (301) 344-8577, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 94-18079 Filed 7-25-94; 8:45 am]

BILLING CODE 4810-35-P

Public Information Collection Requirements Submitted to OMB for Review

July 18, 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: 1545-0175

Form Number: IRS Form 4626

Type of Review: Revision

Title: Alternative Minimum Tax—Corporations (including environmental tax)

Description: Form 4626 is used by corporations to calculate their alternative minimum tax and environmental tax.

Respondents: Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 100,000

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—18 hr., 25 min.

Learning about the law or the form—14 hr., 18 min.

Preparing and sending the form to the IRS—15 hr., 14 min.

Frequency of Response: Annually

Estimated Total Reporting/

Recordkeeping Burden: 4,794,000 hours

OMB Number: 1545-0770

Regulation ID Number: FI-182-78 NPRM

Type of Review: Extension

Title: Transfers of Securities Under Certain Agreements

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement lenders of securities are affected.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions

Estimated Number of Respondents: 11,742

Estimated Burden Hours Per

Respondent: 5 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 9,781 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-18080 Filed 7-25-94; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

July 19, 1994.

The Department of Treasury has made revisions and resubmitted 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: 1545-0675

Form Number: IRS Form 1040EZ

Type of Review: Resubmission

Title: Income Tax Return for Single and Joint Filers With No Dependents

Description: This form is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.

Respondents: Individuals or households

Estimated Number of Respondents/

Recordkeepers: 21,755,603

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—5 min.

Learning about the law or the form—49 min.

Preparing the form—1 hr., 20 min.

Copying, assembling and sending the form to the IRS—1 hr., 15 min.

Frequency of Response: Annually

Estimated Total Reporting/

Recordkeeping Burden: 38,929,046 hours

Clearance Officer: Garrick Shear (202)

622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 94-18081 Filed 7-25-94; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review.

July 19, 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: 1545-1350

Form Number: IRS Form 9465

Type of Review: Revision

Title: Installment Agreement Request

Description: This form will be used by the public to provide identifying account information and financial ability to enter into an installment agreement. The form will be used by IRS to establish a payment plan for taxes owed to the Federal government, if appropriate, and to collect the application fee.

Respondents: Individuals or households

Estimated Number of Respondents: 2,500,000

Estimated Burden Hours Per

Respondent:

Learning about the law or the form—2 min.

Preparing the form—31 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion

Estimated Total Reporting Burden:

2,200,000 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive

Office Building, Washington, DC
20503
Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94-18082 Filed 7-25-94; 8:45 am]
BILLING CODE 4830-01-P

**Public Information Collection
Requirements Submitted to OMB for
Review**

July 19, 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: 1545-0074

Form Number: IRS Form 1040, Schedules A, B, C, C-EZ, D, E, EIC, F, R, and SE

Type of Review: Revision

Title: U.S. Individual Income Tax Return

Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.

Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 65,740,664

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the form
1040	3 hours, 8 minutes	2 hours, 53 minutes	4 hours, 47 minutes	1 hour, 29 minutes.
Sch. A	2 hours, 32 minutes	0 hours, 20 minutes	1 hour, 10 minutes	0 hours, 27 minutes.
Sch. B	36 minutes	8 minutes	17 minutes	20 minutes.
Sch. C	6 hours, 26 minutes	1 hour, 10 minutes	2 hours, 5 minutes	0 hours, 35 minutes.
Sch. C-EZ	46 minutes	4 minutes	18 minutes	20 minutes.
Sch. D	0 hours, 51 minutes	0 hours, 42 minutes	1 hour, 1 minute	0 hours, 41 minutes.
Sch. E	2 hours, 52 minutes	1 hour, 7 minutes	1 hour, 16 minutes	0 hours, 35 minutes.
Sch. EIC	0 hours,	2 minutes	4 minutes	20 minutes.
Sch. F:				
Cash Method	4 hours, 2 minutes	0 hours, 35 minutes	1 hour, 14 minutes	0 hours, 20 minutes.
Accrual Method	4 hours, 22 minutes	0 hours, 25 minutes	1 hour, 19 minutes	0 hours, 20 minutes.
Sch. R	20 minutes	15 minutes	22 minutes	35 minutes.
Sch. SE:				
Short	20 minutes	13 minutes	11 minutes	14 minutes.
Long	26 minutes	22 minutes	34 minutes	20 minutes.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 1,099,783,736 hours

OMB Number: 1545-1270
Regulation ID Number: PS-120-90 Final
Type of Review: Extension
Title: Gasoline Excise Tax

Description: Gasoline refiners, traders, terminal operators, chemical companies and gasohol blenders must notify each other of their registration status and/or intended uses of product before transactions may be made tax-free.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 3,050

Estimated Burden Hours Per Respondent: 12 minutes

Frequency of Response: On occasion
Estimated Total Reporting Burden: 356 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and

Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland
Departmental Reports Management Officer
[FR Doc. 94-18083 Filed 7-25-94; 8:45 am]
BILLING CODE 4830-01-P

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 58 FR 156 dated August 16, 1993, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of member of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The name and titles of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Thrift Institutions Oversight and Policy

John H. Auten—Director, Office of Financial Analysis

William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)

Ralph L. Bayrer—Director, Office of Synthetic Fuels

Kurt Campbell—Special Assistant to the Under Secretary for International Affairs

Richard S. Carnell—Assistant Secretary (Financial Institutions)

Joyce H. Carrier—Deputy Executive Secretary (Public Liaison)

Mary E. Chaves—Director, Office of International Debt Policy

Wushow Chou—Deputy Assistant Secretary (Information Systems)

Lowell Dworin—Director, Office of Tax Analysis

James H. Fall, III—Deputy Assistant Secretary (Developing Nations)

Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office

Geraldine A. Gerardi—Director for Business Taxation

Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
 Edward S. Knight—Executive Secretary and Senior Advisor to the Secretary
 Susan Levine—Deputy Assistant Secretary (International Development & Debt Policy)
 Michael Levy—Assistant Secretary (Legislative Affairs)
 David Lipton—Deputy Assistant Secretary (Eastern Europe and Former Soviet Union Policy)
 Joan Logue-Kinder—Assistant Secretary (Public Affairs)
 John W. Mangels—Director, Office of Operations
 Alicia H. Munnell—Assistant Secretary (Economic Policy)
 George Muñoz—Assistant Secretary (Management and Chief Financial Officer)
 Gerald Murphy—Fiscal Assistant Secretary
 Frank Newman—Under Secretary for Domestic Finance
 Ronald K. Noble—Assistant Secretary (Enforcement)
 Thomas P. O'Malley—Director, Management Programs Directorate
 Jill K. Ouseley—Director, Office of Market Finance
 Marcus W. Page—Deputy Fiscal Assistant Secretary
 Charlene J. Robinson—Director, Human Resources Directorate
 Alex Rodriguez—Deputy Assistant Secretary (Administration)
 Leslie Samuels—Assistant Secretary (Tax Policy)
 Charles Schotta—Deputy Assistant Secretary (Middle East & Energy Policy)
 Sam Sessions—Deputy Assistant Secretary (Tax Policy)
 G. Dale Seward—Director, Automated Systems Division
 Jeffrey Shafer—Assistant Secretary (International Affairs)
 Joshua L. Steiner—Chief of Staff
 Jane L. Sullivan—Director, Office of Information Resources Management
 Lawrence H. Summers—Under Secretary for International Affairs
 Edwin A. Verburg—Director, Financial Services Directorate

FOR FURTHER INFORMATION CONTACT:

Rosemary Downing, Executive Secretary, PRB, room 1316, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone: (202) 622-1440. This notice does not meet the Department's criteria for significant regulations.

George Muñoz,

Assistant Secretary of the Treasury (Management).

[FR Doc. 94-18149 Filed 7-25-94; 8:45 am]

BILLING CODE 4810-25-M

CUSTOMS SERVICE**Public Meetings in Seattle and Los Angeles on Customs Automated Export System**

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

SUMMARY: This notice announces the location and dates of public meetings to be held in Seattle, WA, and Los Angeles, CA, on the development of the Automated Export System (AES). These meetings are being held to (1) give Customs managers an opportunity to provide the public with information related to the development of AES and (2) give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality.
DATES: Seattle, WA., August 2, 1994, commencing at 9:30 a.m.; Los Angeles, CA., August 3, 1994, Seaport Operations, commencing at 9:00 p.m., and Airport Operations, commencing at 1:00 p.m.

ADDRESSES: Seattle, WA.: Henry "Scoop" Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA 98104.

Los Angeles, CA.: Port of Los Angeles Building, Board Room, 2nd Floor, 425 South Palos Verdes Street, San Pedro, CA 90733.

FOR FURTHER INFORMATION CONTACT: Seattle Meeting: Mr. Gary Payne (206) 553-0706; Pre-registration Fax: (206) 553-2466.

Los Angeles Meeting: Ms. Mary Curcio, (310) 514-6029; Pre-registration Fax: (310) 514-6769.

General AES questions: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 7331, Washington, DC., 20229, (202) 927-0280.

SUPPLEMENTARY INFORMATION:**Background**

In a notice published in the *Federal Register* on June 13, 1994, (59 FR 30383) Customs announced its intention of developing an Automated Export System (AES) and informed the public that a series of meetings would be held around the country regarding the AES. That notice provided information on the first such meeting which was scheduled in Washington, DC. This notice is being issued to inform the public of the date and time of meetings which will be held in Seattle, Washington, and Los Angeles, California.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public

meetings for the purpose of (1) giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future. After this presentation, the floor will be open to all attendees for general informal discussion of the AES program.

In this document, Customs is announcing the following public meetings on AES:

1. Seattle, Washington, August 2, 1994, commencing at 9:30 a.m., Henry "Scoop" Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA 98104. Point of Contact: Mr. Gary Payne (206) 553-0706. Pre-registration Fax Number (206) 553-2466.
2. Los Angeles, California, August 3, 1994, Seaport Operations commencing at 9:00 a.m.; Airport Operations commencing at 1:00 p.m., Port of Los Angeles Building, Board Room, Second Floor, 425 South Palos Verdes Street, San Pedro, CA 90733. Point of Contact: Ms. Mary Curcio (310) 514-6029. Pre-registration Fax Number (310) 514-6769.

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

A final public meeting on AES is planned for Portland, Oregon. Appropriate notice will be published in the *Federal Register* when the date, time and specific location for this meeting has been established.

Dated: July 22, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94-18235 Filed 7-25-94; 8:45 am]

BILLING CODE 4820-02-P

Fiscal Service

[Dept. Cir. 570, 1993—Rev., Supp. No. 26]

Insurance Company of Evanston; Surety Companies Acceptable on Federal Bonds; Suspension of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Insurance Company of Evanston, of Evanston, IL under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable

surety on Federal bonds is hereby suspended, effective this date. The suspension will remain in effect until further notice.

The Company as last listed as an acceptable surety on Federal bonds at 58 FR 35800, July 1, 1993. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with Insurance Company of Evanston, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, D.C. 20227, telephone (202) 874-6850.

Dated: July 1, 1994.

Charles F. Schwan III,

Director, Funds Management Division,
Financial Management Service.

[FR Doc. 94-18156 Filed 7-25-94; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1993—Rev., Supp. No. 27]

Reliance Insurance Company of New York; Surety Companies Acceptable on Federal Bonds; Change of Name

Reliance Insurance Company of New York, a New York corporation, has formally changed its name to Reliance National Insurance Company of New York, effective March 31, 1994. The Company was last listed as an acceptable surety on Federal bonds at 58 FR 35812, July 1, 1993.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to Reliance National Insurance Company of New York, Fairport, NY. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of \$1,445,000 established for the Company as of July 1, 1993, and the business address remain unchanged until June 30, 1994.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which

outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, at page 35812 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, D.C. 20227, telephone (202) 874-7116.

Dated: July 19, 1994.

Charles F. Schwan III,

Director, Funds Management Division,
Financial Management Service.

[FR Doc. 94-18157 Filed 7-25-94; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Tax on Certain Imported Substances (Dimethyl-2,6-Naphthalene Dicarboxylate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89-61, 1989-1 C.B. 717, of a petition requesting that dimethyl-2,6-naphthalene dicarboxylate be added to the list of taxable substances in section 4672(a)(3).

Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by September 26, 1994. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on May 5, 1994. The petitioner is Amoco Corporation, a manufacturer and exporter of this substance. The following is a summary

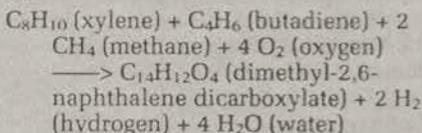
of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS: number. 2917.39.50

CAS: number. 840-65-3

This substance is derived from the taxable chemicals xylene, butadiene, and methane. Dimethyl-2,6-naphthalene dicarboxylate is a solid produced predominantly by esterification of naphthalene dicarboxylic acid (2,6-NDA). 2,6-NDA is made by air oxidation of dimethyl naphthalene (2,6-DMN). 2,6-DMN is prepared via the alkenylation of orthoxylene acid butadiene.

The stoichiometric material consumption formula for this substance is:



According to the petition, taxable chemicals constitute 60 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$5.97 per ton. This is based upon a conversion factor for xylene of 0.690, a conversion factor for butadiene of 0.390, and a conversion factor for methane of 0.208.

Comments and Requests for A Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant
Chief Counsel (Corporate).

[FR Doc. 94-18056 Filed 7-25-94; 8:45 am]

BILLING CODE 4830-01-U

Tax on Certain Imported Substances (Phosphorous Trichloride, et al.); Filing of Petitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89-61, 1989-

1 C.B. 717, of petitions requesting that phosphorous trichloride and phosphorous pentasulfide be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by September 26, 1994. Any modification of the list of taxable substances based upon these petitions would be effective January 1, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T-R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T-R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622-3130 (not a toll-free number).

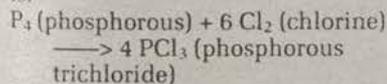
SUPPLEMENTARY INFORMATION: The petitions were received on March 23, 1994. The petitioner is Monsanto Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Phosphorous Trichloride

HTS number 2812.10.50.10
CAS number 7719-12-2

This substance is derived from the taxable chemicals phosphorous and chlorine. Phosphorous trichloride is a liquid produced predominantly by the direct union of phosphorous and chlorine.

The stoichiometric material consumption formula for this substance is:



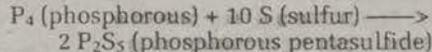
According to the petition, taxable chemicals constitute 100 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$3.10 per ton. This is based upon a conversion factor for phosphorous of 0.23 and a conversion factor for chlorine of 0.77.

Phosphorous Pentasulfide

HTS number 2813.90.20.00
CAS number 1314-80-3

This substance is derived from the taxable chemical phosphorous. Phosphorous pentasulfide is a solid produced predominantly by mixing molten phosphorous with molten sulfur.

The stoichiometric material consumption formula for this substance is:



According to the petition, taxable chemicals constitute 94.6 percent by value of the materials used in its production. The stated cost for phosphorous is \$0.91 per pound and the stated cost for sulfur is \$0.02 per pound. The rate of tax for this substance would be \$1.24 per ton. This is based upon a conversion factor for phosphorous of 0.28.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the *Federal Register*.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94-18055 Filed 7-25-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

Amendment of System of Records—Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA (36VA00)

AGENCY: Department of Veterans Affairs.
ACTION: Amendment of system of records.

Notice is hereby given that the Department of Veterans Affairs (VA) is revising certain paragraphs in the system of records entitled, "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA" (36VA00) which first appeared in the *Federal Register*, 40 FR 38095, on August 26, 1975. It was revised in 47 FR 29132 (July 6, 1982) and amended in 50 FR 13448 (April 4, 1985) and in 50 FR 50033 (December 6, 1985). The "System location", "Authority for maintenance of the system", "Routine uses of records.

* * *. "Storage", "Retrievability", and "Safeguards" paragraphs are being revised to make minor changes.

Approved: May 10, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as 36VA00, "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA" is being amended. It first appeared in the *Federal Register*, 40 FR 38095, on August 25, 1975, was revised in 47 FR 29132 (July 6, 1982) and amended in 50 FR 13448 (April 4, 1985) and in 50 FR 50033 (December 6, 1985). 36VA00 is amended by changing "data processing" centers to "benefits delivery" centers by adding a reference to the microfiche record storage capability and by making other minor changes as follows:

36VA00

SYSTEM NAME:

Veterans and Armed Forces Personnel United States Government Life Insurance Record—VA.

SYSTEM LOCATION:

Active records are located at the VA Regional Office and Insurance Centers in Philadelphia, Pennsylvania and St. Paul, Minnesota. Inactive records are stored at various servicing Federal Archives and Records Centers and at the VA Records Processing Center in St. Louis, Missouri. Information from these files is also maintained in automated files at the VA Benefits Delivery Center in Philadelphia, Pennsylvania. Information from the automated files in Philadelphia is available to all VA Regional Offices, except Manila, Philippines, through the ITS (Insurance Terminal System) which provides direct access to the records via video display terminals. Duplicate copies of certain manual and automated files are maintained at other locations in accordance with Federal and VA policy on security and vital records. Address locations of VA facilities are listed in VA Appendix 1 at the end of this document.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 5, Section 501, and Chapter 19.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

19. Any information in this system, including the nature and amount of a

financial obligation, may be disclosed to a debtor's employing agency or commanding officer, upon its official request, in order to assist VA in the collection of unpaid financial obligations owed VA so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive order 11222 of May 8, 1965.

20. Any information in this system, including available identifying data regarding the debtor, such as name of debtor, last known address of debtor, name of debtor's spouse, social security account number of debtor, VA insurance number, VA loan number, VA file number, place of birth and date of birth of debtor, name and address of debtor's employer or firm and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers license bureaus, and State automobile title and license bureaus as a routine use in order to obtain current address, locator and credit report assistance in the collection of unpaid financial obligations owed the United States. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89-508, 31 United States Code, 3701-3718) and 4 CFR parts 101-105 and 38 U.S.C. 5701(b)(6).

21. Any information concerning the veteran's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Purposes of these disclosures may be to (a) Assist VA in collection of title 38 benefit overpayments, overdue

indebtedness, and or costs of services provided individuals not entitled to such services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

22. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, microfilm, microfiche, disks, and paper documents including computer lists and punched cards.

RETRIEVABILITY:

All manual and automated insurance records are retrievable by the insurance file number, using name, social security number, VA file number and date of birth as additional identifying information.

SAFEGUARDS:

1. Physical security: a. All VA facilities are protected by the Federal Protective Service or other security personnel. All file areas are restricted to authorized personnel on a need-to-know basis. Areas containing paper records are protected by a sprinkler system. Paper records pertaining to employees and public figures, or otherwise

sensitive files, are stored in locked files. Microfilm records are stored in a locked, fireproof, humidity-controlled vault. Automated records which are not in use at the Benefits Delivery Center are stored in secured, locked vault areas.

b. Access to the VA Benefits Delivery Center is restricted to Center employees, custodial personnel, and Federal Protective Service or other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted by an individual with authorized access.

c. At Regional Offices and at Regional Office and Insurance Centers, the video display terminals are protected by password access. Electronic keyboard locks are activated on security errors. A security officer at each facility is assigned responsibility for privacy-security measures, including review of violation logs and local control and distribution of passwords.

2. System Security: a. At the Benefits Delivery Center, identification of magnetic tapes and disks containing data is rigidly enforced using manual and automated labeling techniques. Access to computer programs is controlled at three levels: Programming, auditing and operations.

b. The Insurance Terminal System(ITS) uses the VA data telecommunications terminal system known as the Benefits Delivery Network (BDN) which provides computerized access control for security purposes. This system provides automated recognition of authorized users and their respective access levels and restrictions through passwords. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes.

* * * * *

IFR Doc. 94-18117 Filed 7-25-94; 8:45 am

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register

Vol. 58, No. 142

Tuesday, July 26, 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).

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 10 a.m., Wednesday, July 27, 1994.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Administrative Law Judge Reform.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 273-1940.

Dated, Washington, DC, July 22, 1994.

By direction of the Board:

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 94-18293 Filed 7-22-94; 2:00 pm]

BILLING CODE 7445-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 25, August 1, 8, and 15, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 25

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

Week of August 8—Tentative

There are no meetings scheduled for the Week of August 8.

Week of August 15—Tentative

There are no meetings scheduled for the Week of August 15.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

Dated: July 22, 1994.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94-18310 Filed 7-22-94; 2:45 pm]

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Corrections

Federal Register

Vol. 59, No. 142

Tuesday, July 26, 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

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 91-68; Notice 03]

RIN 2127-AC64

Consumer Information Regulations; Federal Motor Vehicle Safety standards; Rollover Prevention

Correction

In proposed rule document 94-15598 beginning on page 33254 in the issue of Tuesday, June 28, 1994, make the following corrections:

1. On page 33264, in the third column, under "1. Critical Sliding Velocity," the first equation appearing

in the first paragraph is corrected to read as follows:

$$CSV = \sqrt{\frac{2gI_{OXX}}{Mh_{cg}^2} \left(\sqrt{\frac{TW^2}{4} + h_{cg}^2} - h_{cg} \right)}$$

§ 575.102 [Corrected]

2. On page 33267, in the second column, in paragraph (c), the first equation appearing in the paragraph defining "Critical Sliding Velocity" is corrected to read as follows:

$$CSV = \sqrt{\frac{2gI_{OXX}}{Mh_{cg}^2} \left(\sqrt{\frac{TW^2}{4} + h_{cg}^2} - h_{cg} \right)}$$

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 26, 1994

Part II

Department of Transportation

Research and Special Programs
Administration

49 CFR Part 171, et al.
Intermediate Bulk Containers for
Hazardous Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 178, and 180

[Docket No. HM-181E; Amdt. Nos. 171-126, 172-136, 173-238, 178-103, 180-5]

RIN 2137-AC23

Intermediate Bulk Containers for Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to include requirements for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials. The amendments are based on standards contained in the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the commodity assignments set forth in the International Maritime Organization's (IMO's) International Maritime Dangerous Goods (IMDG) Code. This final rule establishes safety standards for IBCs; allows for flexibility and technological innovation in the development of IBC design types; eliminates the need for most DOT exemptions applying to polyethylene, rigid, and flexible IBCs; enhances safety; and harmonizes domestic provisions for IBCs with international provisions.

DATES: Effective: September 30, 1994.

Compliance date: Compliance with the regulations, as amended herein, is authorized as of August 12, 1994.

Incorporation by reference: The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of September 30, 1994.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, (202) 366-4488, or William Gramer, Office of Hazardous Materials Technology, (202) 366-4545, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 1992, RSPA published in the Federal Register a notice of proposed rulemaking (NPRM) (Docket No. HM-181E; Notice 92-7; 57 FR 36694) proposing to amend the

Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) by incorporating requirements for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transport of hazardous materials. Requirements in this final rule continue the process initiated under Docket No. HM-131 (55 FR 52402-52720, Dec. 21, 1990; 56 FR 66124-66287, Dec. 20, 1991) of adopting performance-oriented packaging standards based, in part, on UN Recommendations. This final rule also responds to a petition for rulemaking (P-1103) from the Rigid Intermediate Bulk Container Association (RIBCA) requesting adoption of IBC requirements based on the UN Recommendations.

The construction and design testing requirements for IBCs contained in this final rule are based, in large part, on standards specified in Chapter 16 of the UN Recommendations. These standards include definitions, specifications, performance test requirements, inspection, and periodic testing of metal, rigid plastic, composite, fiberboard, wooden, and flexible IBCs.

A major benefit of this final rule is the elimination of the need for a number of exemptions. RSPA believes that regulating the manufacture and use of IBCs under the HMR will enhance technological innovation, particularly in the development of polyethylene and composite IBCs. The elimination of the need for IBC exemptions also frees manufacturers from the cost and administrative burdens associated with obtaining, using and renewing exemptions.

Two commenters urged RSPA to grandfather existing plastic and composite IBCs currently under exemptions that withstand performance test requirements proposed in the NPRM. RSPA recognizes the need for a policy which eliminates unnecessary exemptions but permits the manufacture and use of IBCs that already meet UN standards or offer an equivalent level of safety. Therefore, in this final rule, RSPA is establishing four options to address IBC packagings currently manufactured and used under terms of an exemption:

(1) RSPA will consider renewing the terms of a DOT exemption IBC in accordance with the provisions in subpart B of part 107 until October 1, 1996. With a two-year exemption term, IBCs could be used until October 1, 1998.

(2) Exemption IBC packagings meeting new construction and design type test standards adopted in subparts N and O of part 178 in this final rule may be remarked and certified as UN

standard packagings. In such cases, exemptions would no longer be needed.

(3) Under the approval of equivalent packagings provided in § 178.801(i), an exemption intermediate bulk container which differs from the standards in subpart N of this part, or which is tested using methods other than those specified in subpart O of this part, may be approved as a UN standard packaging by the Associate Administrator for Hazardous Materials Safety. Such exemption intermediate bulk containers must be shown to be equally effective, and testing methods used must be equivalent. The exemption numbers must be retained for reference.

(4) Exemptions issued for IBC packagings after the effective date of this final rule will be based on the construction and testing standards established in subparts N and O to part 178 in this final rule.

Although not a complete list, the following 128 exemptions authorizing IBCs are potentially affected by the adoption of the UN IBC standards:

5520	9092	9920
6743	9110	9923
7259	9116	9938
7543	9117	9944
7622	9133	9983
7625	9140	9996
7869	9144	10021
8087	9150	10090
8094	9201	10104
8136	9213	10135
8146	9272	10172
8225	9289	10273
8303	9319	10298
8332	9340	10318
8351	9367	10340
8444	9374	10362
8570	9396	10468
8588	9400	10476
8629	9440	10513
8631	9498	10537
8653	9503	10547
8681	9519	10562
8692	9531	10563
8779	9533	10570
8784	9534	10598
8798	9592	10633
8839	9628	10679
8861	9637	10687
8871	9645	10694
8883	9658	10725
8884	9690	10738
8910	9692	10764
8921	9701	10775
8937	9713	10811
8942	9783	10826
8982	9789	10828
9015	9804	10837
9042	9805	10841
9046	9806	10852
9052	9819	10864
9062	9846	10894
9078	9889	10897
9089	9917	

II. Summary of Rulemaking Actions in Response to Comments

Seventy-three commenters responded to the NPRM. Commenters unanimously supported general adoption of IBC standards based on Chapter 16 of the

UN Recommendations, but with modifications for domestic transportation. One commenter said that adoption of international IBC standards "will not only ensure safety and facilitate transport but will improve competitiveness of American industries engaged both in the sale of hazardous materials, and of hazardous materials packagings, in the global marketplace." Other specific comments are addressed in Part III, Review by Section. Based on the merits of comments, RSPA is: (1) limiting the applicability of "secondary protection" to IBCs intended for vessel transportation, in accordance with the IMDG Code (RSPA also is requiring Packing Group I and II hazardous materials in certain IBC types to be further packed in closed transport vehicles); (2) permitting replacement of repaired add-on plastic components; (3) revising the definition of IBC "body" by excluding service equipment, thus permitting more flexibility in what previously were considered design-type changes, without requalification testing; (4) establishing a vibration test requirement for rigid IBCs and a vibration capability standard for flexible IBCs; and (5) setting forth in a single table in § 178.803 the IBC design qualification testing proposed in §§ 178.810-819 for the certification of metal, rigid plastic, composite, fiberboard, wooden, and flexible IBC types.

RSPA also is adopting certain recommendations approved for the Eighth revised edition of the UN Recommendations during the 17th session of the UN Committee of Experts (December 7-16, 1992). These include authorization of Packing Group I solids in IBCs, with certain quantity restrictions; addition of a Packing Group I drop test, and deletion of the 10-minute hold on production line leakproofness testing.

RSPA is establishing generic IBC commodity assignments in §§ 173.240 through 173.243 with certain special provisions in § 172.102. Generally, IBC commodity assignments are based on the lists of liquid and solid "Substances Suitable for Transport in Intermediate Bulk Containers," contained in the IMDG Code. However, RSPA is authorizing the use of IBCs for some materials that are not allowed by the IMDG Code to be transported in any IBC or in a specific IBC type.

Because DOT Specification 56 (DOT 56) and 57 (DOT 57) portable tanks are functionally IBCs, these design-types will be covered by the provisions of this rule. This coverage will obviate the necessity to maintain these older standards for metal IBCs. Consequently,

RSPA is not authorizing the manufacture of DOT 56 and 57 portable tanks after October 1, 1996. However, RSPA will permit continued domestic use of DOT 56 and 57 portable tanks for as long as they meet the retest provisions contained in § 173.32(e).

For reasons discussed in Part III, Review by Section, RSPA is not adopting commenters' suggestions to: (1) remove the proposed 450-liter (119-gallon) lower IBC capacity limit, (2) authorize non-specification IBCs, (3) remove testing requirements for periodic design requalification by incorporating quality assurance programs based on documentation, or (4) permit reuse of flexible IBCs. RSPA also is not adopting the five-year limit on plastic IBC service proposed in §§ 173.35(h) and 180.351(c).

III. Review by Section

Part 171

Section 171.7. A puncture-resistance standard for fiberboard packagings (ISO 3036-1975) is added to the table of material incorporated by reference in paragraph (a), as approved by the Federal Register. RSPA believes that approved changes in the frequency of IBC design requalification testing must be based on a detailed quality assurance program, but not on any particular set of quality assurance standards. RSPA believes that limiting quality assurance standards to those set forth in ISO 9000 by itself would not be adequate. Therefore, reference to the quality assurance standard under ISO 9000 in proposed § 178.801(e)(2)(i) is deleted.

Section 171.8. A definition of "intermediate bulk container" is added in this section to mean a rigid or flexible portable packaging, other than a cylinder or portable tank, which is designed for mechanical handling. The proposed reference to "semi-rigid" IBCs is not adopted because specifications have yet to be developed for this type of IBC construction.

IBC capacity limits have been removed from the general IBC definition in this section and are placed in the IBC standards in § 178.700(c)(1). The definition "UN standard packaging" is revised to include reference to newly added subparts N and O of Part 178. In this final rule, "secondary containment" applies only to IBCs intended to be transported by vessel which may require "secondary protection," as specified in Section 26 of the IMDG Code. Therefore, the definition "secondary containment" is removed (See discussion in the preamble to § 173.240-243).

Section 171.12. This section is revised to authorize the use of IBCs in

accordance with the IMDG Code for shipments involving transportation by vessel. RIBCA suggested that RSPA amend paragraph (b)(5) to require rigid IBCs to pass the vibration test in proposed § 178.819. RIBCA said this test "needs to apply to all IBCs being transported in this country." This suggestion is not adopted. In final rules under Docket HM-181, RSPA did not require that imported non-bulk packagings be capable of passing the vibration standard in § 178.608, unless they are filled or refilled in the U.S. In this final rule, USA-marked rigid IBCs, and foreign-manufactured rigid IBCs filled in the U.S., must withstand the vibration test in § 178.819. Flexible IBCs must be capable of withstanding this test.

Part 172

Sections 172.101-102. The Hazardous Materials Table (HMT) is revised by adding special provisions B100, B101, B103 and B104 as proposed. These special provisions prohibit the transportation of particular materials in certain or all IBCs, and set forth special conditions for use of IBCs. In this final rule, Special Provision B101 is revised to authorize metal IBCs for certain liquid and solid materials. Proposed B102 is incorporated into B101, and is not adopted. IBC authorizations pertaining to six materials under Special provisions B101 and B100 have been revised in this final rule. Five dual hazard materials proposed to be authorized only in metal IBCs under Special provision B101 also are authorized generically for metal IBCs § 173.243. To remove this redundancy, the references to B101 for these materials have been removed from the § 172.101 Table.

For consistency with the IMDG Code, in this final rule, RSPA is prohibiting the use of IBCs for several Division 4.3 and Division 4.2 Packing Group I materials that were inadvertently authorized in the notice. Also for consistency with the IMDG Code, RSPA is adding additional IBC use limitations and operating requirements in Special provisions B105, B106, B108, B109 and B110. For example, B106 requires that IBCs be "vapor tight" (i.e., IBCs that will prevent any vapor from entering or escaping during transportation. A vapor tight IBC must be capable of passing the leakproofness test in 178.813). Special provision B108 requires that materials in Division 4.3 Packing Group III be in sift-proof, water resistant flexible, fiberboard or wooden IBCs packed in a closed transport vehicle. Special provision B110 authorizes IBCs for Bromobenzyl cyanides, solid and

Divinyl ether, inhibited only if packaged in accordance with § 173.242(d). These materials inadvertently reference §§ 173.240 and 173.241.

Section 173.322. In response to a petition for reconsideration received under Docket HM-211 addressing marine pollutants, this section is revised to provide a partial exception from the marine pollutant marking requirements for small bulk packagings (packages with capacities of up to 3,785 liters [1,000 gallons]). Consistent with recently adopted marine pollutant requirements for other bulk packages, IBCs (limited to an upper capacity of 3,000 liters, 793 gallons) require two, instead of four, marine pollutant markings.

Section 173.514. Paragraph (c)(4) is added, as proposed, to require all IBCs to be labeled or placarded on two opposite sides.

Part 173

Section 173.24. Paragraph (d) is revised to require IBCs manufactured under performance-oriented standards to conform to subparts N and O of part 178. The requirement that measures must be taken to prevent electrostatic discharge proposed in paragraph (j) of this section, has been moved in this final rule to § 173.35(k).

Section 173.32. A grandfather provision for DOT 56 and 57 portable tanks is added in paragraph (d). DOT 56 and 57 portable tanks may not be manufactured after September 30, 1996. DOT 56 and 57 portable tanks manufactured before October 1, 1996, may continue in hazardous materials service for the commodities currently authorized as long as they meet the retest requirements in paragraph (e) of this section.

One commenter pointed out that the retest requirements (every two years) for DOT 52, 53, 56 and 57 portable tanks in § 173.32(e)(1)(ii) should be made consistent with the 2.5 year retest and inspection requirements in (b)(1) and (b)(2) for all other IBCs intended for liquids or for solids loaded and discharged under pressure. The commenter said "this consistency would be most helpful in establishing general retest procedures at user sites." RSPA agrees that, for consistency with retest period requirements for metal, rigid plastic and composite IBCs in § 180.352, DOT 52, 53, 56 and 57 portable tanks should be retested every 2.5 years. Paragraph (e)(1)(ii) is revised accordingly.

Dual-marked portable tanks certified to both pre-October 1, 1996 DOT 56 or 57 specifications and the metal IBC standards adopted in this final rule

must conform to the pre-October 1, 1996 retest requirements in § 173.32(e) and the metal IBC retest and inspection requirements adopted in subpart D to part 180 of this final rule.

Section 173.35. This section contains operational requirements for the use of IBCs. IBC filling limits and vapor pressure limits for rigid plastic or composite IBCs intended to contain liquids or solids are addressed. Under this section, each IBC and its service equipment, before being filled and offered for transportation, must be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render it unsafe for transportation. Operational requirements prescribed in this section apply only to IBCs manufactured in accordance with subparts N and O of part 178. For DOT 52, 53, 56 and 57 portable tanks, operational requirements remain in § 173.32. DOT 56 and 57 portable tanks manufactured before October 1, 1996 continue to be subject to requirements in § 173.32 for the service life of these units.

Commenters opposed the proposed ban, in paragraph (b), on the use of rigid plastic or composite IBCs with repaired plastic components. RIBCA contended that "precluding replacement or repair of any damaged plastic component would quickly remove IBCs from service long before they have served their useful lives." RIBCA added that many plastic components are satisfactorily replaced or repaired. RIBCA suggested that paragraph (b) be amended to read: "no rigid plastic or composite IBC with a repaired plastic body (except for openings and closures) may be reused," but that it allow such essential plastic parts as closures, pallets, valve door or leg, to be replaced.

Consistent with a new UN-recommended definition of "IBC body" as the "receptacle proper" that does not include service equipment (see § 178.700(c)(1)), RSPA agrees that no repair of a rigid plastic IBC body or plastic inner receptacle should be permitted. RSPA agrees, therefore, proposed paragraph (b) is revised in this final rule to permit repair or replacement of add-on plastic components. Under this revision, for example, repair of a threaded opening considered part of the IBC body is not permitted. Conversely, replacement of service equipment, such as a screw-on plastic closure with stripped threads, is permitted.

Several commenters, including the Chlorobenzene Producers Association (CPA), asked RSPA to remove the proposed provision in paragraph (b)

forbidding reuse of flexible IBCs. CPA said such a prohibition is wasteful and unnecessary and there is no basis for rejecting the inspection and reuse alternative for flexible IBCs. CPA asserted that a ban on flexible IBC reuse would aggravate U.S. solid waste disposal problems and that the ban "conflicts with goals of waste minimization." Another commenter said that "economics, safety and environmental concerns all point to reusability." CPA added that a categorical ban on flexible IBC reuse also would retard innovation in the development of flexible IBC design types, including development of durable, reusable construction materials.

RSPA does not agree that reuse of flexible IBCs should be permitted. Flexible IBCs have not been permitted to be reused in the past under provisions of exemptions or approvals. RSPA does not have evidence that fiberboard, wooden or flexible IBCs are designed to be, or are suitable for, reuse in hazardous materials service. Therefore, as proposed in paragraph (b), fiberboard, wooden and flexible IBCs may not be reused for hazardous materials.

One commenter said proposed paragraph (c), requiring added thickness to compensate for IBC body thinning by corrosion or mechanical abrasion, does not go far enough. The commenter recommended that shippers be required to "verify lading compatibility to the IBC material of construction." The commenter said that allowing an increased thickness to compensate for corrosion "could lead to the failure or leakage of a metallic IBC." The commenter added that rates of corrosion are "affected by temperature, pressure, etc., and therefore, added thickness may not be enough to prevent a leaker."

RSPA disagrees. Shippers currently are required to comply with general requirements in subpart B of part 173 to assure the integrity of all hazardous materials packagings under conditions normally incident to transportation. Section 173.24(e)(1) specifically requires that all packagings be compatible with their lading. Failure to comply with compatibility requirements in § 173.24(e)(1) may result in a thinning of the IBC body below thickness standards specified in § 178.705(c) for metal IBCs, possibly resulting in leakage. RSPA believes that increasing IBC body thickness is necessary to ensure design-type integrity. Therefore, as proposed, RSPA is adopting paragraph (c) requiring that a metal IBC, subject to thinning by mechanical abrasion or corrosion due to

the lading, be protected by providing a suitable increase in thickness of material, a lining or some other suitable method of protection.

Three commenters, including the National Agricultural Chemicals Association (NACA), opposed the five-year authorized period for use of rigid plastic IBCs and plastic inner receptacles of composite IBCs proposed in paragraph (h). One commenter said that a use restriction should not be included in a final rule without further input from industry regarding what a suitable in-use life should be for plastic IBCs, following the approach taken for non-bulk plastic packagings. For domestic uses of plastic IBCs, RSPA concurs with these commenters and, therefore, is not adopting the five-year use restriction for rigid plastic IBCs and inner plastic receptacles of composite IBCs proposed in paragraph (h). Internationally, the five-year use restriction may still be applied.

Proposed paragraph (i) is adopted as paragraph (h) and is clarified to distinguish between the use of gauge and absolute pressures when determining suitability of plastic and composite IBCs for liquid hazardous materials based on their vapor pressures. The test pressure marked on the IBC is a gauge pressure. Gauge pressure consists only of the vapor pressure of the hazardous material in the IBC that exceeds atmospheric pressure. Absolute pressure consists of ambient atmospheric pressure plus the vapor pressure of the hazardous material in the IBC. Vapor pressure of the hazardous material is the pressure exerted on the IBC by gases emitted by the material.

RIBCA pointed out that proposed vapor pressure requirements in paragraph (i)(2) apply to all IBCs, whereas in proposed paragraph (d)(2)(viii) in §§ 173.241 and 173.242, identical requirements apply only to metal IBCs. Accordingly, paragraph (h)(2) in this final rule applies the 110 kPa (16 psi) vapor pressure restriction only to metal IBCs. There is a test pressure limit for metal IBCs of 200 kPa (29 psig) which must not be exceeded by the vapor pressure of any material times a factor of safety of 1.5 or 1.75 depending on temperature.

Consistent with recommendations in the Eighth revised edition of the UN Recommendations, RSPA also is adding paragraph (j), which establishes a maximum capacity of 1.5 cubic meters (17.7 cubic feet) for rigid plastic, composite, flexible, fiberboard, and wooden IBCs authorized to transport Packing Group I solids. For metal IBCs, the maximum allowable capacity for

Packing Group I solids remains at 3 cubic meters (35.3 cubic feet). No Packing Group I liquid is authorized in IBCs (see paragraph (d)(2)(i) in §§ 173.242 and 173.243).

Several commenters urged RSPA not to adopt proposed paragraph (j) in § 173.24 pertaining to the prevention of electrostatic discharge. They claimed that the discharge danger occurs only in plant operations and not during transportation. One commenter asserted that the wording of proposed paragraph (j) "establishes a new requirement applicable to all packagings." RSPA agrees that prevention against electrostatic discharge is not required during transportation, although a danger does exist during loading and unloading operations. Accordingly, RSPA is revising the requirement proposed in paragraph (j) to prevent electrostatic discharge only during the loading and unloading of flammable liquids and powders that could result in an explosion. This requirement applies to IBCs used in all modes, not just highway (see § 177.837(b)). Because this is an operational requirement, the provision proposed in § 173.24(j) is moved to § 173.35 and adopted as paragraph (k).

Section 173.225. As proposed, RSPA is adopting a modified form of Table 11.4 in the UN Recommendations, authorizing four organic peroxide materials in 31HA1 composite IBCs. Special conditions for certain organic peroxides transported in IBCs also are prescribed. One commenter requested an extension of organic peroxide authorizations in IBCs to include all organic peroxides in the Type F and G categories, liquids and solids, if they meet the definitions for those categories in § 173.128. RSPA agrees that type F organic peroxides currently authorized for bulk packagings are suitable for IBCs. Therefore, RSPA is amending footnote 14 to the Organic Peroxides Table in § 173.225 to authorize IBCs for Type F organic peroxides. Because Type G organic peroxides are not subject to the requirements of this section, there are no IBC restrictions that apply to this material.

Sections 173.240-243. These generic bulk packaging sections are amended to authorize IBCs for certain solids and liquids and in §§ 173.242 and 173.243 to prohibit the use of IBCs for Packing Group I. In §§ 173.242 and 173.243, RSPA is authorizing Packing Group I solids in both metal IBCs with capacities of up to 3 cubic meters (35.4 cubic feet) and non-metal IBCs with capacities up to 1.5 cubic meters (17.7 cubic feet).

Commenters urged RSPA to authorize non-specification IBCs consistent with existing packaging provisions which permit non-specification portable tanks for low-hazard materials, and with § 173.150(f)(3), which allows combustible materials meeting no other hazard class criteria to be shipped in non-specification bulk containers. These requests are not adopted. RSPA believes that IBCs should meet the performance standards adopted in this rule as a condition for use. Therefore, metal, rigid plastic, composite, fiberboard, wooden and flexible IBC types authorized in §§ 173.240(d) and 173.241(d) must be constructed as prescribed in subpart N, and tested in accordance with subpart O, of part 178.

The NPRM inadvertently proposed that certain dual-hazard materials be authorized for transport in all rigid IBCs. The generic authorizations proposed in § 173.243 for these materials deviate from the level of containment intended for these materials. Therefore, consistent with RSPA's policy, as stated in Docket HM-181, to emphasize package integrity as a principal means of maintaining hazardous materials transportation safety, § 173.243(d)(1) is revised to limit multiple-hazard materials to metal IBCs.

One commenter noted that, under the proposed regulation, materials having a subsidiary hazard of Class 3, but with a flash point higher than 100° F, or having a subsidiary hazard of Division 6.1, Packing Group III, would no longer be authorized in DOT 57 portable tanks. The commenter urged RSPA to address this situation in this rulemaking. Under HM-181, most liquid multiple-hazard materials are assigned packagings in § 173.243, which does not specifically list the DOT 57 portable tank. RSPA recognizes that in HM-181, certain materials with low subsidiary hazards of flammability and toxicity have been assigned packaging in § 173.243 (generic authorizations for certain high hazard liquids and dual hazards) for the transport of these materials. Therefore, in § 173.243(e) of this final rule, a dual hazard material with a subsidiary hazard of either Class 3 with a flash point exceeding 100° F or Division 6.1, Packing Group III, may be packaged in accordance with § 173.242.

In this final rule, specific IBC requirements for Division 4.3 DANGEROUS WHEN WET materials are provided under Special Provisions in the § 172.101 Table. Therefore, generic IBC authorizations and operating requirements for these materials in proposed paragraphs (d)(2)(v) and (d)(2)(vii) in §§ 173.240, 173.241, 173.242 and 173.243 are not adopted

(see previous discussion under § 172.101).

Commenters opposed the broad applicability of the proposed "secondary containment" requirement as proposed in the NPRM, which stated that freight containers or vehicles containing IBCs "should have rigid sides or fencing at least to the height of the IBCs." Several commenters asserted that applying such a requirement to IBCs shipped by surface transportation would create hardships for retail dealers and farmers. RIBCA said the proposed definition of "secondary containment" would preclude the use of IBCs or greatly increase handling costs. Commenters urged RSPA to narrow the applicability of "secondary containment" to vessel transportation and to use the term "secondary protection," consistent with the IMDG Code. RSPA concurs. Accordingly, in this final rule, the proposed requirement that materials in Packing group II be transported in IBCs employing secondary containment are removed. IBCs containing hazardous materials intended for transportation may require secondary protection in accordance with Section 26 of the IMDG Code. However, RSPA believes that, consistent with the terms in many existing IBC exemptions, medium-level and higher hazard materials in certain IBC types must be protected from environmental exposure. Since the broad applicability for "secondary containment" has not been adopted for highway and rail transportation, RSPA is adding §§ 173.242(d)(2)(iv) and 173.243(2)(iii) requiring flexible, fiberboard, wooden and composite IBCs with fiberboard outer bodies for Packing Group I materials and in §§ 173.240(d)(2)(ii), 173.241(d)(2)(iii) for Packing Group II materials in flexible, fiberboard and wooden IBCs must be transported in closed freight containers or closed transport vehicles. Because a general standard is established in § 178.704 requiring all IBCs be sift-proof and water resistant, RSPA is not adopting proposed paragraph (d)(2)(vi) in §§ 173.240, 173.241, 173.242 and 173.243 requiring flexible, fiberboard or wooden IBCs used to transport Class 8 materials to be water resistant. In §§ 173.240, 173.242, 173.242 and 173.243 proposed paragraph (d)(2)(ix) prohibiting the use of bottom outlets on IBCs containing materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1 is not adopted in this final rule. RSPA believes prohibiting the use of bottom outlets on IBCs goes beyond existing requirements in the HMR and would not

be consistent with other packaging authorizations. If use of bottom outlets on IBCs containing these materials presents a safety concern, this issue can be considered in a future rulemaking.

Part 178

Sections 178.251, 178.252 and 178.253 are removed since the manufacture of DOT 56 and 57 metal portable tanks is prohibited after September 30, 1996 (see § 173.32 (d)).

Section 178.700. The purpose and scope of IBC standards and general definitions associated with IBCs are contained in this section, generally as proposed. In response to commenter requests, RSPA is revising the definition of IBC "body" in paragraph (c)(1) by adopting terms originally proposed by the U.S. and now contained in the Eighth revised edition of the UN Recommendations: an IBC body means "the receptacle proper, including openings and their closures, but does not include service equipment. * * *". As a result of this change, IBC "service equipment" (i.e., filling and discharge, pressure relief, safety, heating and heat-insulating devices, and measuring instruments) is no longer considered part of the IBC body. This section also defines IBC "structural equipment" as the reinforcing, fastening, handling, protective, or stabilizing members of the body (e.g., metal cages) as well as stacking load-bearing structural members. Also in the definition of IBC body, as proposed, RSPA is adopting IBC volumetric capacity limits of not more than 3 cubic meters (3,000 liters, 793 gallons or 35.3 cubic feet) and not less than 0.45 cubic meters (450 liters, 119 gallons or 5.3 cubic feet).

The proposed 450-liter (119-gallon) lower IBC capacity limit drew substantial comment. Commenters suggested that RSPA either eliminate the lower capacity limit or, at a minimum, establish a 250-liter (66-gallon) lower limit consistent with Section 26.1.2.1 of the IMDG Code. RIBCA questioned the need for a lower limit and stated that small IBCs under 450 liter (119-gallon) capacity already are authorized under exemptions. For example, DOT E-9690 authorizes 415.8-liter (110-gallon) IBCs. RIBCA noted that small IBCs have been used for years in agricultural and water treatment operations. RIBCA added that allowing small IBCs into the U.S. under § 171.12, but not allowing U.S. manufacturers to market small IBCs domestically, creates competitive disadvantages.

Commenter requests to remove the IBC lower capacity limit are not adopted in this final rule. RSPA is not authorizing IBCs with capacities less

than 450 liters (119 gallons) because RSPA believes that differing non-bulk and IBC construction standards, performance and reuse requirements could create safety inequities in the use of these two packaging categories. For example, a drum manufacturer might call a drum or jerrican an IBC to gain certain kinds of regulatory relief. Metal and plastic drums and jerricans intended for reuse must meet minimum thickness standards in § 173.28(b)(4), while no such standards are proposed for stand-alone or composite IBCs. Metal and plastic drums designed for limited hazardous materials service must be leakproofness-tested before each reuse (§ 173.28(b)(2)). IBCs would be subject to a completely different retest and inspection scheme requiring leakproofness testing every 2.5 years (§ 180.352). In addition, drop, stacking, and hydrostatic pressure design performance requirements for non-bulk packagings in subpart M of part 178 substantially differ from those proposed for IBCs in subpart O of part 178.

Although IBCs with capacities below 450 liters (119 gallons) represent only a small percentage of the total number of IBCs in domestic service, RSPA recognizes that IBC manufacturers and users may occasionally need a full capacity range of IBC design types. In this final rule, therefore, a provision in paragraph § 178.801(i) provides for the manufacture and use of IBCs which differ from the standards in subpart N, including IBCs with capacities less than 450 liters (119 gallons), if approved by the Associate Administrator for Hazardous Materials Safety. RSPA notes that IBCs with lower capacities may continue to be used for import and export shipments, as provided in § 171.12.

RSPA is not adopting a proposal by the Oregon Trucking Association and several Oregon-based carriers to include a rubber bladder bag among the UN-recommended IBC design types RSPA is adopting in this final rule. Although bladder bags are designed for mechanical handling (as are IBCs), they do not meet any of the material-of-construction standards for the flexible IBCs that were proposed in subpart N of part 178. Flexible IBC standards were developed with the intent that these packagings would contain dry materials. Standards for flexible IBCs intended for liquids do not appear in the UN Recommendations and were not considered in this rulemaking. Bulk bladder bags may be used for hazardous materials requiring specification packaging only if specifically authorized under an exemption issued in

accordance with subpart B of 49 CFR, part 107.

Section 178.702. This section, adopted as proposed, contains IBC code designations for metal, rigid plastic, composite, fiberboard, wooden, and flexible IBCs.

Section 178.703. Certification and additional marking requirements for IBCs are set forth in this section. The IBC certification mark is comprised of the following elements: UN symbols, code numbers designating IBC type, Packing Group designation, month and year of manufacture, the country authorizing allocation of the mark, name and address or symbol of the manufacturer or the approval agency certifying compliance with subparts N and O of part 178, the stacking test load in kilograms (kg), and the maximum permissible gross mass (for flexible IBCs, the "maximum net mass" as defined in § 171.8 in kilograms (kg)). RSPA is adding a new paragraph (a)(1)(iii)(A), establishing the mark "X" for IBCs meeting Packing Group I, II and III performance test standards.

Four examples of IBC certification marking are provided in § 178.703(a)(2) (i) through (iv). Two examples of additional markings are given in § 178.703(b)(3) (i) and (ii).

One commenter asked RSPA to allow manufacturers or others certifying flexible IBCs to omit the "UN-in-a-circle" symbol because "such symbols are difficult to reproduce" on flexible IBCs. The commenter noted that this option already is provided for metal IBCs. This request is not adopted because RSPA is not aware that use of the "UN-in-a-circle" has been a problem for manufacturers of flexible IBCs in other countries.

In paragraphs (b)(1)(i) and (b)(2)(i) among additional marking requirements, rigid, composite and metal IBCs must be marked for "rated" capacity. Rated capacity is capacity normally used compared to "maximum capacity," which is defined in § 171.8 as "the maximum inner volume of receptacles or packagings."

RIBCA commented that paragraph (b), requiring additional marks to be located "in a place readily accessible for inspection," could lead to enforcement problems "because there is no possible way to find a location that will assure that under all circumstances in usage the markings would always be visible for inspection." RIBCA said the phrase "for inspection" conveys an "operational intent" that "could be used by inspectors" in the field. RIBCA suggested that RSPA follow the general policy established for drums in § 178.503(a) and carried over in the

proposed § 178.703(a): "in addition to markings in paragraph (a) of this section, each metallic, rigid plastic and composite IBC" be marked "in a durable and clearly visible manner." This request is not adopted because for larger packages (e.g., IBCs), the phrase "readily accessible for inspection" is necessary to ensure that the mark can be seen by an inspector without lifting the package.

RIBCA objected to the paragraph (b)(1) proposal to require use of specification plates for rigid plastic and composite IBCs. It contended that required use of plates "can lead to less desirable and less permanent means of marking." RIBCA noted that paragraph (a) does not require markings on a plate. RIBCA suggested that the markings set forth in paragraph (a) for each rigid plastic and composite IBC "be grouped together in one location * * *" but without required use of a plate.

RSPA agrees and, accordingly, is revising proposed paragraph (b) by requiring additional markings to be placed near the certification mark specified in paragraph (a). The wording "on each plate," applying to rigid plastic and composite IBCs, is removed from paragraph (b)(1). Section 180.352(d) is revised to require the retest date to be marked as provided in paragraph (b) of this section (i.e., near the certification mark specified in paragraph (a)).

Section 178.704. This section contains general requirements applicable to manufacturers of IBCs. Each IBC must be resistant to, or protected from, deterioration due to exposure to the external environment. Intermediate bulk containers intended for solid hazardous materials must be sift-proof and water-resistant. One commenter asked RSPA to clarify the requirement in proposed paragraph (b) that "all service equipment must be so positioned or protected as to minimize potential loss of contents resulting from damage during IBC handling and transportation." The commenter asked if proposed paragraph (b) requires shippers to position IBCs "over a containment pad during loading and unloading." The commenter said that such a requirement "would create numerous difficulties." RSPA does not consider this requirement to apply to shipper IBC handling and operations since the positioning of service equipment referred to in paragraph (b) is a design requirement applicable to manufacturers.

Section 178.705. This section contains standards for metal IBCs and is adopted as proposed. Metal IBC design types are designated by code number, definitions, and construction requirements.

Authorized steel and aluminum construction materials are set forth in paragraph (c)(1). Minimum body wall thicknesses are specified in paragraph (c)(1)(iv). Ratios expressing required tensile strength for steel and aluminum IBC construction materials in paragraphs (c)(1)(iii) (A) and (B) and the paragraph (c)(1)(iv)(B) formula for determining the minimum wall thickness of metals other than the reference steel described in paragraph (iii)(A) of this section, are corrected for U.S. standard units.

In response to requests by commenters and an amendment approved for the Eighth revised edition of the UN Recommendations, RSPA has replaced the word "metallic" with the word "metal" with respect to metal IBCs. One commenter asked RSPA to clarify the difference between the terms "sandwich" and "double wall" in the definition of "protected" in proposed paragraph (b)(2). A double-wall metal IBC consists of two metal walls with space between. A "sandwich" configuration consists of two metal walls with material such as foam or insulation between.

The same commenter asked if liners or bags placed inside metal IBCs meet the definition of "protected." The definition of "protected" is derived from section 16.2.2.3 of the UN Recommendations and means any twoply (double wall) or multiple (sandwich) barrier applied *externally*. The construction materials of additional "protection" are not specified, and could include materials other than the material of construction of the IBC in question. For these reasons, RSPA believes liners or bags placed inside metal IBCs do not meet the intent of the definition of "protected" in paragraph (b)(2). In this final rule, in paragraph (b)(2) the definition of "protected" is clarified to mean "providing the IBC body with additional "external protection against impact and abrasion."

Commenters asserted that the use of the term "metallic IBCs" without qualification may lead to the interpretation "that all components (of such IBCs) must have metal properties." RSPA concurs with a suggestion to solve this problem by revising paragraph (c)(1)(iii) to more specifically refer to "metals used" in fabricating the metal IBC body.

RSPA also concurs with RIBCA's request to authorize "frangible" pressure relief devices for the release of vapor to ensure no rupture of the IBC body will occur. RIBCA contended that frangible pressure relief devices have been authorized for DOT 57 portable tanks for years. RSPA notes that

§ 178.253-4(a) requires each DOT 57 portable tank to be "equipped with at least one pressure relief device such as a * * * frangible disc * * *" Section 16.2.3.7.1 of the UN Recommendations ("release of vapor * * * can be achieved by conventional pressure relief devices") can also be interpreted as including frangible relief devices. Accordingly, §§ 178.705(c)(2)(i), 178.706(c)(4) and 178.707(c)(3)(iv) are revised to include frangible relief devices.

Section 178.706 This section, adopted as proposed, contains standards for rigid plastic IBCs including design types designated by code number, general definitions and construction requirements. Commenters asked RSPA to delete proposed §§ 178.706(c)(3) and 178.707(c)(3)(iii), prohibiting the employment of used plastic materials other than production residue or regrind materials from the same manufacturing process in the production of rigid plastic IBCs or plastic inner receptacles. The National Agricultural Retailers Association (NARA) claimed that this prohibition, without justification, "would prevent the environmentally sound practice of recycling mini-bulk/IBC into new IBC containers." The request to delete this prohibition is not adopted. Consistent with requirements in § 178.509(b)(1) for plastic drums and jerricans § 178.522(b)(1) for composite packagings with inner plastic receptacles, RSPA believes contaminated plastic material obtained through recycling should not be used to construct that portion of the packaging in contact with the hazardous materials lading.

Commenters expressed concern that proposed venting requirements in § 178.706(c)(4) for rigid plastic IBCs and § 178.707(c)(3)(iv) for composite IBCs are inconsistent with UN recommendations. They referred to RSPA's proposed venting standard to prevent rupturing of plastic and composite IBC bodies in a fire engulfment situation, a standard not recommended by the UN in Sections 16.4.3.5 and 16.5.3.2.5. One commenter said the UN "does not link venting capacity to fire engulfment," and that the UN requires only that plastic and composite IBCs be provided with sufficient venting capacity to prevent rupture of the IBC body if subjected to an internal pressure in excess of which it was hydraulically tested. RIBCA commented that it is "unlikely a plastic tank completely enveloped in fire could maintain its liquid retention properties throughout the fire regardless of the size of any vent. Eventually, failure will take

place but not due to pressure. The tank will eventually leak due to melting."

Commenters said RSPA's proposals to require relief devices or other means of plastic and composite IBC construction to ensure that leakage or permanent distortion does not occur also are inconsistent with UN recommendations. They asserted that the venting requirements in these sections ought to apply only to preventing rupture of the IBC body in emergency situations and that IBC body distortion should not be related to emergency relief capabilities. RIBCA said that RSPA should rely on the shipper visual inspection requirements in § 173.35 to control whether an IBC may be reused. Commenters also noted that §§ 178.706(c)(4) and 178.707(c)(3)(iv) address all plastic IBCs and not specifically rigid plastic and composite IBCs intended to transport liquids, as recommended by the UN.

RSPA concurs with these commenters on the issue of venting plastic and composite IBCs to prevent rupture in a fire engulfment situation. Accordingly, references to "fire engulfment" are removed from §§ 178.706(c)(4) and 178.707(c)(3)(iv). RSPA agrees that venting requirements in §§ 178.706 and 178.707 should apply only to prevention of IBC rupture in emergency situations and that the "no-leakage or no-permanent deformation" criteria more appropriately apply to IBC design qualification as criteria for passing the hydrostatic pressure test adopted in § 178.814. Therefore, references to leakage or permanent deformation linked to venting requirements in §§ 178.706(c)(4) and 178.707(c)(3)(iv) are removed. In this final rule, RSPA is not specifying IBC venting capacities such as those found in § 178.253-4(c) for DOT 57 portable tanks. However, pressure relief capacity must be sufficient to prevent rupture of the IBC body. Sections 178.706(c)(4) and 178.707(c)(3)(iv) are revised to apply specifically to rigid plastic and composite IBCs respectively, which are intended for the transportation of liquids.

Section 178.707. Standards for composite IBCs are set forth in this section and are adopted as proposed. Standards include design types designated by code number, general definitions and construction requirements. RSPA is adding a new definition of "rigid" inner receptacle to definitions for the composite IBC types in paragraph (b)(3) to clarify the distinction between rigid and flexible inner receptacles. The new definition states that a "rigid" inner receptacle is one which retains its general shape

when empty without closures in place and without benefit of the outer casing. Standards are added for inner receptacles of composite IBCs in paragraph (c)(3), and for composite outer packagings in paragraph (c)(4).

Section 178.708. Standards for fiberboard IBCs are set forth in this section and adopted as proposed. Fiberboard IBC standards are similar to those for fiberboard boxes in § 178.516. However, in this final rule, standards for fiberboard IBCs also include ISO minimum puncture resistance (ISO 3036-1975).

Section 178.709. Standards for wooden IBCs are contained in this section and adopted as proposed.

Section 178.710. Standards for flexible IBCs are adopted as proposed. They include flexible IBC design types designated by code number, definitions and construction standards. Consistent with the Eighth Revised Edition of the UN Recommendations, the definition in paragraph (b)(1) of this section is revised to read "Flexible IBCs consist of a body constructed of film, woven plastic, woven fabric, paper, or combination thereof, together with any appropriate service equipment and handling devices, and if necessary an inner coating or liner."

Section 178.801. General IBC testing, inspection and recordkeeping provisions are set forth in this section and adopted as proposed. They include requirements for manufacturer responsibility, IBC design qualification testing at the start of production of each different IBC design type, periodic design requalification testing, production testing and inspection performed on each newly manufactured IBC and periodic retest and inspection of each IBC conducted at least every 2.5 years (in this final rule, § 173.32 is amended to extend the 2.5-year periodic retest and inspection requirement to DOT-52, -53, -56 and -57 portable tanks constructed before October 1, 1996). The definition of "IBC design type" is modified in this final rule by the removal of "means of filling and discharge" from the definition and addition of "representative service equipment." Reference to packaging which can differ only in its lesser external dimensions (i.e., height, width, length) without further testing is added to the definition of "different IBC design type." In this final rule, RSPA is extending the quality control principle established for non-bulk packagings under Docket HM-181 to IBCs. Consistent with Section 16.1.4.1.1 of the UN Recommendations, RSPA is requiring periodic requalification of IBC design types throughout a production

run sufficient to ensure that newly manufactured IBCs maintain the integrity of original, successfully tested design types. All IBC design types must be requalified at least once every 12 months.

This section also requires persons who certify IBC design types to keep records of the qualification of each IBC design type and of each periodic design requalification. Records must be maintained at each location where an IBC is manufactured and at each location where IBC design qualification or periodic design requalification testing is performed. They must be maintained for as long as IBCs are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. Certification records must include the following information: name and address of test facility, name and address of the IBC certifier, a unique test report identification, date of test report, manufacturer of the IBC, description of the IBC design type (e.g., dimensions, materials, closures, thickness, representative service equipment, etc.), maximum IBC capacity, characteristics of test contents, and test descriptions and results (including drop heights, hydrostatic pressures, tear propagation length, etc.). The test report must be signed with the name of the person conducting the test, and the name of the person responsible for testing.

This section elicited comments concerning design-type definition, design qualification testing, periodic design requalification, production testing, selective testing and other issues under general requirements. RIBCA urged RSPA to reevaluate what constitutes an IBC design type change in terms of minor changes (such as changes to service equipment), requiring design type requalification. RIBCA contended that requirements in proposed paragraphs (c)(1) and (c)(7) involving "IBC design type" and "different IBC design type" would "have the effect of making a new design type in each instance that an IBC appurtenance is changed, a gasket material is replaced, a valve unit is changed in style, e.g., from ball to gate, etc." RIBCA requested revision of paragraph (c)(7) to exclude service equipment from design changes requiring design requalification.

RSPA agrees with RIBCA's concerns regarding the definition of "IBC design type" and "different IBC design type." Service equipment is the IBC component most likely to undergo design change during short production runs. Accordingly, RSPA is revising the proposed definition of IBC "body" in § 178.700(c)(1) by clarifying that the receptacle "does not include service

equipment." Furthermore, RSPA is amending paragraph § 178.801(c)(1) in this section by removing the phrase "means of filling and discharging" and adding a new paragraph § 178.801(c)(7)(iv) stating that a different IBC design type does not apply to "service equipment." RSPA is adopting RIBCA's request to revise paragraph § 178.801(d) by adding that service equipment associated with any IBC design type should be considered "representative" and not design-type specific (for example, safety devices, such as pressure relief valves must have identical venting capacity and integrity; or valve protection must have equal or greater integrity). RSPA also is referring to "representative" service equipment as part of the definition of "IBC design type" in paragraph (c)(1) and is requiring in paragraph (l) that "representative service equipment" be described in each design type test report. Consistent with § 178.601(d) for non-bulk packagings, RSPA is revising proposed paragraph (d) to require the design qualification testing of each "new or different" IBC design type.

Commenters asserted that proposed paragraph (h), allowing a 25-percent reduction of exterior IBC dimensions without retesting, is too restrictive. One commenter suggested that RSPA adopt UN Recommendations which do not limit variation of external dimensions (e.g., 25 percent), "so long as materials of construction and thickness are not changed." RIBCA added that manufacturers are permitted under exemptions to produce smaller IBCs with greater than 25 percent reduction of external dimensions (the IBCs being identical in other respects). RSPA concurs with these commenters and, accordingly, proposed paragraph (h) is revised in paragraph (c)(7)(iii) in this final rule by removing the proposed 25 percent restriction and to permit variation of a tested IBC design type without further testing, provided the IBC differs only in its lesser external dimensions while materials of construction and material thicknesses or fabric weight remain the same. In paragraph (h) of this final rule provides that other minor design variations may be permitted without further testing provided selective testing demonstrates an equivalent or greater level of safety than the design type tested and which has been approved by the Associate Administrator for Hazardous Materials Safety.

The Flexible Intermediate Bulk Container Association (FIBCA) asked RSPA to extend to flexible IBC design types the 25 percent allowable decreased variance in external

dimensions without further testing proposed for rigid IBC design types. As discussed above, RSPA concurs, provided that no loss of original design type integrity occurs (e.g., no change in sewing pattern, fabric weight, etc.). Accordingly, paragraph (c)(7)(iii) includes all IBCs.

Four commenters asserted that, in the NPRM, RSPA departed from the quality assurance program suggested in Section 16.1.4.1.1 of the UN Recommendations by establishing a requirement that each IBC design type be retested every 12 months, similar to the periodic design retest requirement for drums. RIBCA said periodic design qualification is not recommended in Chapter 16 of the UN Recommendations because IBC design type qualification is much more expensive than it is for drums (for which, in Section 9.7.1.3, the UN recommends periodic testing). On average, RIBCA said its member manufacturers spend \$5,147 to qualify each design type. In one year, RIBCA said the total cost for members was \$4,990,000 for qualifying 970 different design types. "This is nearly \$5 million of test costs spread over 15 manufacturers."

RIBCA said imposing on IBC manufacturers a requalification scheme that is more suited to non-bulk packaging production runs is counterproductive and cost-inefficient. RIBCA noted that IBC production rates differ markedly from rates for steel and plastic drums. "The numbers manufactured for [an IBC] design usually become smaller each year * * * Each such order, often for 5, 10 or 20 tanks, would be accompanied by very high and inordinate design qualification costs when compared to non-bulk packaging on a per unit sold basis." One commenter added that, under requirements in paragraph (e), "every conceivable gasket type, fitting type and fitting configuration used on an IBC will have to be tested in their various combinations and retested every 12 months. This would entail hundreds of design qualification tests every year." RIBCA maintained that once an IBC design type is proven, "the passage of time (e.g., 12 months) is irrelevant." RIBCA said "re-proving" an IBC design "demonstrates nothing about the design * * * It would only indicate that either the method of production failed to yield an acceptable product or that the original design (procedure) was not followed."

Commenters urged RSPA to consider a quality assurance program where IBC manufacturers would be required to demonstrate and document, as RIBCA suggested, a "continuing adherence to

minimum requirements of a qualified design." They said that a periodic internal audit, properly documented, would accomplish this. RIBCA claimed that its members already are committed to such a program. RIBCA suggested revisions to paragraph (e) to require "an ongoing design and manufacturing process evaluation * * * recorded annually, based on the date of the original design certification for each design type * * *." Another commenter agreed with RIBCA that a 12-month requalification period makes sense for high-volume, non-bulk packagings but not for "specialty-type containers" produced in low volumes. The commenter said that the one-time-per-year requalification which RSPA proposes "must be based on an average number of units produced by an average IBC manufacturer in one year." The commenter asked, "to be fair, why not give the manufacturer the option of one year or a certain amount of containers produced (based on this average number of containers produced by an average company over one year)?"

RSPA agrees in principle that, under a performance-based system, good quality assurance practices are essential to maintain the integrity of each production unit manufactured to a certified IBC design type. RSPA encourages the development of sound quality assurance programs. For this final rule, however, RSPA has determined that 12-month periodic design qualification testing involving samples taken from the production line is necessary as the minimum requirement. Paragraph (e)(2) provides an approval process for the development of programs requiring less actual testing if a quality assurance program is maintained and higher design and construction standards are demonstrated. Under current exemptions, IBC design types generally must be requalified every four months. RSPA believes that the 12-month periodic design requalification requirement in this final rule offers manufacturers significant relief while not compromising transportation safety.

In response to a commenter's request, RSPA is revising requirements for the production test proposed in paragraph (f)(1) by adding paragraph (f)(1)(i) stating that IBCs need not have fitted closures. RSPA is adding paragraph (f)(1)(ii) providing that inner receptacles of composite IBCs can be leakproofness tested without outer IBC bodies, provided that test results are not affected. These provisions are consistent with production leakproofness testing requirements for non-bulk packagings in § 178.604. Furthermore, the UN

Recommendations do not specify (in Section 16.1.4.2.4) how IBCs are to be prepared for production leakproofness testing.

Noting that many third-party testing agencies lack expertise in testing IBCs, RIBCA requested a revision to proposed paragraphs (j) and (j)(2) to permit manufacturers to monitor tests being performed by third-party agencies and report on inadequate procedures. Although RSPA agrees that IBC manufacturers should be permitted to participate in, or monitor the development of, sound third-party testing, RSPA sees no need to establish by regulation the right of manufacturers to visit IBC test laboratories. This issue can be resolved by contractual or other agreements between the manufacturer and a third-party agency. Therefore, this request is not adopted.

RIBCA questioned the effectiveness of RSPA's requirement in proposed paragraph (k) that the inner coating of an IBC must withstand subpart O tests. RIBCA said "the ensuing crush patterns" resulting from the drop test makes it "difficult to assure * * * if the coating is still protective." RIBCA requested a clarifying sentence emphasizing that after withstanding the tests, "no immediate hazard is created by contact of the contents with any material of construction in the tank." This comment is not accepted. Consistent with requirements for non-bulk packagings requiring coatings in § 178.601(j), RSPA believes a criterion stating that coatings retain their protective properties after withstanding subpart O performance tests is necessary to ensure the integrity of IBC construction.

Section 178.802. This section establishes requirements for the preparation of fiberboard IBCs or composite IBCs with fiberboard outer packagings for design qualification testing. Fiberboard IBCs must be conditioned under the same temperature and relative humidity conditions as required for non-bulk fiberboard packagings in § 178.602(d). In this final rule, paragraph (c) is added permitting fiberboard IBCs, or composite IBCs with fiberboard outer packagings, to be conditioned at ambient temperature "for purposes of periodic design requalification only." This is consistent with a similar provision in 173.602(d)(3) for the periodic retesting of non-bulk fiberboard packaging design types.

Section 178.803. Design qualification testing specified in §§ 178.810-819 for the certification of metal, rigid plastic, composite, fiberboard, wooden, and flexible IBC types is set forth in a single

table in this section. Separate tables specifying the order of tests for each IBC design type category proposed in §§ 178.804-178.808 are not adopted.

RIBCA and other commenters recommended that the vibration test be placed first in the order of tests in a single table. RIBCA pointed out that the vibration test "would seem to be most suitably placed before tests that would result in damage to a unit." Referring to the order of tests proposed in § 178.808 for flexible IBCs, FIBCA asked RSPA to delete the phrase "* * * must withstand the applicable tests in the order presented * * *." It contended that the tear test (second in order of tests), involving a four-inch knife cut, would render the test sample unsuitable for the remaining tests. RSPA concurs with these recommendations and, accordingly, the vibration test is placed first.

Based on the merits of comments stating that the vibration test is unnecessary for the certification of flexible IBCs, Note 1 to the table now specifies that flexible IBCs must only "be capable" of withstanding the vibration test (see discussion in § 178.819). In response to a comment from RIBCA urging RSPA to permit the use of another IBC of the same design type for the drop test, RSPA is adding note 4 applicable to metal and composite IBC design types which states that, "another intermediate bulk container of the same design type may be used for the drop test set forth in § 178.810." Consistent with a revision approved for the Eighth revised edition of the UN Recommendations, RSPA is adding note 5, permitting use of a different flexible IBC for each test.

Section 178.810. A drop test similar in many respects to requirements for non-bulk packagings in § 178.603 is adopted as proposed for all IBC design types. In preparation for the drop test, IBCs intended to transport liquids must be filled to at least 98 percent of their capacity, and to at least 95 percent of their capacity if intended to transport solids. Before being drop tested, rigid plastic IBCs and composite IBCs with inner plastic receptacles must be conditioned for testing by reducing the temperature of the packaging and its contents to -18°C (0°F) or lower. Test liquids must be kept in the liquid state by the addition of anti-freeze, if necessary. Test samples of all IBC design types must be dropped onto a rigid, non-resilient, smooth, flat horizontal surface; the point of impact must be the most vulnerable part of the base of the IBC undergoing the test. Drop heights are dependent upon the Packing Group to which the IBC is being

tested and certified. A Packing Group I drop test is adopted in paragraph (d)(1)(i) of this final rule for IBCs intended for certain high-hazard solid materials.

One commenter proposed a one-meter puncture drop test to "verify the ability of an IBC to withstand worst-case situations in handling and transportation." RSPA acknowledges that this suggested test represents good industry practice to verify that an IBC exceeds the minimum IBC drop test requirements we are adopting in this final rule. However, RSPA believes that any proposal for additional required testing should be done through notice and comment, and that there is not sufficient justification or evaluation of the proposed test to warrant further action at this time.

Section 178.811. The requirement for a bottom lift test for IBCs designed to be lifted from the base is adopted as proposed.

Section 178.812. A top lift test is adopted as proposed for all metal, rigid plastic and composite IBC design types designed to be lifted from the top. In this final rule, the top lift test is applicable to flexible IBCs designed to be lifted from the top or side. FIBCA referred to other, equally effective methods to top-lift flexible IBCs and suggested that platen plate hydraulic loading testing methods, now utilized in Europe, should be acceptable to RSPA. As provided in § 178.801(i), manufacturers may use other top lift methods for flexible IBCs, if they demonstrate equal effectiveness.

Section 178.813. The leakproofness test is adopted as proposed for the design qualification of metal, rigid plastic, and composite IBC design types, and rigid IBC production units, if they are intended to contain liquids or if they are intended to contain solids loaded or discharged under pressure. The test must be performed by applying air at a gauge pressure of not less than 20 kPa (2.9 psig). Other methods of leakproofness testing, if at least equally effective, may be used in accordance with Appendix B of part 178, or if approved by the Associate Administrator for Hazardous Materials Safety, as provided in § 178.801(i).

RIBCA objected to the proposed ten-minute hold in applying air pressure during production line leakproofness testing. RIBCA said a ten-minute hold "would introduce an unacceptable delay in modern production lines." RIBCA added that a ten-minute hold in production lines using blow-molded techniques would literally shut down production "because of the number of

units coming off-line in these higher-speed production systems."

RSPA acknowledges RIBCA's concern and, consistent with a revision approved for the Eighth revised edition of the UN Recommendations, is revising proposed paragraph (c) by not adopting a ten-minute hold requirement. The final rule provides that the test "must be carried out for a suitable length of time * * *" to determine if there are leaks.

Section 178.814. The hydrostatic pressure design qualification test is adopted as proposed for all metal, rigid plastic and composite IBC design types intended to contain liquids or intended to contain solids loaded or discharged under pressure. The test must be performed for ten minutes at gauge pressures specified for three metal IBC design types intended to contain liquids and four rigid plastic and four composite IBC design types.

Consistent with a proposal accepted for the 8th revised edition of the UN Recommendations, a new paragraph (d)(3) is added, requiring metal IBCs of type 21A, 21B and 21N intended for transportation of Packing Group I solids to be tested at 250 kPa (36 psig) gauge pressure. Proposed paragraphs (d)(3) and (d)(4) are renumbered (d)(4) and (d)(5), respectively, and adopted as proposed.

RIBCA suggested a revision of paragraph (b) by adding a requirement to replace vented closures with similar non-vented closures or to seal vents before conducting the hydrostatic test, consistent with preparations for conducting the leakproofness test in § 178.813(b), which requires sealed vents. RSPA agrees and is revising paragraph (b) to also require vented closures to be removed and their openings plugged. RSPA acknowledges RIBCA's concerns that the choice of hydrostatic test methods proposed in paragraph (d)(4) would invariably result in shippers being forced to choose higher test pressure values for shipment of low-pressure materials in rigid plastic IBCs. Accordingly, in this final rule, RSPA is adjusting the choice of test pressure values by adding the following language in paragraph (d)(5): "* * * whichever is the greater of."

Paragraph (d)(5) also is revised in this final rule to more clearly distinguish between the use of gauge and absolute pressures when determining hydrostatic test pressure to be applied to the IBC. The test pressure marked on the IBC is a gauge pressure as specified in § 178.703(b)(1)(iii). Gauge pressure consists only of the pressure in the IBC that exceeds atmospheric pressure. Absolute pressure consists of ambient atmospheric pressure plus the vapor

pressure of the hazardous material in the IBC. Vapor pressure of the hazardous material is the pressure exerted on the IBC by vapors or gases emitted by the material. Paragraphs (d)(5)(i) (B) and (C) are clarified to show that, because vapor pressure of the hazardous material is described in absolute terms, the pressure applied for the hydrostatic test is determined by subtracting atmospheric pressure from absolute pressure. Methods using absolute pressure set forth in paragraphs (d)(5)(i) (B) and (C) can be used when the vapor pressure of a substance is available in technical literature. Hydrostatic test pressure for these methods must be at least 100 kPa (14.5 psig). The method in paragraph (d)(5)(i)(A) for determining hydrostatic test pressure applied is useful when the vapor pressure of a mixture or substance is unknown and may be experimentally determined.

One commenter pointed out that the leakproofness test should be conducted after the hydrostatic pressure test "to indicate whether a potential path for vapor loss has been opened in the structure by the hydrostatic testing. A leakproofness test of at least 30 percent of the hydrostatic pressure after the hydrostatic pressure test would ensure that the package can maintain complete integrity against both liquid and vapor loss in a worst-case situation." RSPA believes tests performed in the order recommended by that commenter will adequately ensure IBC integrity. Therefore, in the table for testing and certification of IBCs established in § 178.803, the leakproofness test precedes the hydrostatic pressure test.

RIBCA urged RSPA to not regard IBC "deformation" as a failure of the hydrostatic pressure test and disqualification of the design type. RIBCA said that leakage alone must be the pass/fail criterion for the hydrostatic test. Referring to criteria in paragraphs (e) (1) and (3) which, for most rigid IBCs, allow "no permanent deformation which renders the IBC unsafe for transport," RIBCA said significant deformation of metal and composite IBCs begins to take place "at quite low pressures," and added that "no existing DOT 57 or composite IBC can pass this test."

As proposed in paragraph (e)(1), RSPA believes that any hydrostatic pressure test resulting either in permanent distortion or leakage, either of which renders an IBC design type unsafe for transport constitutes failure of this test and disqualifies the tested design type. Therefore, RIBCA's suggestion is not adopted. In this final

rule, pass/fail criteria for the hydrostatic test are retained as proposed.

Section 178.815. As proposed, the stacking test must be conducted for the qualification of all intermediate bulk container design types designed to be stacked. All stacked IBCs must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes. Fiberboard, wooden, and composite IBC design types with outer packagings constructed of materials other than plastic must withstand this test for 24 hours. Stand-alone rigid plastic and composite design types with outer plastic packagings must be tested for 28 days at 40 °C (104 °F). For all IBC design types, the load placed on the IBC must be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top during transport.

Section 178.816. The topple test is adopted as proposed for the qualification of all flexible IBC design types. However, a topple height for Packing Group I has been added, consistent with the Packing Group levels prescribed for the drop test in § 178.810.

Section 178.817. The righting test is adopted as proposed for the qualification of all flexible IBC design types designed to be lifted from the top or side.

Section 178.818. The tear test is adopted as proposed for the qualification of all flexible IBC design types.

Section 178.819. The vibration test is adopted as proposed as a requirement for the qualification of rigid IBC design types. A vibration capability standard is adopted in this final rule for the qualification of flexible IBC design types. The proposal to require vibration testing for all IBC design types drew comment from flexible IBC manufacturers, who asserted that hundreds of millions of flexible IBCs have been successfully used without having been vibration-tested. Because flexible IBC design types were never subjected to vibration testing, one commenter asserted there is no basis for establishing what reasonable vibration test criteria would be. FIBCA pointed out that no other nation requires this test for flexible IBCs, nor do the UN Recommendations address this issue. FIBCA said that including the vibration test requirement in subpart O violates principles stated in the preamble to the NPRM, "for removing a dual domestic and international regulatory system." One commenter asked if foreign UN-marked flexible IBCs that are not

vibration-tested relinquish UN certification in the U.S. Other commenters asked RSPA to introduce this additional testing only when a vibration standard is adopted in the UN Recommendations on a universal basis.

RSPA notes that DOT exemptions for flexible IBCs have not required vibration testing and agrees with commenters that a mandatory vibration test should not be required for flexible IBCs. Therefore, paragraph (a) is revised to exclude flexible IBCs from mandatory vibration testing. However, flexible IBCs must be capable of withstanding the vibration test. RSPA also is adding note 1 to the table of "Testing and Certification of IBCs" in § 178.803, which will now require flexible IBCs to be "capable of withstanding the vibration test."

RIBCA supported the proposed mandatory test for rigid IBCs but not requirements in paragraph (b)(4) to turn IBCs on their sides following the test. RIBCA asserted that the greatest vulnerability in a vertical peak-to-peak vibration test (which RIBCA termed a "repeated jolt test") are bottom openings and not the top of IBCs, "unless they are of the open-head style in which the ring closure may leak if it has not been properly secured." RIBCA suggested a revision of pass/fail criteria to reflect this position.

RSPA agrees that the wide structural variability of IBCs, including location of closures, valves, etc., represents a different range of stress vulnerabilities and vibration test outcomes than are experienced by non-bulk packagings for which the side turn is required in § 178.608(b)(4). RSPA also recognizes that IBC size and stacking characteristics ensure that an upright position in the transportation environment normally will be maintained. Therefore, proposed paragraph (b)(4) is not adopted. Paragraph (c) is clarified to state that an IBC passes the vibration test if there is no rupture or leakage.

Part 180

Section 180.350. This section is adopted as proposed.

Section 180.351. General requirements for the qualification of IBCs are adopted as proposed. Many comments were received addressing the five-year plastic IBC use limit proposed in paragraph (c). One commenter pointed out that proposed paragraph (c) is inconsistent with proposed § 173.35(h) in that it omits consideration by the Associate Administrator for Hazardous Materials Safety for approving a longer service life for plastic and composite IBCs. One commenter advised RSPA to restrict the

limit to plastic IBCs constructed of certain materials showing patterns of structural failure due to ultraviolet (UV) degradation. The commenter said the five-year limit should specifically apply to "Carbon Black stabilized IBCs and possibly other plastic packagings."

RIBCA asserted that requiring, after five years, that a plastic unit be replaced "by a receptacle identical to the one that was employed five years previously is almost impossible to meet." RIBCA added that it is "unlikely that material of construction (i.e., resins) will not have undergone some modifications or adjustments in that time." RIBCA suggested that paragraph (c) be revised to read "a receptacle meeting the original design type" of the IBC. RIBCA said the phrase "original" design type "implies no changes when we believe that the intent is not to have changes that alter the design type of the IBC in which a new inner receptacle is placed."

As stated above in the preamble to § 173.35, RSPA is not adopting a five-year rigid plastic and composite IBC use restriction. Accordingly, proposed paragraph (c) in this section is not adopted.

Section 180.352. Requirements for initial and periodic retest and inspection of IBCs are adopted as proposed. Initially after production and every 2.5 years thereafter, metal, rigid plastic, and composite IBCs intended for liquids or intended for solids loaded or discharged by pressure must withstand the 20 kPa (2.9 psig) leakproofness test prescribed in § 178.813. For these IBC types, external inspections must be performed after production and each 2.5 years thereafter to ensure that each IBC is properly marked and free from damage that may reduce its structural integrity during transportation, and that IBC service equipment functions properly. Internal inspections are required to be performed initially on metal IBCs after production and every five years thereafter. Metal, plastic, and composite IBCs are to be inspected at least every five years for cracks, warpage, and corrosion. Metal IBCs must be inspected at least every five years for corrosion of wall material below required minimum thicknesses. An IBC found with such defects must be removed from hazardous materials service. Inspection of flexible, fiberboard or wooden IBCs is necessary to ensure that these IBCs are properly marked and that they continue to meet required construction and design specifications. For example, each flexible IBC must be inspected to ensure that seams are free from defects in stitching, heat sealing, or gluing. The

requirements in this section do not apply to DOT 56 or 57 portable tanks. IBC owners or lessees must maintain records of periodic retests and initial and periodic inspections for each IBC in continuous hazardous materials service.

Four commenters questioned whether the test and inspection requirements in this section apply "before each use" of an IBC, or every 2.5 years from the date of manufacture of the IBC. The periodic retest requirements in this section do not apply to IBCs before every reuse. This section sets forth periodic test and inspection requirements. A shipper cannot reuse an IBC intended for liquids or intended for solids that are loaded or discharged by pressure if that IBC has not been leakproofness tested every 2.5 years as specified in paragraph (b)(1) of this section. For clarity, RSPA is revising the first sentence in paragraph (a) to read, "Each intermediate bulk container constructed in accordance with a UN standard for which a test or inspection specified in paragraphs (b)(1), (b)(2) and (b)(3) of this section is required may not be filled * * * IBCs must meet standards prescribed in this final rule at all times in hazardous materials service without regard to the 2.5-year retest and inspection period.

NARA asserted that the required leakproofness retest "will pose difficulties for retail dealers, custom applicators, farmers who handle a number of IBC/mini-bulks with various dates of manufacture." NARA said that wide IBC distribution and "the marketing system" for IBCs in agricultural use make it "extremely difficult for IBC owners to conduct the leakproofness test." NARA suggested a "more stringent visual inspection" in place of the leakproofness retest. This suggestion is not adopted. RSPA believes that a visual inspection alone is insufficient to establish the leakproofness integrity of these IBCs.

Four commenters were unclear about the applicability of proposed paragraph (b)(1). One commenter said the paragraph could be interpreted to mean IBCs intended for liquids and solids that are only loaded and unloaded under pressure must be leakproofness retested. NACA asked RSPA to make paragraph (b)(1) consistent with § 178.813(a). RSPA concurs and, accordingly, is clarifying paragraph (b)(1) to show that the leakproofness test every 2.5 years does not have to be performed on IBCs intended to contain solids that are not loaded or discharged under pressure.

One commenter asked RSPA to revise paragraph (b)(2)(iii) by deleting the requirement of removing the inner receptacle of a composite IBC for inspections. This suggestion is not

adopted. RSPA believes that the inner unit must be removed, if possible, to allow inspectors to examine the external condition of the inner receptacle. RSPA is clarifying paragraph (b)(2)(iii) to state that the inner receptacle of a composite IBC must be removed from the outer IBC body unless the inner unit is bonded to the outer body or unless the outer body is constructed in such a way (e.g., a welded or riveted cage) that removal of the inner receptacle is not possible without damaging or destroying the outer body.

RIBCA's concerns regarding the marking of retest data on a rigid plastic or composite IBC if no certification plate is fitted are addressed in revisions to § 178.703(b) requiring retest data "to be placed near" the UN certification marking required in § 178.703(a). Paragraph (d) is revised to require the retest date to be marked as "provided in § 178.703(b)."

NACA asserted that the "burden of recordkeeping for potentially hundreds of thousands of tanks * * * seems to serve no safety benefit," and recommended deletion of paragraph (e). RSPA believes that the record retention requirements in paragraph (e) are consistent with the recordkeeping requirements for other types of packagings, e.g., cargo tanks and non-bulk packagings, and are essential in demonstrating compliance with the requirement in this final rule. Therefore, NACA's comment is not adopted.

IV. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects unless they are "substantively" the same as the HMR. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule addresses covered subjects, under item (ii) and (v) above and, therefore, preempts State, local, or Indian tribe requirements not meeting the "substantively the same" standard. The HMTA (49 App. U.S.C. 1804(a)(5)), as amended, provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the *Federal Register* the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be January 13, 1995. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule applies to certain shippers and carriers of hazardous materials in intermediate bulk containers, some of whom may be small entities, its economic impacts are minimal.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 2137-0510.

Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 178, and 180 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR Part 1.

2. In § 171.7, a new entry ISO 3036-1975 is added following the last entry under *International Organization for Standardization* in the Table of material incorporated by reference in paragraph (a)(3), to read as follows:

§ 171.7 Reference material.

(a) * * *
(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
International Organization for Standardization:	
ISO 3036-1975(E) Board—Determination of puncture resistance	178.708

3. In § 171.8, the definition of "Intermediate bulk container" is added in appropriate alphabetic order, and the definition of "UN standard packaging" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

Intermediate bulk container (IBC) means a rigid or flexible portable packaging, other than a cylinder or portable tank, which is designed for

mechanical handling. Standards for intermediate bulk containers manufactured in the United States are set forth in subparts N and O of part 178 of this subchapter.

* * * * *

UN standard packaging means a specification packaging conforming to applicable requirements in subparts L and M, or N and O of part 178 of this subchapter.

* * * * *

4. In § 171.12, paragraph (b)(5) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(5) Except for packagings conforming to the requirements of Chapter 26 of the IMDG Code, bulk packagings must conform to the requirements of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

6. In § 172.101, the following entries in the Hazardous Materials Table are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101 HAZARDOUS MATERIALS TABLE

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) Packing group	(6) Label(s) required (if not excepted)	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Acetyl chloride	3	UN1717	II	FLAMMABLE LIQ-UID, CORRO-SIVE.	A3, A6, A7, B100, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl iodide	8	UN1898	II	CORROSIVE	B2, B101, T9	154	202	242	1 L	30 L	C	8, 40
	Alkali metal am-ides.	4.3	UN1390	II	DANGEROUS WHEN WET.	A6, A7, A8, A19, A20, B101, B106.	None	212	241	15 kg	50 kg	E	40
	Alkaline earth metal alloys, n.o.s.	4.3	UN1393	II	DANGEROUS WHEN WET.	A19, B100	None	212	241	15 kg	50 kg	E	
	Allyl iodide	3	UN1723	II	FLAMMABLE LIQ-UID, CORRO-SIVE.	A3, A6, B100, N34, T18.	None	201	243	0.5 L	2.5 L	B	40
	Aluminum bro-mide, anhydrous.	8	UN1725	II	CORROSIVE	B106	154	212	240	15 kg	50 kg	A	40
	Aluminum carbide	4.3	UN1394	II	DANGEROUS WHEN WET.	A20, B101, B106, N41.	None	212	242	15 kg	50 kg	A	
	Aluminum chloride, anhydrous.	8	UN1726	II	CORROSIVE	B106	154	212	240	15 kg	50 kg	A	40
	Aluminum ferrosilicon pow-der.	4.3	UN1395	II	DANGEROUS WHEN WET.	A19, B108	None	212	242	15 kg	50 kg	A	40, 85, 103
	Aluminum hydride	4.3	UN2463	I	DANGEROUS WHEN WET.	A19, B100, N40	None	211	242	Forbidden.	15 kg	E	
	Aluminum phosphide.	4.3	UN1397	I	DANGEROUS WHEN WET, POISON.	A8, A19, B100, N40.	None	211	242	Forbidden.	15 kg	E	40, 85
	Aluminum powder, uncoated.	4.3	UN1396	II	DANGEROUS WHEN WET	A19, A20, B108	None	212	242	15 kg	50 kg	A	39
	Ammonium hydro-gen fluoride, solid.	8	UN1727	II	CORROSIVE	B106, N34	154	212	240	15 kg	50 kg	A	25, 26, 40
	Ammonium nitrate, liquid (that con-centrated solu-tion).	5.1	UN2426		OXIDIZER	B5, B100, B17, T25.	None	None	243	Forbidden.	Forbidden.	D	59, 60
	Antimony tri-chloride, solid.	8	UN1733	II	CORROSIVE	B106	154	212	240	15 kg	50 kg	A	40
	Barium	4.3	UN1400	II	DANGEROUS WHEN WET.	A19, B100	None	212	241	15 kg	50 kg	E	
	Benzene	3	UN1114	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	B	40
	Benzotrichloride	8	UN2226	II	CORROSIVE	B2, B101, T15	154	202	242	1 L	30 L	A	40

SECTION 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Bifluoride, n.o.s., solid.	8	UN1740	II	CORROSIVE	B106, N3, N34	None	212	240	15 kg	50 kg	A	25, 26, 40
	Bromobenzyl cyanides, solid.	6.1	UN1694	I	POISON	B110, T18	None	211	241	Forbid-den.	50 kg	D	12, 40
	Butyl vinyl ether, inhibited.	3	UN2352	II	FLAMMABLE LIQ-UID.	B101, T7	150	202	242	5 L	60 L	B	40
	n-Butylamine	3	UN1125	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	B	40
	Butyl chloride	3	UN2353	II	FLAMMABLE LIQ-UID, CORRO-SIVE.	B100, T9, T26	None	202	243	1 L	5 L	C	40
	Calcium	4.3	UN1401	II	DANGEROUS WHEN WET.	B100	None	212	241	15 kg	50 kg	E	
	Calcium carbide	4.3	UN1402	II	DANGEROUS WHEN WET.	A1, A8, B55, B101, B106, N34.	None	212	241	15 kg	50 kg	B	
	Calcium cyanamide with more than 0.1 percent of calcium carbide.	4.3	UN1403	III	DANGEROUS WHEN WET.	A1, A19, B105	None	213	241	25 kg	100 kg	A	
	Calcium hydride	4.3	UN1404	I	DANGEROUS WHEN WET.	A19, B100, N40	None	211	242	Forbid-den.	15 kg	E	
	Calcium hypochlorite mixtures, dry with more than 10 percent but not more than 39 per cent available chlorine.	5.1	UN2208	III	OXIDIZER	A1, A29, B103, N34.	152	213	240	25 kg	100 kg	A	56, 58, 69, 106
	Calcium manganese silicon.	4.3	UN2844	III	DANGEROUS WHEN WET.	A1, A19, B105, B106.	None	213	241	25 kg	100 kg	A	85, 103
	Calcium phosphide	4.3	UN1360	I	DANGEROUS WHEN WET, POISON.	A8, A19, B100, N40.	None	211	242	Forbid-den.	15 kg	E	40, 85
	Calcium silicide	4.3	UN1405	II	DANGEROUS WHEN WET.	A19, B106, B108	None	212	241	15 kg	50 kg	B	85, 103
	Cerium, turnings or gritty powder.	4.3	UN3078	II	DANGEROUS WHEN WET.	A1, B105, B106, B109.	None	213	242	15 kg	50 kg	E	
	Cesium or caesium.	4.3	UN1407	I	DANGEROUS WHEN WET.	A19, B100, N34, N40.	None	211	242	Forbid-den.	15 kg	D	
	Chloral, anhydrous, inhibited.	6.1	UN2075	II	POISON	B101, T14	None	212	243	25 kg	100 kg	D	40

Chlorobutanes	3	UN1127	II	.....	FLAMMABLE LIQ-UID.	B101, T8	.....	150	.....	202	242	5 L	.....	60 L	.....	B	.....
Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	.....	POISON	5, B100	.....	None	.....	201	243	Forbid-den.	.....	Forbid-den.	.....	C	40
.....	.....	.....	II	.....	POISON	B100	.....	None	.....	202	243	Forbid-den.	.....	Forbid-den.	.....	C	40
.....	.....	.....	III	.....	KEEP AWAY FROM FOOD.	B100	.....	153	.....	203	241	Forbid-den.	.....	Forbid-den.	.....	C	40
Chlorosilanes, n.o.s., flash point not less than 23 degrees C.	8	UN2986	II	.....	CORROSIVE, FLAMMABLE LIQUID.	B100	.....	None	.....	202	243	1 L	.....	30 L	.....	C	23, 40
Chlorosilanes, n.o.s., flash point less than 23 degrees C.	3	UN2985	II	.....	FLAMMABLE LIQ-UID, CORROSIVE.	B100, T18, T26	.....	None	.....	201	243	1 L	.....	5 L	.....	B	40
Chromium trioxide, anhydrous.	5.1	UN1463	II	.....	OXIDIZER, CORROSIVE.	B106	.....	None	.....	212	242	5 kg	.....	25 kg	.....	A	.....
Corrosive solids, flammable, n.o.s.	8	UN2921	I	.....	CORROSIVE, FLAMMABLE SOLID.	B106	.....	None	.....	211	242	1 kg	.....	25 kg	.....	B	12, 24, 25, 48
Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	.....	CORROSIVE, OXIDIZER.	B100	.....	None	.....	211	240	1 kg	.....	25 kg	.....	C	89
.....	.....	.....	II	.....	CORROSIVE, OXIDIZER.	B100	.....	None	.....	212	240	15 kg	.....	50 kg	.....	C	89
Corrosive solids, self-heating, n.o.s.	8	UN3095	I	.....	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	B100	.....	None	.....	211	243	1 kg	.....	25 kg	.....	C	.....
.....	.....	.....	II	.....	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	.....	.....	None	.....	212	242	15 kg	.....	50 kg	.....	E	.....
Corrosive solids, which in contact with water emit flammable gases, n.o.s.	8	UN3096	I	.....	CORROSIVE, DANGEROUS WHEN WET.	B105	.....	None	.....	211	243	1 kg	.....	25 kg	.....	E	.....
.....	.....	.....	II	.....	CORROSIVE, DANGEROUS WHEN WET.	B105	.....	None	.....	212	242	15 kg	.....	50 kg	.....	E	.....
Cyclohexane	3	UN1145	II	.....	FLAMMABLE LIQ-UID.	B101, T8	.....	150	.....	202	242	5 L	.....	60 L	.....	E	.....
Cyclohexene	3	UN2256	II	.....	FLAMMABLE LIQ-UID.	B101, T7	.....	150	.....	202	242	5 L	.....	60 L	.....	E	.....
Cyclohexylamine ..	8	UN2357	II	.....	CORROSIVE, FLAMMABLE LIQUID.	B100, T8, T26	.....	None	.....	202	243	1 L	.....	30 L	.....	A	12, 21, 40, 48
Cyclopentane	3	UN1146	II	.....	FLAMMABLE LIQ-UID.	B101, T14	.....	150	.....	202	242	5 L	.....	60 L	.....	E	.....
Cyclopentene	3	UN2246	II	.....	FLAMMABLE LIQ-UID.	B101, T13	.....	150	.....	202	242	5 L	.....	60 L	.....	E	.....
1,1-Dichloroethane	3	UN2362	II	.....	FLAMMABLE LIQ-UID.	B101, T7	.....	150	.....	202	242	5 L	.....	60 L	.....	B	40
Diethyl sulfate	6.1	UN1594	II	.....	POISON	B101, T14	.....	None	.....	202	243	5 L	.....	60 L	.....	C	.....
Diethyl sulfide	3	UN2375	II	.....	FLAMMABLE LIQ-UID	B101, T14	.....	None	.....	202	243	1 L	.....	60 L	.....	E	.....

SECTION 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) Packing group	(6) Label(s) required (if not excepted)	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Diethylamine	3	UN1154	II	FLAMMABLE LIQ-UID.	B101, N34, T8	150	202	242	5 L	60 L	E	
	Diethyldichlorosilane.	8	UN1767	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B6, N34, B100, T8, T26.	None	202	243	Forbid-den.	30 L	C	21, 40
	Diisopropyl ether ..	3	UN1159	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	E	40
	Diisopropylamine ..	3	UN1158	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	B	
	Dimethyl sulfide ...	3	UN1164	II	FLAMMABLE LIQ-UID.	B100, T14	None	201	243	1 L	30 L	E	40
	Dinitrotoluenes, molten.	6.1	UN1600	II	POISON	B100, T14	None	202	243	Forbid-den.	Forbid-den.	C	
	Divinyl ether, inhibited.	3	UN1167	I	FLAMMABLE LIQ-UID.	B110, T14	None	202	241	5 L	60 L	e	40
	Ethyl bromide	6.1	UN1891	II	POISON	B100, T17	None	202	243	5 L	60 L	B	40
	Ethyl butyl ether ...	3	UN1179	II	FLAMMABLE LIQ-UID.	B1, B101, T1	150	202	242	5 L	60 L	B	
	Ethyl propyl ether .	3	UN2615	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	E	
	Ethyltrichlorosilane	3	UN1196	II	FLAMMABLE LIQ-UID, CORRO-SIVE.	A7, B100, N34, T15, T26.	None	201	243	Forbid-den.	2.5 L	B	40
	Ferrous metal borings, shavings, turnings or cuttings in a form liable to self-heating.	4.2	UN2793	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19, B101	None	213	241	25 kg	100 kg	A	
	Flammable solids, corrosive, n.o.s.	4.1	UN2925	II	FLAMMABLE SOLID, CORROSIVE.	B106	None	212	242	15 kg	50 kg	D	40
	.....			III	FLAMMABLE SOLID, CORROSIVE.	A1, B106	151	213	242	25 kg	100 kg	D	40
	Flammable solids, poisonous, n.o.s.	4.1	UN2926	II	FLAMMABLE SOLID, POISON.	B106	None	212	242	15 kg	50 kg	B	40
	.....			III	FLAMMABLE SOLID, KEEP AWAY FROM FOOD.	A1, B106	151	213	242	25 kg	100 kg	B	40
	Fluoroacetic acid ..	6.1	UN2642	I	POISON	B100	None	211	242	1 kg	15 kg	E	
	Fluorobenzene	3	UN2387	II	FLAMMABLE LIQ-UID.	B101, T8	150	202	242	5 L	60 L	B	
	Gasoline	3	UN1203	II	FLAMMABLE LIQ-UID.	B33, B101, T8	150	202	242	5 L	60 L	E	

Material Name	4.2	UN2545	I	SPONTANEOUSLY COMBUSTIBLE	B100	None	211	242	Forbid-den.	Forbid-den.	D.
Barium powder, dry.			I	SPONTANEOUSLY COMBUSTIBLE.	B100	None	211	242	Forbid-den.	Forbid-den.	D.
			II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, B100, N34.	None	212	241	15 kg	50 kg	D.
			III	SPONTANEOUSLY COMBUSTIBLE.	B100	None	213	241	25 kg	100 kg	D.
n-Heptene	3	UN2278	II	FLAMMABLE LIQUID.	B101, T8	150	202	242	5 L	60 L	B.
Hexadienes	3	UN2458	II	FLAMMABLE LIQUID.	B101, T7	None	202	242	5 L	60 L	B.
Hexamethylene diisocyanate.	6.1	UN2281	II	POISON	B101, T14	None	202	243	5 L	60 L	B
Hexamethyleneimine.	3	UN2493	II	FLAMMABLE LIQUID, CORROSIVE.	B101, T8	None	202	243	1 L	5 L	B
Hexanes	3	UN1208	II	FLAMMABLE LIQUID.	B101, T8	150	202	242	5 L	60 L	E.
1-Hexene	3	UN2370	II	FLAMMABLE LIQUID.	B101, T8	150	202	242	5 L	60 L	E.
Hydrogen peroxide and peroxy-acetic acid mixtures, with acids, water and not more than 5 per cent peroxy-acetic acid, stabilized.	5.1	UN3149	II	OXIDIZER, CORROSIVE.	A2, A3, A6, B12, B53, B104, T14.	None	202	243	1 L	5 L	D
Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary).	5.1	UN2014	II	OXIDIZER, CORROSIVE.	12, A3, A6, B12, B53, B80, B81, B85, B104, T14, T37.	None	202	243	Forbid-den.	Forbid-den.	D
Hydrogen peroxide, aqueous solutions with not less than 8 per cent but less than 20 per cent hydrogen peroxide (stabilized as necessary).	5.1	UN2984	III	OXIDIZER	17, A1, B104, T8, T37.	152	203	241	2.5 L	30 L	B

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SECTION 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) Packing group	(6) Label(s) required (if not excepted)	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
	Hydrogen peroxide, aqueous solutions with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary).	5.1	U2014	II	OXIDIZER, CORROSIVE.	A2, A3, A6, B12, B53, B104, T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hypochlorite solutions with more than 5 per cent but less than 16 per cent available chlorine.	8	UN1791	III	CORROSIVE	B104, N34, T7	154	203	242	5 L	60 L	B	26
	Isobutylamine	3	UN1214	II	FLAMMABLE LIQUID.	B101, T8	150	202	242	5 L	60 L	B	40
	Isobutyl chloride	3	UN2395	II	FLAMMABLE LIQUID, CORROSIVE.	B100, T9, T26	None	202	243	1 L	5 L	C	40
	Isocyanatobenzotri-fluorides.	6.1	UN2285	II	POISON	5, B101, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Lithium	4.3	UN1415	II	DANGEROUS WHEN WET.	A7, A19, B100, N45.	None	212	244	Forbidden.	50 kg	E	
	Lithium aluminum hydride.	4.3	UN1410	I	DANGEROUS WHEN WET.	A19, B100, N40	None	211	242	Forbidden.	15 kg	E	
	Lithium ferrosilicon	4.3	UN2830	II	DANGEROUS WHEN WET.	A19, B105, B106	None	212	241	15 kg	50 kg	E	40, 85, 103
	Lithium hydride	4.3	UN1414	I	DANGEROUS WHEN WET.	A19, B100, N40	None	211	242	Forbidden.	15 kg	E	
	Lithium hydride, fused solid.	4.3	UN2805	II	DANGEROUS WHEN WET.	A8, A19, A20, B101, B106.	None	212	241	15 kg	50 kg	E	
	Lithium silicon	4.3	UN1417	II	DANGEROUS WHEN WET.	A19, A20, B100	None	212	241	15 kg	50 kg	A	85, 103
	Magnesium aluminum phosphide.	4.3	UN1419	I	DANGEROUS WHEN WET, POISON.	A19, B100, N34, N40.	None	211	242	Forbidden.	15 kg	E	40, 85
	Magnesium granules, coated particle size not less than 149 microns.	4.3	UN2950	III	DANGEROUS WHEN WET.	A1, A19, B108	None	213	240	25 kg	100 kg	A	
	Magnesium hydride.	4.3	UN2010	I	DANGEROUS WHEN WET.	A19, B100, N40	None	211	242	Forbidden.	15 kg	E	

SECTION 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) Packing group	(6) Label(s) required (if not excepted)	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Pa-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Phosphorus pentasulfide, free from yellow or white phosphorus.	4.3	UN1340	II	DANGEROUS WHEN WET	A20, B59, B100	None	212	242	15 kg	50 kg	B	74
	Poisonous solids, flammable, n.o.s.	6.1	UN2930	I	POISON, FLAMMABLE SOLID.	B106	None	211	242	1 kg	15 kg	B	
				II	POISON, FLAMMABLE SOLID.	B106	None	212	242	15 kg	50 kg	B	
	Poisonous solids, self heating, n.o.s.	6.1	UN3124	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	A5, B100	None	211	241	5 kg	15 kg	C	
	Poisonous solids, which in contact with water emit flammable gases, n.o.s.	6.1	UN3125	I	POISON, DANGEROUS WHEN WET.	A5, B101	None	211	241	5 kg	15 kg	E	
				II	POISON, DANGEROUS WHEN WET.	B100	None	212	242	15 kg	50 kg	E	
	Potassium	4.3	UN2257	II	DANGEROUS WHEN WET	A19, A20, B27, B100, N6, N34, T15, T26.	None	212	244	Forbidden.	50 kg	D	
	Potassium bifluoride, solid.	8	UN1811	II	CORROSIVE, POISON.	B106, N3, N34, T8	154	212	242	15 kg	50 kg	A	25, 26, 40, 95
	Potassium sulfide, anhydrous or Potassium sulfide with less than 30 percent water of crystallization.	4.2	UN1382	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, B16, B106, N34.	None	212	241	15 kg	50 kg	A	
	Propionyl chloride	3	UN1815	II	FLAMMABLE LIQUID, CORROSIVE.	B100, T8, T26	None	202	243	1 L	5 L	B	40
	Rubidium	4.3	UN1423	I	DANGEROUS WHEN WET.	22, A7, A19, B100, N34, N40, N45.	None	211	242	Forbidden.	15 kg	E	
	Self-heating substances, solid, n.o.s.	4.2	UN3088	II	SPONTANEOUSLY COMBUSTIBLE.	B101	None	212	241	25 kg	100 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.	B101	None	213	241	25 kg	100 kg	C	

UN Number	Provision	Material Name	Classification	Quantity	Labeling	Other
4.3 UN1428	II	Sodium	DANGEROUS WHEN WET.	50 kg	244	Forbid-den.
4.3 UN2835	II	Sodium aluminum hydride.	DANGEROUS WHEN WET.	50 kg	242	Forbid-den.
4.2 UN1384	II	Sodium dithionite or Sodium hydrosulfite.	SPONTANEOUSLY COMBUSTIBLE.	50 kg	241	15 kg
4.3 UN1427	I	Sodium hydride	DANGEROUS WHEN WET.	15 kg	242	Forbid-den.
8 UN2439	II	Sodium hydrogen fluoride.	CORROSIVE	50 kg	240	15 kg
4.2 UN1385	II	Sodium sulfide, anhydrous or Sodium sulfide with less than 30 per cent water crystallization.	SPONTANEOUSLY COMBUSTIBLE.	50 kg	241	15 kg
4.3 UN1433	I	Stannic phosphide	DANGEROUS WHEN WET.	15 kg	242	Forbid-den.
4.3 UN3131	I	Substances which in contact with water emit flammable gases, solid, corrosive, n.o.s.	DANGEROUS WHEN WET, CORROSIVE.	15 kg	242	Forbid-den.
.....	II	.....	DANGEROUS WHEN WET, CORROSIVE.	50 kg	242	15 kg
.....	III	.....	DANGEROUS WHEN WET, CORROSIVE.	100 kg	241	25 kg
4.3 UN3132	I	Substances which in contact with water emit flammable gases, solid, flammable, n.o.s.	DANGEROUS WHEN WET, FLAMMABLE SOLID.	15 kg	242	Forbid-den.
.....	II	.....	DANGEROUS WHEN WET, FLAMMABLE SOLID.	50 kg	242	15 kg
.....	III	.....	DANGEROUS WHEN WET, FLAMMABLE SOLID.	100 kg	241	25 kg
4.3 UN2813	I	Substances which in contact with water emit flammable gases, solid, n.o.s.	DANGEROUS WHEN WET.	15 kg	242	Forbid-den.
.....	II	.....	DANGEROUS WHEN WET.	50 kg	242	15 kg

SECTION 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) Packing group	(6) Label(s) required (if not excepted)	(7) Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk packaging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	DANGEROUS WHEN WET.	B100	None	213	241	25 kg	100 kg	E	40
	Substances which in contact with water, emit flammable gases, solid, poisonous, n.o.s.	4.3	UN3134	I	DANGEROUS WHEN WET, POISON.	A5, N40, B101	None	211	242	Forbidden.	15 kg	E	
				II	DANGEROUS WHEN WET, POISON.	B105	None	212	242	15 kg	50 kg	E	
				III	DANGEROUS WHEN WET, POISON.	B105	None	213	241	25 kg	100 kg	E	
	Substances which in contact with water emit flammable gases, solid, self-heating, n.o.s.	4.3	UN3135	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	B100, N40	None	211	242	Forbidden.	15 kg	E	
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	B100	None	212	242	15 kg	50 kg	E	
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	B100	None	213	241	25 kg	100 kg	E	
	Thiophene	3	UN2414	II	FLAMMABLE LIQUID.	B101, T2	150	202	242	5 L	60 L	B	40
	Thiophosphoryl chloride.	8	UN1837	II	CORROSIVE	A3, A7, B2, B8, B25, B101, N34, T12.	None	202	242	Forbidden.	30 L	C	8, 40
	Titanium trichloride mixtures.	8	UN2869	II	CORROSIVE	A7, B106, N34	154	212	240	15 kg	50 kg	A	40
	Toluene	6.1	UN2078	II	POISON	B101, T14	None	202	243	5 L	60 L	B	25, 40
	Diisocyanate.	3	UN1296	II	FLAMMABLE LIQUID.	B101, T8	150	202	242	5 L	60 L	B	40
	Triethylamine	3	UN1302	II	FLAMMABLE LIQUID.	A3, B100, T14	None	201	243	1 L	30 L	E	
	Vinyl ethyl ether, inhibited.	6.1	UN3073	II	POISON, FLAMMABLE LIQUID.	B100, T8	None	212	243	5 L	60 L	B	40

Zinc ashes	4.3	UN1435	III	.....	DANGEROUS WHEN WET.	A1, A19, B108	.....	None	.....	213	241	25 kg ...	100 kg .	A.
Zinc powder or Zinc dust.	4.3	UN1436	I	.....	DANGEROUS WHEN WET, SPONTANEOUSLY COM- BUSTIBLE.	B100	.....	None	.....	211	242	Forbidden.	15 kg ...	A.
.....	.....	.....	II	.....	DANGEROUS WHEN WET, SPONTANEOUSLY COM- BUSTIBLE.	B108	.....	None	.....	212	242	15 kg ...	50 kg ...	A.
.....	.....	.....	III	.....	DANGEROUS WHEN WET, SPONTANEOUSLY COM- BUSTIBLE.	B108	.....	None	.....	213	242	25 kg ...	100 kg .	A.

7. In § 172.102, in paragraph (c)(3) Special Provisions B100, B101, B103, B104, B105, B106, B108, B109 and B110 are added in appropriate alpha-numeric order to read as follows:

§ 172.102 Special provisions.

* * * * *
(c) * * *
(3) * * *

Code/Special Provisions

* * * * *

- B100 Intermediate bulk containers are not authorized.
- B101 Authorized only in metal intermediate bulk containers.
- B103 If an intermediate bulk container is used, the package must be transported in a closed freight container or transport vehicle.
- B104 Intermediate bulk containers must be provided with a device to allow venting during transport. The inlet to the pressure relief valve must communicate with the vapor space of the packaging and lading during transport.
- B105 Authorized only in rigid intermediate bulk containers.
- B106 Authorized in intermediate bulk containers that are vapor tight.
- B108 Authorized in sift-proof, water-resistant flexible, fiberboard or wooden intermediate bulk containers; packed in a closed transport vehicle.
- B109 Not authorized in flexible intermediate bulk containers.
- B110 Authorized in intermediate bulk containers only in accordance with § 173.242(d) of this subchapter.

* * * * *

8. In § 172.322, paragraphs (b) and (e)(2) are revised to read as follows:

§ 172.322 Marine pollutants.

* * * * *

(b) A bulk packaging that contains a marine pollutant must—

(1) Be marked with the MARINE POLLUTANT mark on at least two opposing sides or two ends other than the bottom if the packaging has a capacity of less than 3,785 L (1,000 gallons). The mark must be visible from the direction it faces. The mark may be displayed in black lettering on a square-on-point configuration having the same outside dimensions as a placard; or

(2) Be marked on each end and each side with the MARINE POLLUTANT mark if the packaging has a capacity of 3,785 L (1,000 gallons) or more. The mark must be visible from the direction it faces. The mark may be displayed in black lettering on a square-on-point configuration having the same outside dimensions as a placard.

* * * * *

(e) * * *

(2) The symbol, letters and border must be black and the background white, or the symbol, letters, border and

background must be of contrasting color to the surface to which the mark is affixed. Each side of the mark must be—

(i) At least 100 mm (3.9 inches) for marks applied to:

(A) Non-bulk packagings, except in the case of packagings which, because of their size, can only bear smaller marks; or

(B) Bulk packagings with a capacity of less than 3785 L (1,000 gallons); or

(ii) At least 250 mm (9.8 inches) for marks applied to all other bulk packagings.

9. In § 172.514, paragraph (c)(3) is amended by removing the period at the end of the paragraph and replacing it with “; and” and paragraph (c)(4) is added to read as follows:

§ 172.514 Bulk packagings other than tank cars.

* * * * *

(c) * * *

(4) An intermediate bulk container.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.24 [Amended]

11. In § 173.24, the third sentence of paragraph (d) is amended by replacing “subpart L” with “subpart L or subpart N” and replacing “subpart M” with “subpart M or subpart O, as appropriate.”

12. In § 173.32, paragraphs (d) and (e)(1)(ii) are revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(d) *Use of Specification 52, 53, 56 and 57 portable tanks.* Continued use of an existing portable tank constructed to DOT Specification 52 or 53 is authorized only for a tank constructed before June 1, 1972. Continued use of an existing portable tank constructed to DOT Specification 56 or 57 is authorized only for a tank constructed before October 1, 1996.

(e) * * *

(1) * * *

(ii) Specifications 52, 53, 56 and 57 portable tanks (§§ 178.251, 178.252, 178.253 of this subchapter): At least once every 2.5 years.

* * * * *

13. Section 173.35 is added to read as follows:

§ 173.35 Hazardous materials in intermediate bulk containers.

(a) No person may offer or accept a hazardous material for transportation in an intermediate bulk container except as authorized by this subchapter. Each intermediate bulk container used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity. A specification intermediate bulk container, for which the prescribed periodic retest or inspection under subpart D of part 180 of this subchapter is past due, may not be filled and offered for transportation until the retest or inspection have been successfully completed. This requirement does not apply to any intermediate bulk container filled prior to the retest or inspection due date.

(b) Before being filled and offered for transportation, each intermediate bulk container and its service equipment must be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render the intermediate bulk container unsafe for transportation. No rigid plastic or composite intermediate bulk container with repaired bodies may be reused; however, plastic components, such as closures, valves, or legs, may be replaced. Fiberboard, wooden, or flexible intermediate bulk containers may not be reused.

(c) A metal intermediate bulk container, or a part thereof, subject to thinning by mechanical abrasion or corrosion due to the lading, must be protected by providing a suitable increase in thickness of material, a lining or some other suitable method of protection. Increased thickness for corrosion or abrasion protection must be added to the wall thickness specified in § 178.705(c)(1)(iv) of this subchapter.

(d) Notwithstanding requirements in § 173.24b of this subpart, when filling an intermediate bulk container with liquids, sufficient ullage must be left to ensure that, at the mean bulk temperature of 50 °C (122 °F), the intermediate bulk container is not filled to more than 98 percent of its water capacity.

(e) Where two or more closure systems are fitted in series, the system nearest to the hazardous material being carried must be closed first.

(f) During transportation—

(1) No hazardous material may remain on the outside of the intermediate bulk container; and

(2) Each intermediate bulk container must be securely fastened to or contained within the transport unit.

(g) Each intermediate bulk container used for transportation of solids which may become liquid at temperatures likely to be encountered during transportation must also be capable of containing the substance in the liquid state.

(h) Liquid hazardous materials may only be offered for transportation in a metal, rigid plastic, or composite intermediate bulk container that is appropriately resistant to an increase of internal pressure likely to develop during transportation.

(1) A rigid plastic or composite intermediate bulk container may only be filled with a liquid having a vapor pressure less than or equal to the greater of the following two values: the first value is determined from any of the methods in paragraphs (h)(1)(i), (ii) or (iii) of this section. The second value is determined by the method in paragraph (h)(1)(iv) of this section.

(i) The gauge pressure (pressure in the intermediate bulk container above ambient atmospheric pressure) measured in the intermediate bulk container at 55 °C (131 °F). This gauge pressure must not exceed two-thirds of the marked test pressure and must be determined after the intermediate bulk container was filled and closed at 15 °C

(60 °F) to less than or equal to 98 percent of its capacity.

(ii) The absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) in the intermediate bulk container at 50 °C (122 °F). This absolute pressure must not exceed four-sevenths of the sum of the marked test pressure and 100 kPa (14.5 psi).

(iii) The absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) in the intermediate bulk container at 55 °C (131 °F). This absolute pressure must not exceed two-thirds of the sum of the marked test pressure and 100 kPa (14.5 psi).

(iv) Twice the static pressure of the substance, measured at the bottom of the intermediate bulk container. This value must not be less than twice the static pressure of water.

(2) Gauge pressure (pressure in the intermediate bulk container above ambient atmospheric pressure) in metal intermediate bulk containers must not exceed 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F).

(i) The requirements in this section do not apply to DOT-56 or -57 portable tanks.

(j) No intermediate bulk container may be filled with a Packing Group I liquid. Rigid plastic, composite, flexible, wooden or fiberboard intermediate bulk containers used to transport Packing Group I solid materials may not exceed 1.5 cubic meters (17.7 cubic feet) capacity. For Packing Group I solids, a metal intermediate bulk container may not exceed 3 cubic meters (35.3 cubic feet) capacity.

(k) When an intermediate bulk container is used for the transportation of liquids with a flashpoint of 60.5 °C (141 °F) (closed cup) or lower, or powders with the potential for dust explosion, measures must be taken during product loading and unloading to prevent a dangerous electrostatic discharge.

14. In § 173.225, in paragraph (b) the following entries in the Organic Peroxides Table, and Note 14 following the Table are revised, and a new paragraph (e)(5) is added to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

ORGANIC PEROXIDES TABLE

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-(4-tert-butylcyclohexyl) peroxydicarbonate as a stable dispersion in water	UN3119	=42					OP8A	30	35	14
Dicetyl peroxydicarbonate as a stable dispersion in water	UN3119	=42					OP8A	30	35	14
Dilauroyl peroxide as a stable dispersion in water	UN3109	=42					OP8A			14
Dimyristyl peroxydicarbonate as a stable dispersion in water	UN3119	=42					OP8A	20	25	14

[Revised]

Notes:

14. For domestic shipments, this material may be transported in an intermediate bulk container or bulk packaging under the provisions of § 173.225(e)(3)(iii).

(e) Bulk packagings for organic peroxides.

(5) Intermediate bulk containers. Specification 31HA1 composite intermediate bulk containers that are tested at the Packing Group II performance level in accordance with subpart O of part 178 of this subchapter.

16. In § 173.240, paragraph (d) is added to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

(d) Intermediate bulk containers.

Intermediate bulk containers are authorized subject to the conditions and limitations of this paragraph and paragraph (d)(2) of this section provided they conform to the requirements in subpart O of part 178 of this subchapter at the Packing Group performance level specified in column 5 of the § 172.101 Table of this subchapter for the material being transported.

(1) The following are authorized:
 (i) Composite: 11HZ1, 11HZ2, 21HZ1, 21HZ2, 31HZ1, or 31HZ2. For composite intermediate bulk containers, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 21HA1 is a composite intermediate bulk container with a metal outer packaging (see § 178.702 of this subchapter);

(ii) Fiberboard: 11G;
 (iii) Flexible: 13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, or 13M2;

(iv) Metal: 11A, 11B, 11N, 21A, 21B, 21N, 31A, 31B, or 31N;

(v) Rigid plastic: 11H1, 11H2, 21H1, 21H2, 31H1, or 31H2; or

(vi) Wooden intermediate bulk containers: 11C, 11D, or 11F.

(2) The following conditions and limitations apply to the use of intermediate bulk containers:

(i) Flexible, fiberboard and wooden intermediate bulk containers are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation; or

(ii) Flexible, fiberboard, or wooden intermediate bulk containers containing materials in Packing Group II must be packed in a closed freight container or a closed transport vehicle.

17. In § 173.241, paragraph (d) is added to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

(d) Intermediate bulk containers. (1) Intermediate bulk containers are

authorized subject to the conditions and limitations of this paragraph and paragraph (d)(2) of this section provided they conform to the requirements in subpart O of part 178 of this subchapter at the Packing Group performance level specified in column 5 of the § 172.101 Table of this subchapter for the material being transported.

(i) The following are authorized for liquids or solids:

(A) Composite: 31HZ1 or 31HZ2; For each composite intermediate bulk container, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 31HA1 is a composite intermediate bulk container with a metal outer packaging (see § 178.702 of this subchapter);

(B) Metal: 31A, 31B, or 31N; or
 (C) Rigid plastic: 31H1 or 31H2.

(ii) The following are authorized for solids only:

(A) Composite: 11HZ1, 11HZ2, 21HZ1, or 21HZ2. For each composite intermediate bulk container, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 21HA1 is a composite intermediate bulk container with a metal outer packaging (see § 178.702 of this subchapter);

(B) Fiberboard: 11G;
 (C) Flexible: 13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, or 13M2;
 (D) Metal: 11A, 11B, 11N, 21A, 21B, or 21N;
 (E) Rigid plastic: 11H1, 11H2, 21H1, or 21H2; or
 (F) Wooden: 11C, 11D, or 11F.

(2) The following conditions and limitations apply to the use of intermediate bulk containers:

(i) Flexible, fiberboard and wooden intermediate bulk containers are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(ii) Only liquids with a vapor pressure less than or equal to 110 kPa (16 psig) at 50 °C (122 °F), or 130 kPa (18.9 psig) at 55 °C (131 °F), are authorized in metal intermediate bulk containers; or

(iii) Flexible, fiberboard, or wooden intermediate bulk containers containing materials in Packing Group II must be packed in a closed freight container or a closed transport vehicle.

18. In § 173.242, paragraph (d) is added to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

(d) Intermediate bulk containers. (1) Intermediate bulk containers are

authorized subject to the conditions and limitations of this paragraph and paragraph (d)(2) of this section provided they conform to the requirements in subpart O of part 178 of this subchapter at the Packing Group performance level specified in column 5 of the § 172.101 Table of this subchapter for the material being transported.

(i) The following are authorized for liquids or solids:

(A) Composite intermediate bulk containers: 31HZ1 or 31HZ2; for each composite intermediate bulk container, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 21HA1 is a composite intermediate bulk container with a metal outer packaging (see § 178.702 of this subchapter);

(B) Metal: 31A, 31B, or 31N; or
 (C) Rigid plastic: 31H1 or 31H2;

(ii) The following are authorized for solids only:

(A) Composite: 11HZ1, 11HZ2, 21HZ1, or 21HZ2. For each composite intermediate bulk container, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 21HA1 is a composite intermediate bulk container with a metal outer packaging (see § 178.702 of this subchapter);

(B) Fiberboard: 11G;
 (C) Flexible: 13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, or 13M2;
 (D) Metal: 11A, 11B, 11N, 21A, 21B, or 21N;

(E) Rigid plastic: 11H1, 11H2, 21H1, or 21H2; or

(F) Wooden intermediate bulk containers: 11C, 11D, or 11F.

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) No Packing Group I liquids or materials classified as Division 4.2 Packing Group I are authorized in intermediate bulk containers. Packing Group I solids are only authorized in metal intermediate bulk containers with capacities up to 3 cubic meters (35.4 cubic feet) and in rigid plastic, composite and wooden intermediate bulk containers with capacities of up to 1.5 cubic meters (17.7 cubic feet);

(ii) Flexible, fiberboard and wooden intermediate bulk containers are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iii) Only liquids with a vapor pressure less than or equal to 110 kPa (16 psig) at 50 °C (122 °F), or 130 kPa (18.9 psig) at 55 °C (131 °F), are

authorized in metal intermediate bulk containers; or

(iv) Flexible, fiberboard, or wooden intermediate bulk containers and composite intermediate bulk containers, with a fiberboard outer body, containing materials in Packing Group I must be packed in a closed freight container or a closed transport vehicle. Flexible, fiberboard, or wooden intermediate bulk containers containing materials in Packing Group II must be packed in a closed freight container or a closed transport vehicle.

19. In § 173.243, the section heading is revised and paragraphs (d) and (e) are added to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard materials which pose a moderate hazard.

* * * * *

(d) *Intermediate bulk containers.* (1) Metal intermediate bulk containers (31A, 31B, 31N) are authorized subject to the conditions and limitations of paragraph (d)(2) of this section provided they conform to the requirements in subpart O of part 178 of this subchapter at the Packing Group performance level specified in column 5 of the § 172.101 Table of this subchapter for the material being transported.

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) No Packing Group I liquids or materials classified as Division 4.2 Packing Group I are authorized in intermediate bulk containers. Packing Group I solids are only authorized in metal intermediate bulk containers with capacities up to 3 cubic meters (35.4 cubic feet); and in rigid plastic, composite and wooden intermediate bulk containers with capacities of up to 1.5 cubic meters (17.7 cubic feet);

(ii) Only liquids with a vapor pressure less than or equal to 110 kPa (16 psig) at 50 °C (122 °F), or 130 kPa (18.9 psig) at 55 °C (131 °F), are authorized in metal intermediate bulk containers; or

(iii) Flexible, fiberboard, or wooden intermediate bulk containers and composite intermediate bulk containers,

with a fiberboard outer body, containing materials in Packing Group I must be packed in a closed freight container or a closed transport vehicle. Flexible, fiberboard, or wooden intermediate bulk containers containing materials in Packing Group II must be packed in a closed freight container or a closed transport vehicle.

(e) A dual hazard material may be packaged in accordance with § 173.242 if:

(1) The subsidiary hazard is Class 3 with a flash point greater than 38 °C (100°F); or

(2) The subsidiary hazard is Division 6.1, Packing Group III.

PART 178—SPECIFICATIONS FOR PACKAGINGS

20. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

Subpart H—[Amended]

21. In subpart H, §§ 178.251, 178.251-1 through 178.251-7, 178.252, 178.252-1 through 178.252-3, 178.253, and 178.253-1 through 178.253-5 are removed and reserved.

22. Subpart N is added to part 178 to read as follows:

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

Sec.

178.700 Purpose, scope and definitions.

178.702 Intermediate bulk container identification codes.

178.703 Marking of intermediate bulk containers.

178.704 General intermediate bulk container standards.

178.705 Standards for metal intermediate bulk containers.

178.706 Standards for rigid plastic intermediate bulk containers.

178.707 Standards for composite intermediate bulk containers.

178.708 Standards for fiberboard intermediate bulk containers.

178.709 Standards for wooden intermediate bulk containers.

178.710 Standards for flexible intermediate bulk containers.

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

§ 178.700 Purpose, scope and definitions.

(a) This subpart prescribes requirements applying to intermediate bulk containers intended for the transportation of hazardous materials. Standards for these packagings are based on the UN Recommendations.

(b) Terms used in this subpart are defined in § 171.8 of this subchapter and in paragraph (c) of this section.

(c) The following definitions pertain to the intermediate bulk container standards in this subpart.

(1) *Body* means the receptacle proper (including openings and their closures, but not including service equipment), which has a volumetric capacity of not more than 3 cubic meters (3,000 liters, 793 gallons or 35.3 cubic feet) and not less than 0.45 cubic meters (450 liters, 119 gallons or 5.3 cubic feet).

(2) *Service equipment* means filling and discharge, pressure relief, safety, heating and heat-insulating devices and measuring instruments.

(3) *Structural equipment* means the reinforcing, fastening, handling, protective or stabilizing members of the body or stacking load bearing structural members (such as metal cages).

(4) *Maximum permissible gross mass* means the mass of the body, its service equipment, structural equipment and the maximum net mass (see § 171.8 of this subchapter).

§ 178.702 Intermediate bulk container identification codes.

(a) Intermediate bulk container code designations consist of: two numerals specified in paragraph (a)(1) of this section; followed by the capital letter(s) specified in paragraph (a)(2) of this section; followed, when specified in an individual section, by a numeral indicating the category of intermediate bulk container.

(1) Intermediate bulk container code number designations are as follows:

Type	For solids, discharged		For liquids
	by gravity	Under pressure of more than 10 kPa (1.45 psi)	
Rigid	11	21	31
Flexible	13		

(2) Intermediate bulk container code letter designations are as follows:

"A" means steel (all types and surface treatments).

"B" means aluminum.

"C" means natural wood.

"D" means plywood.
 "F" means reconstituted wood.
 "G" means fiberboard.
 "H" means plastic.
 "L" means textile.
 "M" means paper, multiwall.
 "N" means metal (other than steel or aluminum).

(b) For composite intermediate bulk containers, two capital letters are used in sequence following the numeral indicating intermediate bulk container design type. The first letter indicates the material of the intermediate bulk container inner receptacle. The second letter indicates the material of the outer intermediate bulk container. For example, 31HA1 is a composite intermediate bulk container with a plastic inner receptacle and a steel outer packaging.

§ 178.703 Marking of intermediate bulk containers.

(a) The manufacturer shall:
 (1) Mark every intermediate bulk container in a durable and clearly visible manner (applied in a single line or in multiple lines provided the correct

sequence is followed) with the following information in the sequence presented:

(i) The United Nations symbol as illustrated in § 178.503(d)(1). For metal intermediate bulk containers on which the marking is stamped or embossed, the capital letters 'UN' may be applied instead of the symbol.

(ii) The code number designating intermediate bulk container design type according to § 178.702(a) (1) and (2).

(iii) A capital letter identifying the performance standard under which the design type has been successfully tested, as follows:

(A) X—for intermediate bulk containers meeting Packing Group I, II and III tests;

(B) Y—for intermediate bulk containers meeting Packing Group II and III tests; and

(C) Z—for intermediate bulk containers meeting only Packing Group III tests.

(iv) The month (designated numerically) and year (last two digits) of manufacture.

(v) The country authorizing the allocation of the mark. The letters 'USA' indicate that the intermediate bulk container is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subparts N and O of this part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(vii) The stacking test load in kilograms (kg). For intermediate bulk containers not designed for stacking, the figure "0" must be shown.

(viii) The maximum permissible gross mass or, for flexible intermediate bulk containers, the maximum net mass, in kg.

(2) The following are examples of symbols and required markings:

(i) For a metal intermediate bulk container containing solids discharged by gravity made from steel:

BILLING CODE 4910-60-P



11A/Y/02 92/USA/ABC/5500/1500

BILLING CODE 4910-60-C

(ii) For a flexible intermediate bulk container containing solids discharged

by gravity and made from woven plastic with a liner:

BILLING CODE 4910-60-P



13H3/Z/03 92/USA/ABC/0/1500

BILLING CODE 4910-60-C

(iii) For a rigid plastic intermediate bulk container containing liquids, made from plastic with structural equipment

withstanding the stack load and with a manufacturer's symbol in place of the manufacturer's name and address:

BILLING CODE 4910-60-P



31H1/Y/04 93/USA/M9399/10800/1200

BILLING CODE 4910-60-C

(iv) For a composite intermediate bulk container containing liquids, with a rigid plastic inner receptacle and an

outer steel body and with the symbol of a DOT approved third-party test laboratory:

BILLING CODE 4910-60-P



31HA1/Y/05 93/USA/+ZT1235/10800/1200

BILLING CODE 4910-60-C

(b) *Additional marking.* In addition to markings required in paragraph (a) of this section, each intermediate bulk container must be marked as follows in a place near the markings required in paragraph (a) of this section that is readily accessible for inspection. Where units of measure are used, the metric unit indicated (e.g., 450 liters) must also appear.

(1) For each rigid plastic and composite intermediate bulk container, the following markings must be included:

- (i) Rated capacity in liters of water at 20 °C (68 °F);
- (ii) Tare mass in kilograms;
- (iii) Gauge test pressure in kPa;
- (iv) Date of last leakproofness test, if applicable (month and year); and
- (v) Date of last inspection (month and year).

(2) For each metal intermediate bulk container, the following markings must be included on a metal corrosion-resistant plate:

- (i) Rated capacity in liters of water at 20 °C (68 °F);
- (ii) Tare mass in kilograms;
- (iii) Date of last leakproofness test, if applicable (month and year);
- (iv) Date of last inspection (month and year);
- (v) Maximum loading/discharge pressure, in kPa, if applicable;
- (vi) Body material and its minimum thickness in mm; and
- (vii) Serial number assigned by the manufacturer.

(3) Markings required by paragraph (b)(1) or (b)(2) of this section may be preceded by the narrative description of the marking, e.g. "Tare Mass: * * *" where the "* * *" are replaced with the tare mass in kilograms of the intermediate bulk container.

(4) For each fiberboard and wooden intermediate bulk container, the tare mass in kg must be shown.

(5) Each flexible intermediate bulk container may be marked with a pictogram displaying recommended lifting methods.

§ 178.704 General intermediate bulk container standards.

(a) Each intermediate bulk container must be resistant to, or protected from, deterioration due to exposure to the external environment. Intermediate bulk containers intended for solid hazardous materials must be sift-proof and water-resistant.

(b) All service equipment must be so positioned or protected as to minimize potential loss of contents resulting from damage during intermediate bulk container handling and transportation.

(c) Each intermediate bulk container, including attachments, and service and structural equipment, must be designed to withstand, without loss of hazardous materials, the internal pressure of the contents and the stresses of normal handling and transport. An intermediate bulk container intended for stacking must be designed for stacking. Any lifting or securing features of an intermediate bulk container must be of sufficient strength to withstand the normal conditions of handling and transportation without gross distortion or failure and must be positioned so as to cause no undue stress in any part of the intermediate bulk container.

(d) An intermediate bulk container consisting of a packaging within a framework must be so constructed that:

- (1) The body is not damaged by the framework;
- (2) The body is retained within the framework at all times; and
- (3) The service and structural equipment are fixed in such a way that they cannot be damaged if the connections between body and frame allow relative expansion or movement.

(e) Bottom discharge valves must be secured in the closed position and the discharge system suitably protected from damage. Valves having lever closures must be secured against accidental opening. The open or closed position of each valve must be readily apparent. For each intermediate bulk container containing a liquid, a secondary means of sealing the

discharge aperture must also be provided, e.g., by a blank flange or equivalent device.

(f) Intermediate bulk container design types must be constructed in such a way as to be bottom-lifted or top-lifted as specified in §§ 178.811 and 178.812.

§ 178.705 Standards for metal intermediate bulk containers.

(a) The provisions in this section apply to metal intermediate bulk containers intended to contain liquids and solids. Metal intermediate bulk container types are designated:

- (1) 11A, 11B, 11N for solids that are loaded or discharged by gravity.
- (2) 21A, 21B, 21N for solids that are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig).
- (3) 31A, 31B, 31N for liquids or solids.

(b) Definitions for metal intermediate bulk containers:

(1) *Metal intermediate bulk container* means an intermediate bulk container with a metal body, together with appropriate service and structural equipment.

(2) *Protected* means providing the intermediate bulk container body with additional external protection against impact and abrasion. For example, a multi-layer (sandwich) or double wall construction or a frame with a metal lattice-work casing.

(c) Construction requirements for metal intermediate bulk containers are as follows:

(1) *Body.* The body must be made of ductile metal materials. Welds must be made so as to maintain design type integrity of the receptacle under conditions normally incident to transportation.

(i) The use of dissimilar metals must not result in deterioration that could affect the integrity of the body.

(ii) Aluminum intermediate bulk containers intended to contain flammable liquids must have no movable parts, such as covers and closures, made of unprotected steel

liable to rust, which might cause a dangerous reaction from friction or percussive contact with the aluminum.

(iii) Metals used in fabricating the body of a metal intermediate bulk container must meet the following requirements:

(A) For steel, the percentage elongation at fracture must not be less than 10,000/Rm with a minimum of 20 percent; where Rm = minimum tensile strength of the steel to be used, in N/mm²; if U.S. Standard units of pounds per square inch are used for tensile strength then the ratio becomes 10,000 × (145/Rm).

(B) For aluminum, the percentage elongation at fracture must not be less than 10,000/(6Rm) with an absolute minimum of eight percent; if U.S. Standard units of pounds per square inch are used for tensile strength then the ratio becomes 10,000 × 145/(6Rm).

(C) Specimens used to determine the elongation at fracture must be taken transversely to the direction of rolling and be so secured that:

$$L_o = 5d$$

or

$$L_o = 5.65 \sqrt{A}$$

where: L_o = gauge length of the specimen before the test

d = diameter

A = cross-sectional area of test specimen.

(iv) Minimum wall thickness:

(A) For a reference steel having a product of $R_m \times A_o = 10,000$, where A_o = minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress, ($R_m \times A_o = 10,000 \times 145$; if tensile strength is in U.S. Standard units of pounds per square inch) the wall thickness must not be less than:

Capacity in liters ¹	Wall thickness in mm (inches)			
	Types 11A, 11B, 11N		Types 21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
>450 and ≤1000	2.0 (0.079)	1.5 (0.059)	2.5 (0.098)	2.0 (0.079)
>1000 and ≤2000	2.5 (0.098)	2.0 (0.079)	3.0 (0.118)	2.5 (0.098)
>2000 and ≤3000	3.0 (0.118)	2.5 (0.098)	4.0 (0.157)	3.0 (0.118)

¹ Where: gallons = liters × 0.264.

(B) For metals other than the reference steel described in paragraph (c)(1)(iii)(A) of this section, the minimum wall thickness is the greater of 1.5 mm (0.059 inches) or as determined by use of the following equivalence formula:

Formula for metric units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{R_{m1} \times A_1}}$$

Formula for U.S. Standard units

$$e_1 = \frac{544 \times e_0}{\sqrt[3]{(R_{m1} \times A_1) / 145}}$$

where:

e_1 = required equivalent wall thickness of the metal to be used (in mm or if e_0 is in inches, use formula for U.S. Standard units).

e_0 = required minimum wall thickness for the reference steel (in mm or if e_0 is in inches, use formula for U.S. Standard units).

R_{m1} = guaranteed minimum tensile strength of the metal to be used (in N/mm² or for U.S. Standard units, use pounds per square inch).

A_1 = minimum elongation (as a percentage) of the metal to be used

on fracture under tensile stress (see paragraph (c)(1) of this section).

(2) *Pressure relief.* The following pressure relief requirements apply to intermediate bulk containers intended for liquids:

(i) Intermediate bulk containers must be capable of releasing a sufficient amount of vapor in the event of fire engulfment to ensure that no rupture of the body will occur due to pressure build-up. This can be achieved by spring-loaded or frangible pressure relief devices or by other means of construction.

(ii) The start-to-discharge pressure may not be higher than 65 kPa (9 psig) and no lower than the vapor pressure of the hazardous material plus the partial pressure of the air or other inert gases, minus 100 kPa (14.5 psig) at 55 °C (131 °F), determined on the basis of a maximum degree of filling as specified in § 173.35(d) of this subchapter. Pressure relief devices must be fitted in the vapor space.

§ 178.706 Standards for rigid plastic intermediate bulk containers.

(a) The provisions in this section apply to rigid plastic intermediate bulk containers intended to contain solids or liquids. Rigid plastic intermediate bulk container types are designated:

(1) 11H1 fitted with structural equipment designed to withstand the whole load when intermediate bulk

containers are stacked, for solids which are loaded or discharged by gravity.

(2) 11H2 freestanding, for solids which are loaded or discharged by gravity.

(3) 21H1 fitted with structural equipment designed to withstand the whole load when intermediate bulk containers are stacked, for solids which are loaded or discharged under pressure.

(4) 21H2 freestanding, for solids which are loaded or discharged under pressure.

(5) 31H1 fitted with structural equipment designed to withstand the whole load when intermediate bulk containers are stacked, for liquids.

(6) 31H2 freestanding, for liquids.

(b) Rigid plastic intermediate bulk containers consist of a rigid plastic body, which may have structural equipment, together with appropriate service equipment.

(c) Rigid plastic intermediate bulk containers must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to conformance to § 173.24 of this subchapter, plastic materials must be resistant to aging and to degradation caused by ultraviolet radiation.

(1) If protection against ultraviolet radiation is necessary, it must be provided by the addition of a pigment

or inhibitor such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the intermediate bulk container body. Where use is made of carbon black, pigments or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if changes in the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction.

(2) Additives may be included in the composition of the plastic material to improve the resistance to aging or to serve other purposes, provided they do not adversely affect the physical or chemical properties of the material of construction.

(3) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of rigid plastic intermediate bulk containers.

(4) Rigid plastic intermediate bulk containers intended for the transportation of liquids must be capable of releasing a sufficient amount of vapor to prevent the body of the intermediate bulk container from rupturing if it is subjected to an internal pressure in excess of that for which it was hydraulically tested. This may be achieved by spring-loaded or frangible pressure relief devices or by other means of construction.

§ 178.707 Standards for composite intermediate bulk containers.

(a) The provisions in this section apply to:

(1) Composite intermediate bulk containers intended to contain solids and liquids. Composite intermediate bulk container types are designated:

(i) 11HZ1 Composite intermediate bulk containers with a rigid plastic inner receptacle for solids loaded or discharged by gravity.

(ii) 11HZ2 Composite intermediate bulk containers with a flexible plastic inner receptacle for solids loaded or discharged by gravity.

(iii) 21HZ1 Composite intermediate bulk containers with a rigid plastic inner receptacle for solids loaded or discharged under pressure.

(iv) 21HZ2 Composite intermediate bulk containers with a flexible plastic inner receptacle for solids loaded or discharged under pressure.

(v) 31HZ1 Composite intermediate bulk containers with a rigid plastic inner receptacle for liquids.

(vi) 31HZ2 Composite intermediate bulk containers with a flexible plastic inner receptacle for liquids.

(2) The marking code in paragraph (a)(1) of this section must be completed

by replacing the letter Z by a capital letter in accordance with § 178.702(a)(2) to indicate the material used for the outer packaging.

(b) Definitions for composite intermediate bulk container types:

(1) A composite intermediate bulk container is an intermediate bulk container which consists of a rigid outer packaging enclosing a plastic inner receptacle together with any service or other structural equipment. The outer packaging of a composite intermediate bulk container is designed to bear the entire stacking load. The inner receptacle and outer packaging form an integral packaging and are filled, stored, transported, and emptied as a unit.

(2) The term plastic means polymeric materials (i.e., plastic or rubber).

(3) A "rigid" inner receptacle is an inner receptacle which retains its general shape when empty without closures in place and without benefit of the outer casing. Any inner receptacle that is not "rigid" is considered to be "flexible."

(c) Construction requirements for composite intermediate bulk containers with plastic inner receptacles are as follows:

(1) The outer packaging must consist of rigid material formed so as to protect the inner receptacle from physical damage during handling and transportation, but is not required to perform the secondary containment function. It includes the base pallet where appropriate. The inner receptacle is not intended to perform a containment function without the outer packaging.

(2) A composite intermediate bulk container with a fully enclosing outer packaging must be designed to permit assessment of the integrity of the inner container following the leakproofness and hydraulic tests.

(3) The inner receptacle must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to conformance with the requirements of § 173.24 of this subchapter, the material must be resistant to aging and to degradation caused by ultraviolet radiation.

(i) If necessary, protection against ultraviolet radiation must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon

black content, the pigment content, or the inhibitor content do not adversely affect the physical properties of the material of construction.

(ii) Additives may be included in the composition of the plastic material of the inner receptacle to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(iii) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of inner receptacles.

(iv) Composite intermediate bulk containers intended for the transportation of liquids must be capable of releasing a sufficient amount of vapor to prevent the body of the intermediate bulk container from rupturing if it is subjected to an internal pressure in excess of that for which it was hydraulically tested. This may be achieved by spring-loaded or frangible pressure relief devices or by other means of construction.

(4) The strength of the construction material comprising the outer packaging and the manner of construction must be appropriate to the capacity of the composite intermediate bulk container and its intended use. The outer packaging must be free of any projection that might damage the inner receptacle.

(i) Outer packagings of natural wood must be constructed of well seasoned wood that is commercially dry and free from defects that would materially lessen the strength of any part of the outer packaging. The tops and bottoms may be made of water-resistant reconstituted wood such as hardboard or particle board. Materials other than natural wood may be used for construction of structural equipment of the outer packaging.

(ii) Outer packagings of plywood must be made of well-seasoned, rotary cut, sliced, or sawn veneer, commercially dry and free from defects that would materially lessen the strength of the casing. All adjacent plies must be glued with water-resistant adhesive. Materials other than plywood may be used for construction of structural equipment of the outer packaging. Outer packagings must be firmly nailed or secured to corner posts or ends or be assembled by equally suitable devices.

(iii) Outer packagings of reconstituted wood must be constructed of water-resistant reconstituted wood such as hardboard or particle board. Materials other than reconstituted wood may be used for the construction of structural equipment of reconstituted wood outer packaging.

(iv) Fiberboard outer packagings must be constructed of strong, solid, or double-faced corrugated fiberboard (single or multiwall).

(A) Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot—see ISO International Standard 535-1976 (E)). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(B) The ends of fiberboard outer packagings may have a wooden frame or be constructed entirely of wood. Wooden battens may be used for reinforcements.

(C) Manufacturers' joints in the bodies of outer packagings must be taped, lapped and glued, or lapped and stitched with metal staples.

(D) Lapped joints must have an appropriate overlap.

(E) Where closing is effected by gluing or taping, a water-resistant adhesive must be used.

(F) All closures must be sift-proof.

(v) Outer packagings of plastic materials must be constructed in accordance with the relevant provisions of paragraph (c)(3) of this section.

(5) Any integral pallet base forming part of an intermediate bulk container, or any detachable pallet, must be suitable for the mechanical handling of an intermediate bulk container filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid protrusions that may cause damage to the intermediate bulk container in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transportation. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the intermediate bulk container.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle.

(iv) The load-bearing surfaces of intermediate bulk containers intended for stacking must be designed to distribute loads in a stable manner. An intermediate bulk container intended for stacking must be designed so that loads are not supported by the inner receptacle.

§ 178.708 Standards for fiberboard intermediate bulk containers.

(a) The provisions of this section apply to fiberboard intermediate bulk containers intended to contain solids that are loaded or discharged by gravity. Fiberboard intermediate bulk containers are designated: 11G.

(b) Definitions for fiberboard intermediate bulk container types:

(1) *Fiberboard intermediate bulk containers* consist of a fiberboard body with or without separate top and bottom caps, appropriate service and structural equipment, and if necessary an inner liner (but no inner packaging).

(2) *Liner* means a separate tube or bag, including the closures of its openings, inserted in the body but not forming an integral part of it.

(c) Construction requirements for fiberboard intermediate bulk containers are as follows:

(1) Top lifting devices are prohibited in fiberboard intermediate bulk containers.

(2) Fiberboard intermediate bulk containers must be constructed of strong, solid or double-faced corrugated fiberboard (single or multiwall) that is appropriate to the capacity of the outer packaging and its intended use. Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot—see ISO 535-1976(E)). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(i) The walls, including top and bottom, must have a minimum puncture resistance of 15 Joules (11 foot-pounds of energy) measured according to ISO 3036, incorporated by reference in § 171.7 of this subchapter.

(ii) Manufacturers' joints in the bodies of intermediate bulk containers must be made with an appropriate overlap and be taped, glued, stitched with metal staples or fastened by other means at least equally effective. Where joints are made by gluing or taping, a water-resistant adhesive must be used. Metal staples must pass completely through all pieces to be fastened and be formed or protected so that any inner liner cannot be abraded or punctured by them.

(3) The strength of the material used and the construction of the liner must

be appropriate to the capacity of the intermediate bulk container and the intended use. Joints and closures must be sift-proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transport.

(4) Any integral pallet base forming part of an intermediate bulk container, or any detachable pallet, must be suitable for the mechanical handling of an intermediate bulk container filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid protrusions that may cause damage to the intermediate bulk container in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the intermediate bulk container.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner liner.

(iv) The load-bearing surfaces of intermediate bulk containers intended for stacking must be designed to distribute loads in a stable manner.

§ 178.709 Standards for wooden intermediate bulk containers.

(a) The provisions in this section apply to wooden intermediate bulk containers intended to contain solids that are loaded or discharged by gravity. Wooden intermediate bulk container types are designated:

(1) 11C Natural wood with inner liner.

(2) 11D Plywood with inner liner.

(3) 11F Reconstituted wood with inner liner.

(b) Definitions for wooden intermediate bulk containers:

(1) *Wooden intermediate bulk containers* consist of a rigid or collapsible wooden body together with an inner liner (but no inner packaging) and appropriate service and structural equipment.

(2) *Liner* means a separate tube or bag, including the closures of its openings, inserted in the body but not forming an integral part of it.

(c) Construction requirements for wooden intermediate bulk containers are as follows:

(1) Top lifting devices are prohibited in wooden intermediate bulk containers.

(2) The strength of the materials used and the method of construction must be appropriate to the capacity and intended use of the intermediate bulk container.

(i) Natural wood used in the construction of an intermediate bulk

container must be well-seasoned, commercially dry, and free from defects that would materially lessen the strength of any part of the intermediate bulk container. Each intermediate bulk container part must consist of uncut wood or a piece equivalent in strength and integrity. Intermediate bulk container parts are equivalent to one piece when a suitable method of glued assembly is used (i.e., a Lindermann joint, tongue and groove joint, ship lap or rabbet joint, or butt joint with at least two corrugated metal fasteners at each joint, or when other methods at least equally effective are used). Materials other than natural wood may be used for the construction of structural equipment of the outer packaging.

(ii) Plywood used in construction of bodies must be at least 3-ply. Plywood must be made of well-seasoned, rotary-cut, sliced or sawn veneer, commercially dry, and free from defects that would materially lessen the strength of the body. All adjacent plies must be glued with water-resistant adhesive. Materials other than plywood may be used for the construction of structural equipment of the outer packaging.

(iii) Reconstituted wood used in construction of bodies must be water resistant reconstituted wood such as hardboard or particle board. Materials other than reconstituted wood may be used for the construction of structural equipment of the outer packaging.

(iv) Wooden intermediate bulk containers must be firmly nailed or secured to corner posts or ends or be assembled by similar devices.

(3) The strength of the material used and the construction of the liner must be appropriate to the capacity of the intermediate bulk container and its intended use. Joints and closures must be sift-proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transportation.

(4) Any integral pallet base forming part of an intermediate bulk container, or any detachable pallet, must be suitable for the mechanical handling of an intermediate bulk container filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid protrusions that may cause damage to the intermediate bulk container in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transportation. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the intermediate bulk container.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner liner.

(iv) The load-bearing surfaces of intermediate bulk containers intended for stacking must be designed to distribute loads in a stable manner.

§ 178.710 Standards for flexible intermediate bulk containers.

(a) The provisions of this section apply to flexible intermediate bulk containers intended to contain solid hazardous materials. Flexible intermediate bulk container types are designated:

- (1) 13H1 woven plastic without coating or liner.
- (2) 13H2 woven plastic, coated.
- (3) 13H3 woven plastic with liner.
- (4) 13H4 woven plastic, coated and with liner.
- (5) 13H5 plastic film.
- (6) 13L1 textile without coating or liner.
- (7) 13L2 textile, coated.
- (8) 13L3 textile with liner.
- (9) 13L4 textile, coated and with liner.
- (10) 13M1 paper, multiwall.
- (11) 13M2 paper, multiwall, water resistant.

(b) Definitions for flexible intermediate bulk containers:

(1) *Flexible intermediate bulk containers* consist of a body constructed of film, woven plastic, woven fabric, paper, or combination thereof, together with any appropriate service equipment and handling devices, and if necessary, an inner coating or liner.

(2) *Woven plastic* means a material made from stretched tapes or monofilaments.

(3) *Handling device* means any sling, loop, eye, or frame attached to the body of the intermediate bulk container or formed from a continuation of the intermediate bulk container body material.

(c) Construction requirements for flexible intermediate bulk containers are as follows:

(1) The strength of the material and the construction of the flexible intermediate bulk container must be appropriate to its capacity and its intended use.

(2) All materials used in the construction of flexible intermediate bulk containers of types 13M1 and 13M2 must, after complete immersion in water for not less than 24 hours, retain at least 85 percent of the tensile strength as measured originally on the material conditioned to equilibrium at 67 percent relative humidity or less.

(3) Seams must be stitched or formed by heat sealing, gluing or any equivalent

method. All stitched seam-ends must be secured.

(4) In addition to conformance with the requirements of § 173.24 of this subchapter, flexible intermediate bulk containers must be resistant to aging and degradation caused by ultraviolet radiation.

(5) For plastic flexible intermediate bulk containers, if necessary, protection against ultraviolet radiation must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content or the inhibitor content does not adversely affect the physical properties of the material of construction. Additives may be included in the composition of the plastic material to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(6) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of plastic flexible intermediate bulk containers. This does not preclude the re-use of component parts such as fittings and pallet bases, provided such components have not in any way been damaged in previous use.

(7) When flexible intermediate bulk containers are filled, the ratio of height to width may not be more than 2:1.

23. Subpart O is added to part 178 to read as follows:

Subpart O—Testing of Intermediate Bulk Containers

Sec.	
178.800	Purpose and scope.
178.801	General requirements.
178.802	Preparation of fiberboard intermediate bulk containers for testing.
178.803	Testing and certification of intermediate bulk containers.
178.810	Drop test.
178.811	Bottom lift test.
178.812	Top lift test.
178.813	Leakproofness test.
178.814	Hydrostatic pressure test.
178.815	Stacking test.
178.816	Topple test.
178.817	Righting test.
178.818	Tear test.
178.819	Vibration test.

Subpart O—Testing of Intermediate Bulk Containers**§ 178.800 Purpose and scope.**

This subpart prescribes certain testing requirements for intermediate bulk containers identified in subpart N of this part.

§ 178.801 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that intermediate bulk containers containing hazardous materials can withstand normal conditions of transportation and are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and of conforming to the requirements of § 173.24 of this subchapter at all times while in transportation.

(b) *Responsibility.* It is the responsibility of the intermediate bulk container manufacturer, the person certifying compliance with subparts N and O of this part, and the person who offers a hazardous material for transportation (to the extent that assembly functions, including final closure, are performed by the offeror), to assure that each intermediate bulk container is capable of passing the prescribed tests.

(c) *Definitions.* For the purpose of this subpart:

(1) *Intermediate bulk container design type* refers to intermediate bulk container which does not differ in structural design, size, material of construction, wall thickness, manner of construction and representative service equipment.

(2) *Design qualification testing* is the performance of the drop, leakproofness, hydrostatic pressure, stacking, bottom-lift or top-lift, tear, topple, righting and vibration tests, as applicable, prescribed in this subpart, for each different intermediate bulk container design type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on an intermediate bulk container design type, in order to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection that must initially be conducted on each newly manufactured intermediate bulk container.

(5) *Production testing* is the performance of the leakproofness test in accordance with paragraph (f) of this section on each intermediate bulk

container intended to contain solids discharged by pressure or intended to contain liquids.

(6) *Periodic retest and inspection* is performance of the applicable test and inspections on each intermediate bulk container at the frequency specified in § 180.352 of this subchapter.

(7) *Different intermediate bulk container design type* is one that differs from a previously qualified intermediate bulk container design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging which differs in surface treatment;

(ii) A rigid plastic intermediate bulk container or composite intermediate bulk container which differs with regard to additives used to comply with §§ 178.706(c), 178.707(c) or 178.710(c);

(iii) A packaging which differs only in its lesser external dimensions (i.e., height, width, length) provided materials of construction and material thicknesses or fabric weight remain the same;

(iv) A packaging which differs in service equipment.

(d) *Design qualification testing.* The packaging manufacturer shall achieve successful test results for the design qualification testing at the start of production of each new or different intermediate bulk container design type. The service equipment selected for this design qualification testing shall be representative of the type of service equipment that will be fitted to any finished intermediate bulk container body under the design. Application of the certification mark by the manufacturer shall constitute certification that the intermediate bulk container design type passed the prescribed tests in this subpart.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified intermediate bulk container design type if the manufacturer is to maintain authorization for continued production. The intermediate bulk container manufacturer shall achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 12 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator for Hazardous Materials Safety. These requests must be based on:

(i) Detailed quality assurance programs that assure that proposed decreases in test frequency maintain the integrity of originally tested intermediate bulk container design types; and

(ii) Demonstrations that each intermediate bulk container produced is capable of withstanding higher standards (e.g., increased drop height, hydrostatic pressure, wall thickness, fabric weight).

(f) *Production testing and inspection.*

(1) Production testing consists of the leakproofness test prescribed in § 178.813 of this subpart and must be performed on each intermediate bulk container intended to contain solids discharged by pressure or intended to contain liquids. For this test:

(i) The intermediate bulk container need not have its closures fitted.

(ii) The inner receptacle of a composite intermediate bulk container may be tested without the outer intermediate bulk container body, provided the test results are not affected.

(2) Applicable inspection requirements in § 180.352 of this subchapter must be performed on each intermediate bulk container initially after production.

(g) *Test samples.* The intermediate bulk container manufacturer shall conduct the design qualification and periodic design requalification tests prescribed in this subpart using random samples of intermediate bulk containers, according to the appropriate test section.

(h) *Selective testing of intermediate bulk containers.* Variation of a tested intermediate bulk container design type is permitted without further testing, provided selective testing demonstrates an equivalent or greater level of safety than the design type tested and which has been approved by the Associate Administrator for Hazardous Materials Safety.

(i) *Approval of equivalent packagings.* An intermediate bulk container which differs from the standards in subpart N of this part, or which is tested using methods other than those specified in this subpart, may be used if approved by the Associate Administrator for Hazardous Materials Safety. Such intermediate bulk containers must be shown to be equally effective, and testing methods used must be equivalent.

(j) *Proof of compliance.* Notwithstanding the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator for Hazardous Materials Safety, or a

designated representative, may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, that packagings meet the requirements of this subpart. As required by the Associate Administrator for Hazardous Materials Safety, or a designated representative, the manufacturer shall either:

(1) Conduct performance tests or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample intermediate bulk container available to the Associate Administrator for Hazardous Materials Safety, or a designated representative, for testing in accordance with this subpart.

(k) *Coatings.* If an inner treatment or coating of an intermediate bulk container is required for safety reasons, the manufacturer shall design the intermediate bulk container so that the treatment or coating retains its protective properties even after withstanding the tests prescribed by this subpart.

(l) *Record retention.* (1) The person who certifies an intermediate bulk container design type shall keep records of design qualification tests for each intermediate bulk container design type and for each periodic design requalification as specified in this part. These records must be maintained at each location where the intermediate bulk container is manufactured and at

each location where design qualification and periodic design requalification testing is performed. These records must be maintained for as long as intermediate bulk containers are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. These records must include the following information: name and address of test facility; name and address of the person certifying the intermediate bulk container; a unique test report identification; date of test report; manufacturer of the intermediate bulk container; description of the intermediate bulk container design type (e.g., dimensions, materials, closures, thickness, representative service equipment, etc.); maximum intermediate bulk container capacity; characteristics of test contents; test descriptions and results (including drop heights, hydrostatic pressures, tear propagation length, etc.). Each test report must be signed with the name of the person conducting the test, and name of the person responsible for testing.

(2) The person who certifies each intermediate bulk container must make all records of design qualification tests and periodic design requalification tests available for inspection by a representative of the Department upon request.

§ 178.802 Preparation of fiberboard intermediate bulk containers for testing.

(a) Fiberboard intermediate bulk containers and composite intermediate

bulk containers with fiberboard outer packagings must be conditioned for at least 24 hours in an atmosphere maintained:

(1) At 50 percent \pm 2 percent relative humidity, and at a temperature of $23^{\circ} \pm 2^{\circ} \text{C}$ ($73^{\circ}\text{F} \pm 4^{\circ}\text{F}$); or

(2) At 65 percent \pm 2 percent relative humidity, and at a temperature of $20^{\circ} \pm 2^{\circ} \text{C}$ ($68^{\circ}\text{F} \pm 4^{\circ}\text{F}$), or $27^{\circ} \text{C} \pm 2^{\circ} \text{C}$ ($81^{\circ}\text{F} \pm 4^{\circ}\text{F}$).

(b) Average values for temperature and humidity must fall within the limits in paragraph (a) of this section. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5 percent relative humidity without significant impairment of test reproducibility.

(c) For purposes of periodic design requalification only, fiberboard intermediate bulk containers or composite intermediate bulk containers with fiberboard outer packagings may be at ambient conditions.

§ 178.803 Testing and certification of intermediate bulk containers.

Tests required for the certification of each intermediate bulk container design type are specified in the following table. The letter X indicates that one intermediate bulk container (except where noted) of each design type must be subjected to the tests in the order presented:

Intermediate bulk container (IBC) type	Metal IBCs	Rigid plastic IBCs	Composite IBCs	Fiberboard IBCs	Wooden IBCs	Flexible IBCs
Vibration	X	X	X	X	X	X ^{1,5}
Bottom lift	X ²	X ²	X ²	X	X	
Top lift	X ²	X ²	X ²			X ^{2,5}
Stacking	X	X	X	X	X	X ⁵
Leakproofness	X ³	X ³	X ³			
Hydrostatic	X ³	X ³	X ³			
Drop	X ⁴	X ⁴	X ⁴	X ⁴	X ⁴	X ⁵
Topple						X ⁵
Righting						X ^{2,5}
Tear						X ⁵

- Notes: 1. Flexible intermediate bulk containers must be capable of withstanding the vibration test.
 2. Only if intermediate bulk containers are designed to be handled this way.
 3. The leakproofness and hydrostatic pressure tests are required for intermediate bulk containers intended to contain liquids or which are intended to contain solids loaded or discharged under pressure.
 4. Another intermediate bulk container of the same design type may be used for the drop test set forth in § 178.810.
 5. A different flexible intermediate bulk container may be used for each test.

§ 178.810 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all intermediate bulk container design types and performed periodically as specified in § 178.801(e) of this subpart.

(b) *Special preparation for the drop test.* (1) Metal, rigid plastic, and composite intermediate bulk containers

intended to contain solids must be filled to not less than 95 percent of their capacity, or if intended to contain liquids, to not less than 98 percent of their capacity. Pressure relief devices must be removed and their apertures plugged or rendered inoperative.

(2) Fiberboard, wooden, and flexible intermediate bulk containers must be

filled with a solid material to not less than 95 percent of their capacity.

(3) Rigid plastic intermediate bulk containers and composite intermediate bulk containers with plastic inner receptacles must be conditioned for testing by reducing the temperature of the packaging and its contents to -18°C (0°F) or lower. Test liquids must be

kept in the liquid state. Anti-freeze should be used, if necessary.

(c) *Test method.* Samples of all intermediate bulk container design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. The point of impact must be the most vulnerable part of the base of the intermediate bulk container being tested. Following the drop, the intermediate bulk container must be restored to the upright position for observation.

(d) *Drop height.* (1) For all intermediate bulk containers, drop heights are specified as follows:

- (i) Packing Group I: 1.8 m (5.9 feet).
- (ii) Packing Group II: 1.2 m (3.9 feet).
- (iii) Packing Group III: 0.8 m (2.6 feet).

(2) Drop tests are to be performed with the solid or liquid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(3) The specific gravity and viscosity of a substituted non-hazardous material used in the drop test for liquids must be similar to the hazardous material intended for transportation. Water also may be used for the liquid drop test under the following conditions:

(i) Where the substances to be carried have a specific gravity not exceeding 1.2, the drop heights must be those specified in paragraph (d)(1) of this section for each intermediate bulk container design type; and

(ii) Where the substances to be carried have a specific gravity exceeding 1.2, the drop heights must be as follows:

- (A) Packing Group I: SG x 1.5 m (4.9 feet).
- (B) Packing Group II: SG x 1.0 m (3.3 feet).
- (C) Packing Group III: SG x 0.67 m (2.2 feet).

(e) *Criteria for passing the test.* For all intermediate bulk container design types there may be no loss of contents. A slight discharge from a closure upon impact is not considered to be a failure of the intermediate bulk container provided that no further leakage occurs. A slight discharge (e.g., from closures or stitch holes) upon impact is not considered a failure of the flexible intermediate bulk container provided that no further leakage occurs after the intermediate bulk container has been raised clear of the ground.

§ 178.811 Bottom lift test.

(a) *General.* The bottom lift test must be conducted for the qualification of all intermediate bulk container design types designed to be lifted from the base.

(b) *Special preparation for the bottom lift test.* The intermediate bulk container

must be loaded to 1.25 times its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* All intermediate bulk container design types must be raised and lowered twice by a lift truck with the forks centrally positioned and spaced at three quarters of the dimension of the side of entry (unless the points of entry are fixed). The forks must penetrate to three quarters of the direction of entry. The test must be repeated from each possible direction of entry.

(d) *Criteria for passing the test.* For all intermediate bulk container design types designed to be lifted from the base, there may be no permanent deformation which renders the intermediate bulk container unsafe for transportation and no loss of contents.

§ 178.812 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all intermediate bulk container design types designed to be lifted from the top or, for flexible intermediate bulk containers, from the side.

(b) *Special preparation for the top lift test.* (1) Metal, rigid plastic, and composite intermediate bulk container design types must be loaded to twice the maximum permissible gross mass.

(2) Flexible intermediate bulk container design types must be filled to six times the maximum net mass, the load being evenly distributed.

(c) *Test method.* (1) A metal or flexible intermediate bulk container must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes. For flexible intermediate bulk container design types, other methods of top lift testing and preparation at least equally effective may be used (see § 178.801(i)).

(2) Rigid plastic and composite intermediate bulk container design types must be:

(i) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied vertically, for a period of five minutes; and

(ii) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied towards the center at 45° to the vertical, for a period of five minutes.

(d) *Criteria for passing the test.* For all intermediate bulk container design types designed to be lifted from the top, there may be no permanent deformation which renders the intermediate bulk container, including the base pallets when applicable, unsafe for transportation, and no loss of contents.

§ 178.813 Leakproofness test.

(a) *General.* The leakproofness test must be conducted for the qualification of all intermediate bulk container design types and on all production units intended to contain liquids or intended to contain solids that are loaded or discharged under pressure.

(b) *Special preparation for the leakproofness test.* Vented closures must either be replaced by similar non-vented closures or the vent must be sealed. For metal intermediate bulk container design types, the initial test must be carried out before the fitting of any thermal insulation equipment.

(c) *Test method and pressure applied.*

The leakproofness test must be carried out for a suitable length of time using air at a gauge pressure of not less than 20 kPa (2.9 psig). Leakproofness of intermediate bulk container design types must be determined by coating the seams and joints with a heavy oil, a soap solution and water, or other methods suitable for the purpose of detecting leaks. Other methods, if at least equally effective, may be used in accordance with Appendix B of this part, or if approved by the Associate Administrator for Hazardous Materials Safety, as provided in § 178.801(i).

(d) *Criterion for passing the test.* For all intermediate bulk container design types intended to contain liquids or intended to contain solids that are loaded or discharged under pressure, there may be no leakage of air from the intermediate bulk container.

§ 178.814 Hydrostatic pressure test.

(a) *General.* The hydrostatic pressure test must be conducted for the qualification of all metal, rigid plastic, and composite intermediate bulk container design types intended to contain liquids or intended to contain solids loaded or discharged under pressure.

(b) *Special preparation for the hydrostatic pressure test.* For metal intermediate bulk containers, the test must be carried out before the fitting of any thermal insulation equipment. For all intermediate bulk containers, pressure relief devices and vented closures must be removed and their apertures plugged or rendered inoperative.

(c) *Test method.* Hydrostatic gauge pressure must be measured at the top of the intermediate bulk container. The test must be carried out for a period of at least 10 minutes applying a hydrostatic gauge pressure not less than that indicated in paragraph (d) of this section. The intermediate bulk containers may not be mechanically restrained during the test.

(d) *Hydrostatic gauge pressure applied.* (1) For metal intermediate bulk container design types, 31A, 31B, 31N: 65 kPa gauge pressure (9.4 psig).

(2) For metal intermediate bulk container design types 21A, 21B, 21N, 31A, 31B, 31N: 200 kPa (29 psig). For metal intermediate bulk container design types 31A, 31B and 31N, the tests in paragraphs (d)(1) and (d)(2) of this section must be conducted consecutively.

(3) For metal intermediate bulk containers design types 21A, 21B, and 21N, for Packing Group I solids: 250 kPa (36 psig) gauge pressure.

(4) For rigid plastic intermediate bulk container design types 21H1 and 21H2 and composite intermediate bulk container design types 21HZ1 and 21HZ2: 75 kPa (11 psig).

(5) For rigid plastic intermediate bulk container design types 31H1 and 31H2 and composite intermediate bulk container design types 31HZ1 and 31HZ2: whichever is the greater of:

(i) The pressure determined by any one of the following methods:

(A) The gauge pressure (pressure in the intermediate bulk container above ambient atmospheric pressure) measured in the intermediate bulk container at 55 °C (131 °F) multiplied by a safety factor of 1.5. This pressure must be determined on the basis of the intermediate bulk container being filled and closed to no more than 98 percent capacity at 15 °C (60 °F);

(B) If absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) is used, 1.5 multiplied by the vapor pressure of the hazardous material at 55 °C (131 °F) minus 100 kPa (14.5 psi). If this method is chosen, the hydrostatic test pressure applied must be at least 100 kPa gauge pressure (14.5 psig); or

(C) If absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) is used, 1.75 multiplied by the vapor pressure of the hazardous material at 50 °C (122 °F) minus 100 kPa (14.5 psi). If this method is chosen, the hydrostatic test pressure applied must be at least 100 kPa gauge pressure (14.5 psig); or

(ii) Twice the greater of: (A) The static pressure of the hazardous material on the bottom of the intermediate bulk container filled to 98 percent capacity; or

(B) The static pressure of water on the bottom of the intermediate bulk container filled to 98 percent capacity.

(e) *Criteria for passing the test(s).* (1) For metal intermediate bulk containers, subjected to the 65 kPa (9.4 psig) test pressure specified in paragraph (d)(1) of this section, there may be no leakage or

permanent deformation that would make the intermediate bulk container unsafe for transportation.

(2) For metal intermediate bulk containers intended to contain liquids, when subjected to the 200 kPa (29 psig) and the 250 kPa (36 psig) test pressures specified in paragraphs (d)(2) and (d)(3) of this section, respectively, there may be no leakage.

(3) For rigid plastic intermediate bulk container types 21H1, 21H2, 31H1, and 31H2, and composite intermediate bulk container types 21HZ1, 21HZ2, 31HZ1, and 31HZ2, there may be no leakage and no permanent deformation which renders the intermediate bulk container unsafe for transportation.

§ 178.815 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all intermediate bulk container design types intended to be stacked.

(b) *Special preparation for the stacking test.* (1) All intermediate bulk containers except flexible intermediate bulk container design types must be loaded to their maximum permissible gross mass.

(2) The flexible intermediate bulk container must be filled to not less than 95 percent of its capacity and to its maximum net mass, with the load being evenly distributed.

(c) *Test method.* (1) All intermediate bulk containers must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes (see paragraph (d) of this section).

(2) Fiberboard, wooden, and composite intermediate bulk containers with outer packagings constructed of other than plastic materials must be subjected to the test for 24 hours.

(3) Rigid plastic intermediate bulk container types and composite intermediate bulk container types with plastic outer packagings (11HH1, 11HH2, 21HH1, 21HH2, 31HH1 and 31HH2) must be subjected to the test for 28 days at 40 °C (104 °F).

(4) For all intermediate bulk containers, the load must be applied by one of the following methods:

(i) One or more intermediate bulk containers of the same type loaded to their maximum permissible gross mass and stacked on the test intermediate bulk container; or

(ii) The calculated superimposed test load weight loaded on either a flat plate or a reproduction of the base of the intermediate bulk container, which is stacked on the test intermediate bulk container.

(d) *Calculation of superimposed test load.* For all intermediate bulk containers, the load to be placed on the intermediate bulk container must be 1.8 times the combined maximum permissible gross mass of the number of similar intermediate bulk containers that may be stacked on top of the intermediate bulk container during transportation.

(e) *Criteria for passing the test.* (1) For metal, rigid plastic, and composite intermediate bulk containers there may be no permanent deformation which renders the intermediate bulk container unsafe for transportation and no loss of contents.

(2) For fiberboard and wooden intermediate bulk containers there may be no loss of contents and no permanent deformation which renders the whole intermediate bulk container, including the base pallet, unsafe for transportation.

(3) For flexible intermediate bulk containers, there may be no deterioration which renders the intermediate bulk container unsafe for transportation and no loss of contents.

§ 178.816 Topples test.

(a) *General.* The topple test must be conducted for the qualification of all flexible intermediate bulk container design types.

(b) *Special preparation for the topple test.* The flexible intermediate bulk container must be filled to not less than 95 percent of its capacity and to its maximum net mass, with the load being evenly distributed.

(c) *Test method.* A flexible intermediate bulk container must be toppled onto any part of its top upon a rigid, non-resilient, smooth, flat, and horizontal surface.

(d) *Topple height.* For all flexible intermediate bulk containers, the topple height is specified as follows:

(1) Packing Group I: 1.8 m (5.9 feet).

(2) Packing Group II: 1.2 m (3.9 feet).

(3) Packing Group III: 0.8 m (2.6 feet).

(e) *Criteria for passing the test.* For all flexible intermediate bulk containers, there may be no loss of contents. A slight discharge (e.g., from closures or stitch holes) upon impact is not considered to be a failure, provided no further leakage occurs.

§ 178.817 Righting test.

(a) *General.* The righting test must be conducted for the qualification of all flexible intermediate bulk containers designed to be lifted from the top or side.

(b) *Special preparation for the righting test.* The flexible intermediate bulk container must be filled to not less

than 95 percent of its capacity and to its maximum net mass, with the load being evenly distributed.

(c) *Test method.* The flexible intermediate bulk container, lying on its side, must be lifted at a speed of at least 0.1 m/second (0.33 ft/s) to an upright position, clear of the floor, by one lifting device, or by two lifting devices when four are provided.

(d) *Criterion for passing the test.* For all flexible intermediate bulk containers, there may be no damage to the intermediate bulk container or its lifting devices which renders the intermediate bulk container unsafe for transportation or handling.

§ 178.818 Tear test.

(a) *General.* The tear test must be conducted for the qualification of all flexible intermediate bulk container design types.

(b) *Special preparation for the tear test.* The flexible intermediate bulk container must be filled to not less than 95 percent of its capacity and to its maximum net mass, the load being evenly distributed.

(c) *Test method.* Once the intermediate bulk container is placed on the ground, a 100-mm (4-inch) knife score, completely penetrating the wall of a wide face, is made at a 45° angle to the principal axis of the intermediate bulk container, halfway between the bottom surface and the top level of the contents. The intermediate bulk container must then be subjected to a uniformly distributed superimposed load equivalent to twice the maximum net mass. The load must be applied for at least five minutes. An intermediate bulk container which is designed to be lifted from the top or the side must, after removal of the superimposed load, be lifted clear of the floor and maintained in that position for a period of five minutes.

(d) *Criterion for passing the test.* The intermediate bulk container passes the tear test if the cut does not propagate more than 25 percent of its original length.

§ 178.819 Vibration test.

(a) *General.* The vibration test must be conducted for the qualification of all rigid intermediate bulk container design types. Flexible intermediate bulk container design types must be capable of withstanding the vibration test.

(b) *Test method.* (1) A sample intermediate bulk container, selected at random, must be filled and closed as for shipment.

(2) The sample intermediate bulk container must be placed on a vibrating platform that has a vertical double-

amplitude (peak-to-peak displacement) of one inch. The intermediate bulk container must be constrained horizontally to prevent it from falling off the platform, but must be left free to move vertically, bounce and rotate.

(3) The test must be performed for one hour at a frequency that causes the package to be raised from the vibrating platform to such a degree that a piece of material of approximately 1.6-mm (0.063-inch) thickness (such as steel strapping or paperboard) can be passed between the bottom of the intermediate bulk container and the platform. Other methods at least equally effective may be used (see § 178.801(i)).

(c) *Criteria for passing the test.* An intermediate bulk container passes the vibration test if there is no rupture or leakage.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

24. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

25. A new Subpart D is added to part 180 to read as follows:

Subpart D—Qualification and Maintenance of Intermediate Bulk Containers

Sec.

180.350 Applicability.

180.351 Qualification of intermediate bulk containers.

180.352 Requirements for retest and inspection of intermediate bulk containers.

Subpart D—Qualification and Maintenance of Intermediate Bulk Containers

§ 180.350 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 178 of this chapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an intermediate bulk container.

§ 180.351 Qualification of intermediate bulk containers.

(a) *General.* Each intermediate bulk container used for the transportation of hazardous materials must be an authorized packaging.

(b) *Intermediate bulk container specifications.* To qualify as an authorized packaging, each intermediate bulk container must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of

subparts N and O of part 178 of this subchapter.

§ 180.352 Requirements for retest and inspection of intermediate bulk containers.

(a) *General.* Each intermediate bulk container constructed in accordance with a UN standard for which a test or inspection specified in paragraphs (b)(1), (b)(2) and (b)(3) of this section is required may not be filled and offered for transportation or transported until the test or inspection has been successfully completed. This paragraph does not apply to any intermediate bulk container filled prior to the test or inspection due date. The requirements in this section do not apply to DOT 56 and 57 portable tanks.

(b) *Test and inspections for metal, rigid plastic, and composite intermediate bulk containers.* Each intermediate bulk container is subject to the following test and inspections:

(1) The leakproofness test prescribed in § 178.813 of this subchapter must be conducted every 2.5 years starting from the date of manufacture marked on each intermediate bulk container intended to contain liquids or intended to contain solids that are loaded or discharged under pressure.

(2) An external visual inspection must be conducted initially after production and every 2.5 years starting from the date of manufacture on each intermediate bulk container to ensure that:

(i) The intermediate bulk container is marked in accordance with requirements in § 178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be restored or returned to original condition.

(ii) Service equipment is fully functional and free from damage which may cause failure. Missing, broken, or damaged parts must be repaired or replaced.

(iii) The intermediate bulk container, including the outer packaging if applicable, is free from damage which reduces its structural integrity. The intermediate bulk container must be externally inspected for cracks, warpage, corrosion or any other damage which might render the intermediate bulk container unsafe for transportation. An intermediate bulk container found with such defects must be removed from service. The inner receptacle of a composite intermediate bulk container must be removed from the outer intermediate bulk container body for inspection unless the inner receptacle is bonded to the outer body or unless the outer body is constructed in such a way (e.g., a welded or riveted cage) that

removal of the inner receptacle is not possible without impairing the integrity of the outer body. Defective inner receptacles must be replaced with a receptacle meeting the design type of the intermediate bulk container or the entire intermediate bulk container must be replaced. For metal intermediate bulk containers, thermal insulation must be removed to the extent necessary for proper examination of the intermediate bulk container body.

(3) Each metal intermediate bulk container must be internally inspected at least every five years to ensure that the intermediate bulk container is free from damage which might reduce its structural integrity.

(i) The intermediate bulk container must be internally inspected for cracks, warpage, and corrosion or any other defect that might render the intermediate bulk container unsafe for transportation. An intermediate bulk container found with such defects must be removed from hazardous materials service until restored to the original design type of the intermediate bulk container.

(ii) Metal intermediate bulk containers must be inspected to ensure the minimum wall thickness requirements in § 178.705(c)(1)(iv)(A) of this subchapter are met. Metal intermediate bulk containers not conforming to minimum wall thickness requirements must be removed from hazardous materials service.

(c) *Initial visual inspection for flexible, fiberboard, or wooden intermediate bulk containers.* Each intermediate bulk container must be visually inspected prior to first use, by the person who places hazardous

materials in the intermediate bulk container, to ensure that:

(1) The intermediate bulk container is marked in accordance with requirements in § 178.703 of this subchapter. Additional marking allowed for each design type may be present. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

(2) Proper construction and design specifications have been met.

(i) Each flexible intermediate bulk container must be inspected to ensure that:

(A) Lifting straps if used, are securely fastened to the intermediate bulk container in accordance with the design type.

(B) Seams are free from defects in stitching, heat sealing or gluing which would render the intermediate bulk container unsafe for transportation of hazardous materials. All stitched seam-ends must be secure.

(C) Fabric used to construct the intermediate bulk container is free from cuts, tears and punctures. Additionally, fabric must be free from scoring which may render the intermediate bulk container unsafe for transport.

(ii) Each fiberboard intermediate bulk container must be inspected to ensure that:

(A) Fluting or corrugated fiberboard is firmly glued to facings.

(B) Seams are creased and free from scoring, cuts, and scratches.

(C) Joints are appropriately overlapped and glued, stitched, taped or stapled as prescribed by the design. Where staples are used, the joints must be inspected for protruding staple-ends which could puncture or abrade the

inner liner. All such ends must be protected before the intermediate bulk container is authorized for hazardous materials service.

(iii) Each wooden intermediate bulk container must be inspected to ensure that:

(A) End joints are secured in the manner prescribed by the design.

(B) Intermediate bulk container walls are free from defects in wood. Inner protrusions which could puncture or abrade the liner must be covered.

(d) *Retest date.* The date of the most recent periodic retest must be marked as provided in § 178.703(b) of this subchapter.

(e) *Record retention.* The intermediate bulk container owner or lessee shall keep records of periodic retests and initial and periodic inspections. Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting tests or inspections, and test or inspection specifics and results. Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be made available for inspection by a representative of the Department on request.

Issued in Washington, DC on July 1, 1994 under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 94-16673 Filed 7-25-94; 8:45 am]

BILLING CODE 4910-60-P

Federal Register

Tuesday
July 26, 1994

Part III

**Department of
Education**

Office of Special Education and
Rehabilitative Services; Grants and
Cooperative Agreements; Availability, etc.:
Empowerment Zone and Enterprise
Community Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grants and Cooperative Agreements; Availability, etc.: Empowerment Zone and Enterprise Community Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary proposes a funding priority to provide a competitive preference to projects funded under the Individuals with Disabilities Education Act (IDEA) that serve communities that have been designated as Empowerment Zones or Enterprise Communities under section 1391 of the Internal Revenue Code, as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993. This proposed priority is intended to focus resources on the needs of infants, toddlers, children, and youth with disabilities and their families who live in these communities and who are often underserved. For 1995, the Secretary anticipates using this priority with competitions for Parent Training and Information Centers under the Training Personnel for the Education of Children and Youth with Disabilities program, and Outreach Projects under the Early Education for Children with Disabilities program.

DATES: Comments must be received on or before August 25, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Lee Coleman, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4615, Switzer Building, Washington, D.C. 20202-2641.

FOR FURTHER INFORMATION CONTACT: Lee Coleman. Telephone: (202) 205-8166. Individuals who use a telecommunications device for deaf (TDD) may call the TDD number at (202) 205-8170.

SUPPLEMENTARY INFORMATION: The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to 9 areas as Empowerment Zones and up to 95 areas as Enterprise Communities in accordance with Internal Revenue Code section 1391, as amended by Title XIII

of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66). To be eligible for designation, an area must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program, communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1-800-998-9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Community Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well-suited for inclusion in a comprehensive approach to economic and community development. In addition to the programs under IDEA, the Department intends to give preferences to Empowerment Zones and Enterprise Communities in the Rehabilitation Act Projects with Industry program, the Rehabilitation Act Special Demonstration Projects program, the National Workplace Literacy program, the Urban Community Service program, and a variety of

discretionary programs under the Elementary and Secondary Education Act.

The discretionary programs funded under IDEA are well suited to play a role in Empowerment Zones and Enterprise Communities because of the close relationship between poverty and disabilities. While the risk factors associated with disabilities are highest in low income areas, these areas often serve the lowest numbers of children with disabilities. Under the authority of IDEA, the Department supports a wide range of programs related to providing special education, related, and early intervention services to infants, toddlers, children, and youth with disabilities and their families. Coordinated and comprehensive approaches to services, such as those under the Empowerment Zone and Enterprise Community program, can be effective tools in addressing the needs of these children.

For 1995, the Secretary anticipates using this priority in conjunction with priorities under the following programs:

Parent Training and Information Centers (funded under IDEA Part D, Training Personnel for Education for Children and Youth with Disabilities program); and

Outreach Projects (funded under IDEA Part C, Early Education for Children with Disabilities program).

Parent Training and Information Centers projects provide training and information to parents of infants, toddlers, children, and youth with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

Outreach projects build the capacity of educational and other agencies to adopt and implement proven models and components of models to improve services for children under the age of eight with disabilities and their families.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this proposed priority, subject to

meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority: Under 34 CFR 75.105(c)(2) the Secretary proposes to give a competitive preference to applications that are otherwise eligible for funding under appropriate discretionary programs under the Individuals with Disabilities Education Act and that meet the following priority. The Secretary may implement this priority for fiscal year 1995 and for any later fiscal year:

Providing programs in an Empowerment Zone or Enterprise Community. To meet this priority an applicant must:

- Design a program of special activities focused on the unique needs of an Empowerment Zone or Enterprise Community; or,
- Devote a substantial portion of program resources to providing the services within, or meeting the needs of residents of these zones and communities.

The proposed project under the Individuals with Disabilities Education

Act must contribute to the strategic plan of the Empowerment Zone or Enterprise Community and be made an integral component of the Empowerment Zone or Enterprise Community activities.

Executive Order 12866

Assessment of Costs and Benefits

These proposed priorities have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed priorities are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed priorities, the Secretary has determined that the benefits of the proposed priorities justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific

requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed priorities without impeding the effective and efficient administration of the program.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 309 and 316.

Program Authority: 20 U.S.C. 1423 and 1431.

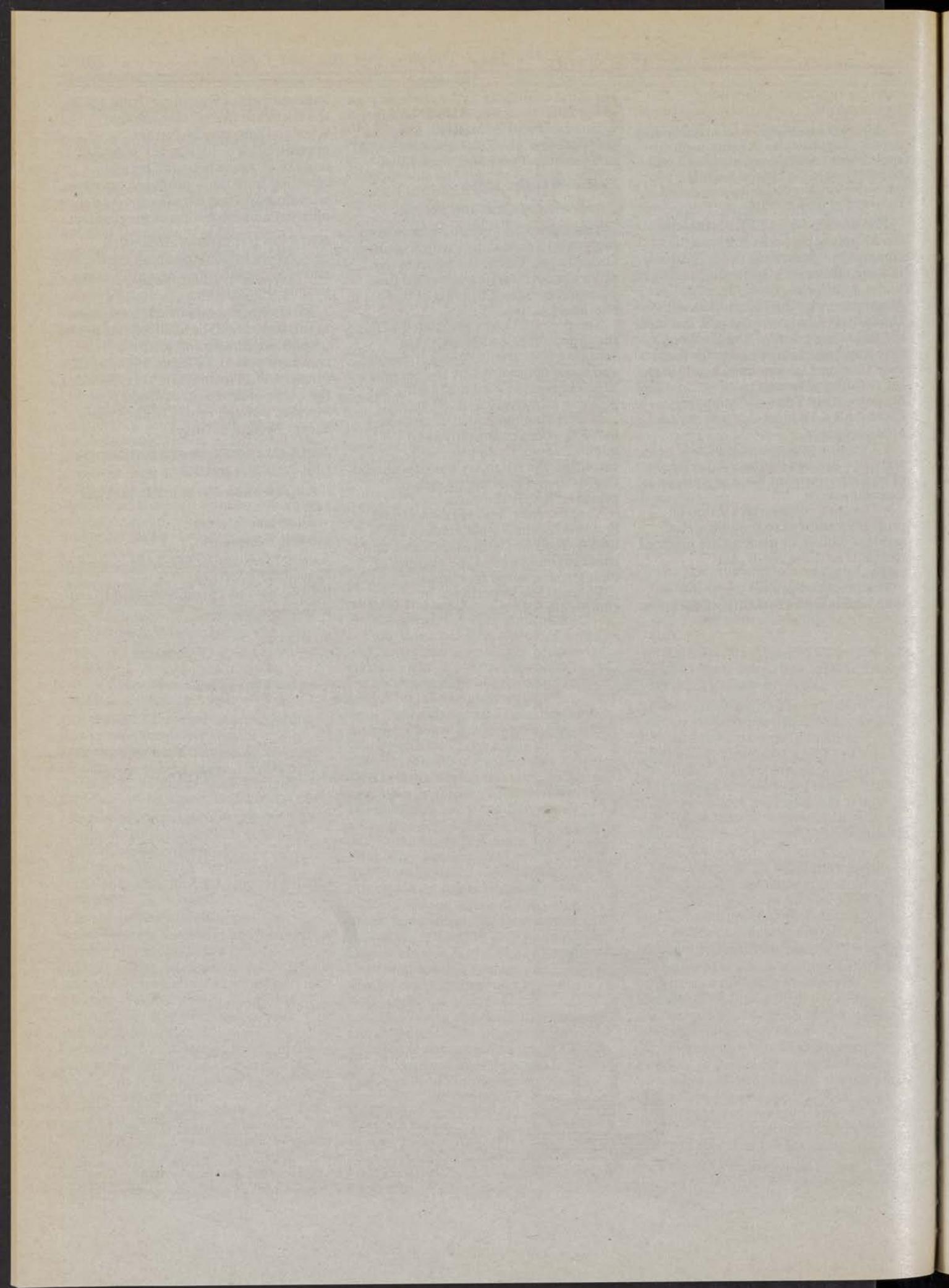
Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94-18072 Filed 7-25-94; 8:45 am]

BILLING CODE 4000-01-U



Tuesday
July 26, 1994

Federal Register

Part IV

Department of Education

Special Demonstrations; Projects With
Industry; Notice

DEPARTMENT OF EDUCATION

RIN 1820-ZA00

Special Demonstrations; Projects With Industry

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities.

SUMMARY: The Secretary proposes priorities under the following programs administered by the Office of Special Education and Rehabilitative Services (OSERS): (1) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities, (2) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities, and (3) Projects with Industry (PWI). The proposed priorities are intended to expand employment opportunities for individuals with disabilities through the provision of vocational rehabilitation services. In addition, the proposed priorities provide for a competitive preference to be given to projects providing program services in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments must be received on or before August 25, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3038 MES, Washington, D.C. 20202-2740.

FOR FURTHER INFORMATION CONTACT: Thomas Finch. Telephone: (202) 205-9796. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the following programs:

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities.

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities. Projects With Industry.

The Secretary is soliciting public comments on (1) The proposed competitive priority for providing program services in an Empowerment Zone or Enterprise Community under all three programs and (2) the proposed

absolute priority for Transitional Rehabilitation Services for Youths and Young Adults with Serious Emotional Disturbance (SED) or Serious Mental Illness (SMI).

The purpose of each program is stated separately under the title of that program.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude nor limit the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priority Relating To Empowerment Zones and Enterprise Communities

Under 34 CFR 75.105(c)(2)(i), the Secretary proposes to give a competitive preference to applications that are otherwise eligible for funding under the three programs and that meet the following priority. The Secretary may implement this priority for fiscal year 1995 and for any later fiscal year. The Secretary proposes to award 10 bonus points to an application that meets this competitive priority. These bonus points would be in addition to any points the application earns under the selection criteria for the program:

*Proposed Competitive Priority—
Providing Program Services in an
Empowerment Zone or Enterprise
Community Background*

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to 9 areas as Empowerment Zones and up to 95 areas as Enterprise Communities in

accordance with Internal Revenue Code (IRC) section 1391, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66). To be eligible for designation, an area must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the IRC.

In the Empowerment Zone and Enterprise Community program, communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1-800-998-9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Community Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well-suited for inclusion in a comprehensive approach to economic and community development. In addition to the Projects With Industry program and the Special Demonstrations programs under the Rehabilitation Act, the Department intends to give preferences to Empowerment Zones and Enterprise Communities in the National Workplace Literacy program, the Urban Community

Service program, the Parent Training program and Early Childhood Education program under the Individuals With Disabilities Education Act, and a variety of discretionary programs under the Elementary and Secondary Education Act.

Relationship of the PWI and Special Demonstrations Programs to the Empowerment Zone or Enterprise Community Program

The Special Demonstrations program for providing vocational rehabilitation services makes grants to expand or otherwise improve vocational and other rehabilitation services to individuals with disabilities, especially those with the most severe disabilities. Vocational rehabilitation services may include training with a view toward career advancement, training (including on-the-job training) in occupational skills, and rehabilitation technology services.

The Special Demonstrations program for providing transitional services to youths with disabilities focuses on the delivery of job training services. The goal of the services is to facilitate a smooth transition of youths from school to work or to higher education.

Services under both of these Special Demonstrations programs are designed to assist individuals with disabilities to live and function as contributing members of society by enhancing their opportunities for employment. Minorities with disabilities, people living with HIV/AIDS, and youths and young adults with serious emotional disturbance or serious mental illness are among the populations with a high incidence of unemployment and poverty.

The purpose of the PWI program is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process; to identify competitive job and career opportunities and the skills needed to perform those jobs; to create practical settings for job readiness and training programs; and to provide job placements and career advancement. In order to support the purpose of the program, all PWI projects are required to have a Business Advisory Council comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives.

The PWI and Special Demonstrations programs under the Rehabilitation Act are ideally suited to play a key role in the Empowerment Zone and Enterprise Community program because studies

have shown strong correlations between disability and unemployment and between disability and poverty. These rehabilitation programs serve a common purpose: to provide assistance to individuals with disabilities in obtaining gainful employment. Employment is achieved by providing job training, job placement, transition services, and related vocational rehabilitation services to individuals with disabilities. Just as Empowerment Zones and Enterprise Communities link economic development and education and training efforts, the Rehabilitation Special Demonstrations and PWI programs support projects that strengthen communities by preparing individuals with disabilities for employment in local businesses.

Provision of rehabilitation services in an urban or rural high-poverty area that has developed a strategic plan to link economic development to education, training, public safety, and human services will also help achieve the purpose of the Rehabilitation Act of 1973, as amended (Act), to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society. Moreover, providing services in a zone or community will help support the purpose of section 21 of the Act to ensure that the needs of individuals with disabilities from minority backgrounds and from other traditionally underserved populations are addressed.

Communities receiving designations as Empowerment Zones or Enterprise Communities already have demonstrated a capacity for the type of cooperative planning that is critical to successful rehabilitation partnerships. Projects funded under these programs will provide models for partnerships in other distressed areas and will further the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in the global economy and exercise the rights and responsibilities of citizenship.

Accordingly, the Secretary has determined that it would serve the purposes of the three programs in this notice to award a competitive preference to applications that propose projects that serve these zones and communities.

Proposed Priority

Under each of the following programs, competitive preference will be given to applications that—(1) Propose the provision of substantial services in Empowerment Zones or Enterprise

Communities, as described under each program listed in this notice; and (2) propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community and that are made an integral component of the Empowerment Zone or Enterprise Community activities. The ten bonus points will be assigned to applications determined to be approvable on the basis of their evaluation under the applicable program selection criteria.

Special Projects and Demonstrations For Providing Vocational Rehabilitation Services To Individuals With Disabilities

Purpose of Program

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation and other rehabilitation services for individuals with disabilities, especially individuals with the most severe disabilities.

Proposed Competitive Priority

Competitive preference of 10 bonus points will be given to applications that meet the 2 requirements described previously under the proposed competitive priority for providing program services in an Empowerment Zone or Enterprise Community.

Under this program a project is considered to be providing substantial services if a minimum of 51 percent of the persons served by the project reside within the Empowerment Zone or Enterprise Community.

Proposed Invitational Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over the other applications:

Proposed Invitational Priority 1— Services to Minorities

The Secretary is particularly interested in applications that propose to provide culturally sensitive vocational rehabilitation services and that propose to make significant efforts to identify and serve individuals with disabilities from minority backgrounds.

Proposed Invitational Priority 2— Services to People Living with HIV/AIDS

The Secretary is particularly interested in applications that propose to provide vocational rehabilitation services to people living with HIV/AIDS.

Applicable Program Regulations: 34 CFR Parts 369 and 373.

Program Authority: 29 U.S.C. 777a(a)(1)

Special Projects and Demonstrations For Providing Transitional Rehabilitation Services To Youth With Disabilities

Purpose of Program:

This program is designed to provide job training for youths with disabilities to prepare them for entry into the labor force, including competitive or supported employment.

Competition I

The Secretary is conducting a general competition under section 311(b) of the Rehabilitation Act of 1973, as amended, to provide transitional rehabilitation services to youths with disabilities. Under that competition the following competitive priority will apply:

Proposed Competitive Priority

Competitive preference of 10 bonus points will be given to applications that meet the 2 requirements described previously under the proposed competitive priority for providing program services in an Empowerment Zone or Enterprise Community.

Under this program a project is considered to be providing substantial services if a minimum of 51 percent of the persons served by the project reside within the Empowerment Zone or Enterprise Community.

Competition II

Under 34 CFR 75.105(c)(3) and section 311(b) of the Rehabilitation Act of 1973, as amended, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

*Proposed Absolute Priority—
Transitional Rehabilitation Services For Youths and Young Adults With Serious Emotional Disturbance (SED) or Serious Mental Illness (SMI) Background*

Young adults, between the ages of 17 and 26, with serious emotional disturbance or serious mental illness are perhaps the most underserved individuals with disabilities. It is estimated that 4 to 9 percent of the total population of young adults exhibit these disorders, but fewer than 1.5 percent are provided services (Kauffman 1989). Youth with SED or SMI display inappropriate behaviors or feelings that seriously impair their abilities to work, live, and function successfully and

effectively in society. The outcome of successful integrated community employment appears to be facilitated by a well-coordinated, multi-dimensional service approach that uses community-based vocational services, the peer group as a supportive setting, job training combined with other training services that address work-related topics, such as stress management, substance abuse, and medication issues, and individualized long-term supportive services (Cook 1991).

Priority

The purpose of this priority is to support demonstration projects that develop model systems of comprehensive service delivery to youths and young adults, ages 17 through 26. Projects must provide job training services to youths and young adults with SED or SMI to prepare them for entry into the labor force.

Proposed Competitive Priority

Competitive preference of 10 bonus points will be given to applications that, in addition to meeting the absolute priority described under this competition, meet the 2 requirements described previously under the proposed competitive priority for providing program services in an Empowerment Zone or Enterprise Community.

Under this program a project is considered to be providing substantial services if a minimum of 51 percent of the persons served by the project reside within the Empowerment Zone or Enterprise Community.

Applicable Program Regulations: 34 CFR Parts 369 and 376.

Program Authority: 29 U.S.C. 777a(b).

Projects With Industry (PWI)

Purpose of Program

Projects With Industry projects create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placement and career advancement services.

Eligibility Requirement

Under section 621(e)(2) of the Rehabilitation Act of 1973, as amended, new grant awards under this program can be made only to eligible entities identified in the program regulations in

34 CFR 379.2 that propose to provide services to individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program. Each applicant is required to explain in its application why the geographic area in which it proposes to provide services is currently unserved or underserved by the PWI program.

Proposed Competitive Priority

Competitive preference of 10 bonus points will be given to applications that meet the 2 requirements described previously under the proposed competitive priority for providing program services in an Empowerment Zone or Enterprise Community.

A PWI project may provide services at one or more sites. Under this program a PWI project is considered to be providing substantial services in a zone or community if a minimum of 51 percent of the total number of persons served by the project, irrespective of the number of sites, reside in a zone or community and at least 1 of the project sites is located within the boundaries of a zone or community. If there is only one project site, it must be located within the boundaries of a zone or community.

Applicable Program Regulations: 34 CFR Parts 369 and 379.

Program Authority: 29 U.S.C. 795g.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, the Secretary has determined that the benefits of the proposed priorities justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential

costs or increase potential benefits resulting from these proposed priorities without impeding the effective and efficient administration of the program.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3038, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday

through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: 84.235 Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities; 84.235 Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities; and 84.234 Projects With Industry)

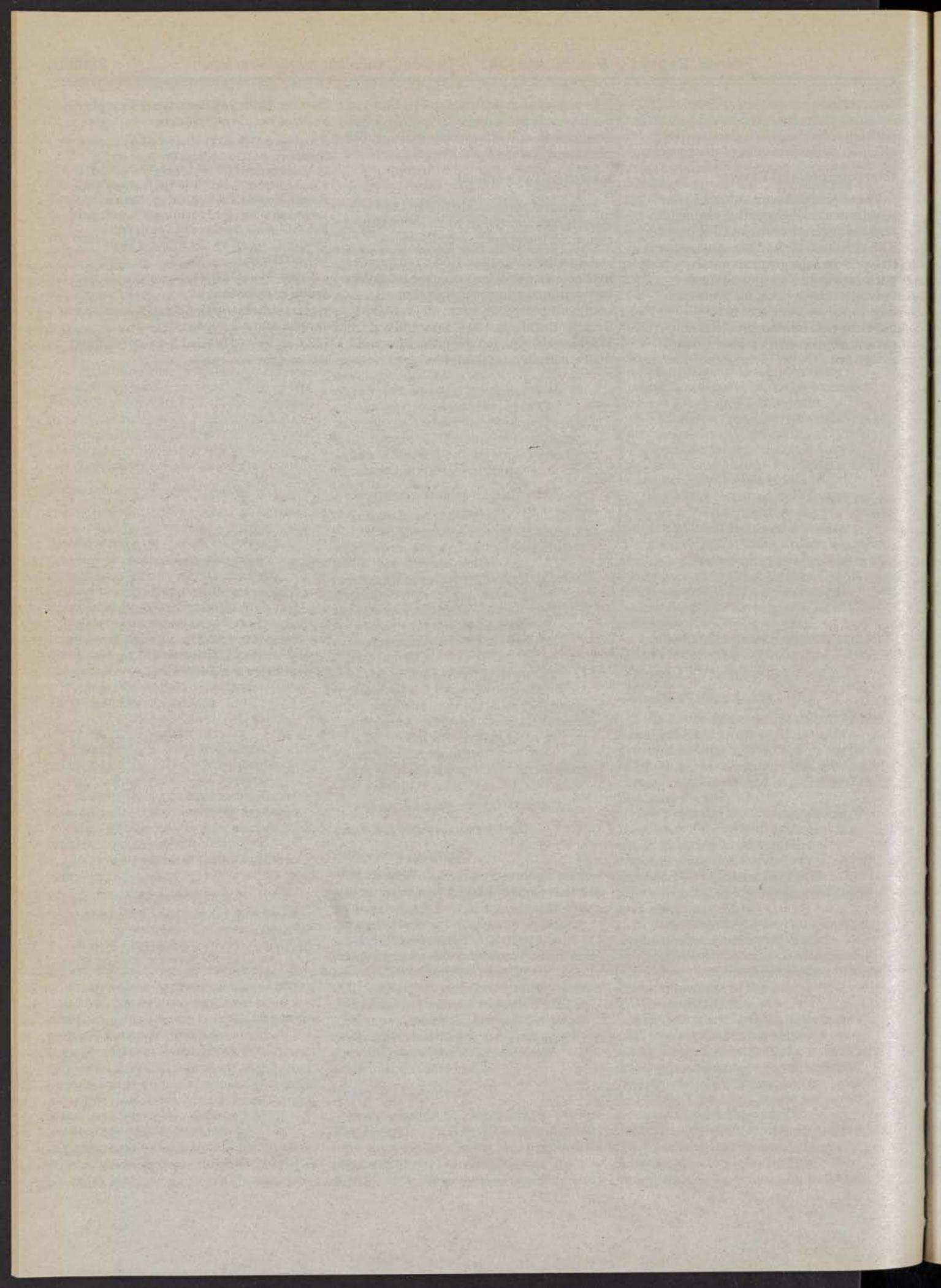
Dated: June 17, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94-18073 Filed 7-25-94; 8:45 am]

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Tuesday
July 26, 1994

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Part V

Office of
Management and
Budget

Economic Classification Policy
Committee; Standard Industrial
Classification Replacement; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee; Standard Industrial Classification Replacement

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Proposal to Replace the Standard Industrial Classification (SIC) with a New North American Industry Classification System (NAICS).

SUMMARY: Under Title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a proposal to develop a new industry classification system. The proposed system, to be developed in cooperation with Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI) and Statistics Canada, would be known as the North American Industry Classification System (NAICS). NAICS would replace the current system known as the Standard Industrial Classification (SIC). The proposed NAICS would provide common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The concepts for the new system, as developed by Statistics Canada, Mexico's INEGI, and OMB's Economic Classification Policy Committee (ECPC), are contained in a joint, three-country statement, published as Part II of this notice.

This notice: (1) Summarizes in Part I the background for the review of the U.S. industry classification system; (2) contains in Part II the proposed conceptual framework for the proposed NAICS, which would be a production-oriented economic classification; (3) details in Part III the process by which the ECPC would develop its recommended actions for the new industry classification system; and (4) outlines in Part IV a work plan that would initiate implementation of NAICS in 1997. While the ECPC is proposing a production-oriented concept for the NAICS, it is also committed to providing improved data for purposes that require market-oriented groupings including an expansion of the lists of commodities and services that will be available from the 1997 Economic Censuses. This market-oriented grouping system would be implemented after 1997.

The ECPC is seeking comments on: (1) The usefulness and advisability of a common North American system for industry classifications, (2) the

proposed conceptual framework for the new NAICS, and (3) the proposed next steps in the development of the classification system for detailed industries. The ECPC is also seeking proposals for: (1) new industries and for changing the boundaries of existing industries, and (2) market-oriented, or demand-based, groupings of economic data. The new NAICS remains tentatively scheduled for introduction in 1997.

DATES: To ensure consideration, all comments on the usefulness and advisability of a common North American system for industry classifications, the conceptual framework, and the replacement process must be in writing and should be received by October 3, 1994. All proposals for new industries and for changing the boundaries of existing industries as well as for market-oriented, or demand-based, groupings of economic data must be in writing and should be submitted as soon as possible, but should be received no later than November 7, 1994.

ADDRESSES: Copies of all ECPC papers and documents mentioned in this notice are available by contacting Peggy L. Burcham, Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, D.C. 20230, telephone number (202) 606-9615, FAX (202) 606-5311.

Please send written comments on the usefulness and advisability of a common North American system for industry classifications, the conceptual framework, or the replacement process to: Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, D.C. 20230.

Please send written proposals for new industries and for changing the boundaries of existing industries as well as for market-oriented, or demand-based, groupings of economic data to: Carole Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 3685-3, Washington, D.C. 20233, telephone number (301) 763-5268, FAX (301) 763-2324.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet from the Census Bureau via GOPHER or HTTL under the listing "Federal Register Notice Soliciting Proposals on Restructuring the SIC." This document, as well as the March 31, 1993, Federal Register notice and the complete set of related ECPC issues papers and reports, is also available via

File Transfer Protocol (FTP) from /pub/naics/ftp.census.gov.

Comments and proposals may be sent via electronic mail to the Census Bureau at naics@census.gov (do not use any capital letters in the address). Comments and proposals received at this address by the dates specified above will be included as part of the official record.

For assistance in reaching the Census Bureau via electronic mail, FTP, GOPHER, or HTTL (e.g., MOSAIC, CELLO, LYNX), please contact your system administrator. You may also send an electronic message to gatekeeper@census.gov requesting the "FAQ" (Frequently Asked Questions). You will receive an electronic reply with information on how to access these services.

FOR FURTHER INFORMATION CONTACT: On the usefulness and advisability of a common North American system for industry classifications, the conceptual framework, or the replacement process: Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, D.C. 20230, telephone number (202) 606-9603, FAX (202) 606-5311.

On all proposals for new industries and for changing the boundaries of existing industries as well as for market-oriented, or demand-based, groupings of economic data: Carole Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 3685-3, Washington, D.C. 20233, telephone number (301) 763-5268, FAX (301) 763-2324.

SUPPLEMENTARY INFORMATION:

Part I: Background

The Standard Industrial Classification (SIC) is the principal system used to promote comparability of statistical data describing establishments in the U.S. economy. This coding scheme is employed by Federal agencies to collect, tabulate, and publish establishment data by industry. The last major revision of the SIC was in 1987. However, the basic structure of the SIC has remained substantially the same since its introduction more than 50 years ago.

In a previous notice in the *Federal Register* (FR, March 31, 1993, pp. 16990-17004), the Office of Management and Budget announced the formation of the Economic Classification Policy Committee, chaired by the Bureau of Economic Analysis, U.S. Department of Commerce, with representatives from the Bureau of the Census, U.S. Department of Commerce,

and the Bureau of Labor Statistics, U.S. Department of Labor. The ECPC reports to OMB which has responsibility for all economic classification systems, other than those for international trade.

The ECPC is charged with a "fresh slate" examination of economic classifications for statistical purposes, including industrial classifications, product classifications, and product code groupings. The ECPC's charge includes: (1) Identifying the essential statistical uses of economic classifications; (2) identifying and developing, if needed, economic concepts, new structures, and statistical methodologies that address such statistical uses; (3) developing classification system(s) based on those concepts; (4) planning the implementation of the new classification system(s); and (5) ensuring that there is ample opportunity for widespread public participation in the process.

The ECPC has prepared and circulated six issues papers on various aspects of economic classifications. ECPC Issues Paper No. 1, "Conceptual Issues," and ECPC Issues Paper No. 2, "Aggregation Structures and Hierarchies," were published in the **Federal Register** with the original notice on March 31, 1993. Those two issues papers discuss economic concepts for industry classification systems. ECPC Issues Paper No. 1 makes the important distinction between classification systems that correspond to a production-oriented (or supply-based) economic concept, and those that correspond to a market-oriented (or demand-based) economic concept. The paper also notes that two major purposes for grouped or aggregated data can be identified and that they correspond, in turn, to the two concepts—production-oriented and market-oriented—discussed in the paper. Production studies, for example, including the measurement of productivity, and comparisons of capital intensity and input usage across industries, require that establishments that have similar production processes be grouped together, and that different industries demarcate differences in production processes. Marketing studies, on the other hand, require groupings that correspond to markets, and that group products or commodities according to their use. The paper suggests that industry classifications of the future should conform to a consistent economic concept, and that the concept that is appropriate depends on the statistical purposes for which the data are collected.

The comments that the ECPC received on ECPC Issues Papers Nos. 1 and 2 display a wide range of views. Public responses indicated substantial support for examining economic concepts for classifications, though also some reservations. Of the respondents who favor a conceptual framework for economic classifications, some favor a production-oriented system and others a market-oriented system. Respondents expressed substantial concerns about costs and feasibility, as well as about potential disruptions that any new system would produce in time series. Though views on international compatibility were not sought in the **Federal Register** notice, respondents often volunteered that international comparability, particularly among North American countries, is important in their uses of economic statistics. (A report, "Summary of Public Comments to ECPC Issues Papers Nos. 1 and 2" [1], is available from the ECPC.)

Four additional ECPC issues papers have been distributed since the original **Federal Register** notice:

Issues Paper No. 3—*Collectibility of Data*

Issues Paper No. 4—*Criteria for Determining Industries*

Issues Paper No. 5—*The Impact of Classification Revisions on Time Series*

Issues Paper No. 6—*Services Classifications*

ECPC Issues Paper No. 3 explains how establishment coding for industry classifications is done in the United States, and how the information available to statistical agencies for coding places limits on the industry definitions that can in practice be adopted. ECPC Issues Paper No. 4 describes the statistical measures that have been used in the past to determine industries (primarily size measures and specialization and coverage ratios) and discusses some problems with these measures. It also describes the new heterogeneity index that the ECPC has developed as a new statistical methodology that can be used, in conjunction with traditional information, to judge the conceptual appropriateness of industry definitions, according to the production-oriented economic concept. ECPC Issues Paper No. 5 describes the fundamental trade-offs that must be made between retaining time-series comparability and making changes in the classification system to improve it and to keep it up to date. ECPC Issues Paper No. 6 contains a section describing how the economic concepts of ECPC Issues Paper No. 1 can be applied to service

industries, and also discusses some of the unique problems that arise in classifying service industries.

ECPC Research Activity

The ECPC and Statistics Canada have reviewed the existing structure of detailed "4-digit" industries in the United States and Canada for conformance to economic concepts. The results of the U.S. review are contained in ECPC Report No. 1, "Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United States," and the Canadian results are contained in "The Conceptual Basis of the Standard Industrial Classification," Standards Division, Statistics Canada. In addition, the ECPC has carried out an independent evaluation of U.S. industries using the new "index of heterogeneity" to assess whether establishments in existing 4-digit industries meet the conditions for the production-oriented classification concept, as presented in ECPC Issues Paper No. 1. All of these research reports are available from the ECPC on request.

International Comparability

In the past, the U.S. SIC system was not necessarily compatible with the industry classification systems used in other countries. This incompatibility created problems for analyses that sought to compare industrial characteristics, trends, and developments across the economies of different countries, but such data uses were never given high priority in the design of the SIC system.

A central aspect of the ECPC's new approach to industry classifications is active consultation with international statistical agencies, including the Statistical Office of the European Communities and the United Nations Statistical Office, and particularly with statistical agencies of the North American Free Trade Agreement signatories, Mexico's INEGI and Statistics Canada. Statistical agencies from the three North American countries have agreed to develop a North American Industry Classification System that would produce common industrial statistics for all three countries. A joint statement on NAICS concepts, prepared and released by these statistical agencies, follows (Part II). The conceptual framework and process proposed for the United States in Part III of this notice are consistent with this joint statement.

Part II. The Conceptual Framework for the New North American Industry Classification System

Statistics Canada, Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI), and the Economic Classification Policy Committee (ECPC) of the United States, acting on behalf of the Office of Management and Budget (OMB), have agreed that a common industry classification system for the three North American countries is needed and should be put in place. They have further agreed that the new North American Industry Classification System (NAICS) should conform to the following principles.

1. The uses of industrial statistics which include measuring productivity, unit labor costs, and the capital intensity of production require that information on outputs and inputs be used together. Moreover, statistical agencies in the three countries expect to be called upon to produce information on inputs and outputs, industrial performance, productivity, unit labor costs, employment, and other statistics in order to analyze the effects of the North American Free Trade Agreement. An industry classification system erected on a production-oriented, or supply-based, conceptual framework will assure maximum usefulness of industrial statistics for these and similar purposes. Therefore, the three countries agree that the new North American Industry Classification System should conform to a production-oriented economic concept.

2. The statistical agencies of the three countries also agree that market-oriented, or demand-based, groupings of economic data are required for many purposes, including studies of market share, demands for goods and services, import competition in domestic markets, and similar studies. Each country will provide product data compiled within the framework of its respective statistical system, to meet the need for such information. Recognizing the increasing international trade in goods and services, each country will work cooperatively to help improve commodity classification systems, including the Harmonized System (HS) of the Customs Cooperation Council and the United Nations provisional Central Product Classification (CPC) system for services, by coordinating efforts and keeping each agency informed of proposals for changes.

3. The statistical agencies of the three countries envision the implementation of a production-oriented conceptual framework for economic classifications in the new North American Industry

Classification System as a long-term goal. The conceptual framework will be used, both for 1997 and subsequently, in reviewing changes to the existing list of industries.

4. Statistical agencies of the three countries agree to give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies, including, but not necessarily limited to, electronic components, telecommunications equipment, computer equipment, computer software, medical equipment, and advanced materials. For these industries, statistical agencies will actively seek out industry expertise in all three countries, in order to generate the information required to define industries in accordance with the agreed production-oriented economic concept.

5. For industries in sectors of the economy outside of those sectors discussed in paragraph (4), statistical agencies of the three countries wish to maintain time series continuity, to the extent possible. However, changes in the economy and evolving user needs must be taken into account. Accordingly, proposals relating to all parts of the classification will be considered, so long as they are supported by reasoning and factual information that furthers the long-term goal of the North American Industry Classification System.

6. Those sectors of the economy where Canada, Mexico, and the United States presently have incompatible industry definitions will require adjustments in order to produce a common North American Industry Classification System. The three countries' statistical agencies agree to a detailed review of their present industry definitions to determine where differences in industry definitions exist and to move toward full commonality and the implementation of production-oriented reasoning into the new classification system.

7. In the interest of a wider range of international comparisons, the three countries agree to strive for a North American Industry Classification System that will be compatible with the 2-digit level of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations.

Part III. U.S. Procedures and Solicitation of Proposals for 4-Digit Industries

As indicated in Part II, the ECPC, acting on behalf of OMB, has agreed

jointly with Mexico's INEGI and Statistics Canada to propose a new North American Industry Classification System that would be common to the three countries. The three countries have also proposed (paragraph 1 of Part II) that NAICS be based on a production-oriented, supply-based economic concept for industry classification. In addition, the United States is proposing to prepare a separate, market-oriented product grouping system that would produce data for market-oriented analyses. The present announcement solicits proposals from the public for both the NAICS industry system and the separate market-oriented product grouping system.

Common Industry Classification System for North America

1. Under NAICS, the industry classification systems of Canada, Mexico, and the United States would move toward full commonality. Many respondents to the ECPC's March 31, 1993, Federal Register notice, supported far greater international comparability of industrial statistics, especially within North America (see "Summary of Public Comments to ECPC Issues Papers Nos. 1 and No. 2," pp. 12-13) [1]. The three countries' statistical agencies intend to produce comparable industry data at the most detailed practical level, limited only by differences among the economies of the three countries.

Production-Oriented Concept

2. The three countries' statistical agencies have agreed that industries in NAICS would be based on a production-oriented conceptual framework. As described in ECPC Issues Paper No. 1, "Conceptual Issues," part 1.2, when an industry is defined on a production-oriented concept, the producing units are grouped according to similarities in their production processes. Producing units within the industry's boundaries share a basic production process; they use closely similar technology. Producing units in no other industry share precisely the same combination of technologies or production processes. In the language of economics, producing units within an industry share the same production functions; producing units in different industries have different production functions. The boundaries between industries thus demarcate, in principle, differences in production processes and production technologies. (For additional information on the production-oriented concept, see ECPC Report No. 1, "Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United

States," and ECPC Report No. 2, "The Heterogeneity Index: A Quantitative Tool to Support Industrial Classification." For the application of the production-oriented concept to service industries, see ECPC Issues Paper No. 6, "Services Classifications.")

The reasoning behind the three statistical agencies' decision may be summarized as follows. An industry is a grouping of economic activities. Though it inevitably groups the products of the economic activities that are included in the industry definition, it is not solely a grouping of products. Put another way, an industry groups producing units. Accordingly, an industry classification system provides a framework for collecting data on inputs and outputs together.

The uses of economic data that require that data on inputs and outputs be used together, and be collected on the same basis, include production analyses, productivity measurement, and studying input usage and input intensities. The North American statistical agencies are proposing the production-oriented concept as the framework for industry statistics because (1) an industry classification system groups producing units, not products or services; and (2) groupings of producing units permit the collection of data on inputs and outputs on a comparable basis which is required for production-oriented analysis, but do not facilitate a comprehensive collection of data on the total output of any particular product or service, which is required for market-oriented analysis. Thus, the efficient organizing concept of an industry classification system is production-oriented rather than market-oriented.

Market-Oriented Groupings

3. Part II of this notice also specifies (paragraph 2) that market-oriented, or demand-based, groupings of economic data are required for many purposes; some of these purposes may not be well served by a production-oriented industry classification system. The distinction between market-oriented and production-oriented economic groupings is developed in ECPC Issues Paper No. 1; additional information is contained in ECPC Reports Nos. 1 and 2 and ECPC Issues Paper No. 6.

The ECPC is committed to a program that will provide improved data for purposes that require market-oriented groupings. This program consists of two parts.

(a) The ECPC has committed to expanding the lists of commodities and services that will be available from the 1997 Economic Censuses. The ECPC has

formed several "Product Codes Task Forces." These task forces have been charged with improving the basic lists of products and commodities, and for constructing new detailed codes that will be compatible across U.S. statistical agencies, and will also mesh to the extent possible with international detailed commodity or product systems. The ECPC is also committed to developing new mechanisms that will identify more quickly new products and services as they enter into commerce, and will work with other government agencies that have expertise on these matters and that have similar concerns.

(b) Improved product code data will, in turn, provide the basic commodity information for statistical agencies or users to develop market-oriented, demand-based economic groupings. The expanded product codes will permit aggregations for products that are close substitutes or complements but which may cut across the production processes of individual industries (see ECPC Issues Papers Nos. 1 and 6, and ECPC Report No. 1).

Emphasis on New Industries, Service Industries, and Advanced Technology

4. The ECPC will emphasize the development of improved industry classifications for (1) new and emerging industries, (2) service industries, in general, and (3) industries engaged in the production of advanced technologies. For these areas of the economy, the ECPC is committed to a proactive stance, and intends to identify and seek out industry expertise in these areas, as well as the expertise of data users on the topics mentioned above. ECPC Issues Paper No. 6 provides an explicit discussion of the problems to be surmounted in the classification of service industries.

The ECPC will consider proposals for changes to all parts of the classification system, including industries that are not targeted for special emphasis, so long as they further the proposed long-term goals of a production-oriented classification concept for the NAICS, and a common NAICS for all three North American countries. The ECPC is mindful that many users wish to maintain time series continuity to the extent possible (see ECPC Issues Paper No. 5, "The Impact of Classification Revisions on Time Series"), and will attempt to minimize changes that are not necessary either (a) to meet requests of users or (b) for North American comparability.

Classification Unit

5. The ECPC recommends that the establishment remain the unit to be

classified. The Standard Industrial Classification Manual, 1987, defines an establishment as a production entity that produces goods or services at or from one location for which data are available or can be meaningfully compiled (see ECPC Issues Paper No. 1, section 1.6, and ECPC Issues Paper No. 3, "Collectibility of Data"). In those sectors of the economy where the establishment concept does not adequately portray economic activity, alternative classification units will be considered.

Format for Industry Proposals

6. Proposals for new or revised 4-digit industries should be consistent with the production-oriented conceptual framework incorporated into the principles of NAICS. When formulating proposals, please note that an industry classification system groups the economic activities of establishments or producing units, which means that products and activities of the same producing unit cannot be separated in the industry classification system.

Proposals must be in writing and should include the following information:

(a) Specific detail about the economic activities to be covered by the proposed industry, especially its production processes, specialized labor skills, and any unique materials used. This detail should demonstrate that the proposal groups establishments that have similar production processes in accordance with the NAICS production-oriented industry concept (see Part II of this notice, ECPC Issues Paper No. 1, ECPC Reports Nos. 1 and 2, and for application of the production-oriented concept to service industries, ECPC Issues Paper No. 6).

(b) Specific indication of the relationship of the proposed industry to existing U.S. SIC 4-digit industries.

(c) Documentation of the size and importance of the proposed industry in the United States.

(d) As noted below, information about the proposed industry in Canada and Mexico would be helpful, if available.

Format for Market-Oriented Proposals

7. The ECPC will also accept proposals at this time for the alternative market-oriented product grouping system to be implemented after 1997. Such proposals must be in writing and should demonstrate that the proposed grouping includes products that are close substitutes, or that make up a marketing category, or otherwise meet the requirements for a market-oriented grouping system, as specified in ECPC Issues Paper No. 1 and Report No. 1.

Please note that proposals for the market-oriented system, unlike proposals for the industry system, may cut across the activities of establishments or producing units.

Evaluation Criteria

8. Proposals submitted to the ECPC requesting the creation of, or a revision to, a 4-digit industry will be evaluated using production-oriented criteria. ECPC Issues Paper No. 4, "Criteria for Determining Industries," describes some measures that may be used, e.g., the specialization ratio and the heterogeneity measure (see also ECPC Report No. 2, "The Heterogeneity Index: A Quantitative Tool to Support Industry Classification"). Other measures of the similarity among establishments will be considered and developed where necessary. For example, a coefficient of variation measure may be applied where applicable. However, all these statistical measures will supplement, not supplant, industry expertise and expert judgments about industry production processes and similarities.

Some specific measures employed previously in the U.S. SIC, particularly the formula for "economic significance," will not be used in NAICS (see ECPC Issues Paper No. 4) though size and importance of a proposed industry will be considered. The coverage ratio, previously used in the U.S. SIC, is more relevant for a product-grouping system than an industry system and therefore will not be used in NAICS.

Proposed industries must also include a sufficient number of companies so that Federal agencies can publish industry data without disclosing information about the operations of individual firms. The ability of government agencies to classify, collect, and publish data on the proposed basis will also be taken into account (see ECPC Issues Paper No. 3). Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Other Considerations

9. Persons or organizations submitting proposals should note that it is not always necessary to revise the 4-digit industries to obtain more detailed statistical information. If statistical information is needed for specific products rather than establishments, it may be more appropriate to seek changes in the detail of data collected and published by individual statistical agencies than to change the industry classification. Also, proposals for grouped data that fall under the market-oriented economic concept will be considered when the new U.S. market-oriented grouping system is developed after 1997.

All proposals for new industries and for changes in the boundaries of present industries will be reviewed for North American compatibility. The existing Canadian and Mexican industry classification systems [2, 3] will be subject to a similar review. Proposals will be exchanged with Statistics Canada and INEGI, and reviewed jointly in the preparation of NAICS. It would be helpful, although not required, if written proposals for new industries in NAICS present any available information on whether the proposed industry exists in Canada or Mexico, and whether the proposal can also be implemented in those countries.

Part IV. Work Plan

Within the framework presented in Parts II and III above, the ECPC intends to begin the detailed development of the proposed economic classification system, the North American Industry Classification System. This notice requests specific proposals for NAICS. Public comments and input from committees of government agencies that collect, compile, and use data that are classified by economic classifications will form part of the basis for the development of the new classification structure in NAICS. The specific milestones for additional activities of the ECPC are as follows:

(1) Publish **Federal Register** notice of proposed ECPC economic classification

recommendations for public comment. (January 1996)

(2) Publish **Federal Register** notice of final ECPC economic classification recommendations for public comment. (June 1996)

(3) Publish **Federal Register** notice of final OMB decisions. (October 1996)

(4) Begin implementation of NAICS. (January 1997)

PUBLIC REVIEW PROCEDURE: All comments and proposals received in response to this notice will be available for public inspection at the Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, 1441 L St., N.W., Washington, D.C. 20230. Please telephone BEA at (202) 606-9615 to make an appointment to enter the building. All proposals recommended by the ECPC will be published in the **Federal Register** for review and comment prior to final action by OMB. Those making proposals will be notified directly of action taken by the ECPC; others will be advised through the **Federal Register**.

References

[1] Economic Classification Policy Committee, "Summary of Public Comments to ECPC Issues Papers Nos. 1 and 2," October 1993. Available from Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, D.C. 20230, telephone number (202) 606-9615, FAX (202) 606-5311.

[2] Instituto Nacional de Estadística, Geografía e Informática, Clasificación Mexicana de Actividades Y Productos, 1994, Censos Economicos, 1994, 280 pages.

[3] Statistics Canada, Standard Industrial Classification, 1980, Ottawa, Ontario, December 1980, pp. iii-xxviii, 3-551.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 94-18095 Filed 7-25-94; 8:45 am]

BILLING CODE 3110-01-P

Tuesday
July 26, 1994

1994
July 26
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Part VI

**Department of the
Interior**

Bureau of Indian Affairs

**Panel for Educate America Act—Goals
2000; Notice**

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Panel for Educate America Act—Goals 2000

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs is establishing a panel to carry out responsibilities related to the Goals 2000: Educate America Act and hereby requests nominations for panel membership. The panel is required by Public Law 103-227 which sets forth specific provisions regarding the process for nominations for panel membership.

DATES: The nomination of individuals to serve on the Panel must be received at the address provided below on or before August 8, 1994.

ADDRESSES: Nominations are to be mailed to Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C St. NW., Mail Stop 3512-MIB, Washington, DC 20240; OR, hand delivered to Room 3512 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Goodwin K. Cobb, III at the above address or telephone (202) 208-3550.

SUPPLEMENTARY INFORMATION: Public Law 103-227 specifically requires establishment of a Panel and specifies that this panel will carry out provisions of the Educate America Act related to the Bureau of Indian Affairs education

program. These provisions include the "development of a reform and improvement plan designed to increase student learning and assist students in meeting National Education Goals, and the requirements pertaining to State improvement plans required by the act and also provides for the fundamental restructuring and improvement of elementary and secondary education in schools funded by the Bureau."

The Act further specifies that the Secretary of the Interior shall establish a panel coordinated by the Assistant Secretary of the Interior for Indian Affairs and specifies that the panel shall consist of:

1. The Director of the Office of Indian Education Programs of the Bureau and two heads of other divisions of such Bureau as the Assistant Secretary shall designate;

2. A designee of the Secretary of Education; and,

3. A representative nominated by each of the following:

A. The organization representing the majority of teachers and professional personnel in schools operated by the Bureau;

B. The organization representing the majority of nonteaching personnel in schools operated by the Bureau, if not the same organization as in (A) above.

C. School administrators of schools operated by the Bureau;

D. Education line officers located in Bureau area or agency offices serving schools funded by the Bureau;

E. The organization representing the majority of contract or grant schools funded by the Bureau not serving students on the Navajo reservation;

F. The organization representing the majority of contract or grant schools funded by the Bureau serving students on the Navajo reservation;

G. The organization representing the school boards required by statute for schools operated by the Bureau not serving students on the Navajo reservation;

H. The organization representing the school boards required by statute for schools funded by the Bureau serving students on the Navajo reservation.

The Act further specifies that in addition, the members of the panel described above shall designate for full membership on the panel four additional members:

(1) "One of whom shall be a representative of a national organization which represents primarily national Indian education concerns; and,

(2) Three of whom shall be chairpersons (or their designees) of Indian tribes with schools funded by the Bureau on their reservations (other than those specifically represented by organizations referred to above, provided that preference for no less than two of these members shall be given to Indian tribes with a significant number of schools funded by the Bureau on their reservations, or with a significant percentage of their children enrolled in schools funded by the Bureau."

Dated: July 15, 1994.

Faith Roessel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94-18111 Filed 7-25-94; 8:45 am]

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Reader Aids

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Vol. 59, No. 142

Tuesday, July 26, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection announcement line	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	2634	34755
Administrative Orders:	2636	34755
Presidential Determinations:	2641	34755
No. 94-29 of		
June 27, 1994	35211	
No. 94-30 of		
June 30, 1994	35607	
No. 94-31 of		
July 1, 1994	35609	
No. 94-32 of		
July 12, 1994	37649	
No. 94-33 of		
July 14, 1994	37147	
No. 94-34 of July 15,		
1994 (Superseded		
by publication of July		
21)	37149	
No. 94-34 of July 15,		
1994 (Supersedes		
publication of July		
20)	37397	
No. 94-36 of		
July 19, 1994	37153	
Memorandums:		
June 30, 1994	34341	
July 11, 1994	36017	
Notice:		
July 19, 1994	37151	
Proclamations:		
6641 (See Proc.		
6704)	34329	
6704	34329	
6705	34343	
6706	36893	
6707	37395	
Executive Orders:		
1919½ (Revoked in		
part by PLO		
7065)	35054	
12002 (See EO		
12923)	34551	
12214 (See EO		
12923)	34551	
12722 (Continued by		
Notice of July 19)	37151	
12724 (Continued by		
Notice of July 19)	37151	
12735 (See EO		
12923)	34551	
12755 (See EO		
12923)	34551	
12851 (See EO		
12923)	34551	
12901 (See USTR		
notice of July 15)	36234	
12923	34551	
5 CFR		
179	35213, 35215	
532	36019, 36351	
772	36352	
2610	34755	
7 CFR		
1	36019	
2	36020	
272	34553	
275	34553	
283	34553	
301	35611, 37929	
319	35564	
354	35612	
406	35613	
916	33897	
917	33897	
928	33898	
929	36021	
947	33900	
981	35222, 35847	
998	36353	
1205	33901	
1421	34345	
1427	37399	
1755	34353, 34899	
Proposed Rules:		
46	35487	
301	36996	
322	36373	
372	37442	
925	36091	
944	36091	
989	36093	
1030	36094	
1036	33922	
1106	36095	
1710	36998	
8 CFR		
103	33903	
212	35614	
245	33903	
245a	33903	
264	33903	
274a	33903	
299	35978	
Proposed Rules:		
204	36729	
214	35866	
9 CFR		
77	36691	
78	35615, 36023	
92	34375, 36024	
97	34756	
Ch. III	34375	
Proposed Rules:		
50	36374	
77	36374	

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FEDERAL REGISTER PAGES AND DATES, JULY

33897-34342	1	37929-38098	26
34343-34552	5		
34553-34754	6		
34755-34966	7		
34967-35210	8		
35211-35460	11		
35461-35606	12		
35607-35846	13		
35847-36016	14		
36017-36350	15		
36351-36690	18		
36691-36892	19		
36893-37152	20		
37153-37398	21		
37399-37650	22		
37651-37928	25		

92.....36374	97.....35248, 35250, 37416, 37417	21 CFR	92.....34300
317.....34396	1209.....35623	5.....35848, 37419	100.....34902
381.....35639	1260.....36355	172.....37419	203.....36846
10 CFR	Proposed Rules:	173.....36935	570.....34300
2.....36026	Ch. I.....35868, 37442	341.....36051	941.....35834
170.....36895	21.....34779, 37878	343.....37421	982.....36846
171.....36895	23.....35196, 37620, 37878	510.....33908	984.....36846
30.....36026	33.....35272	520.....33908, 35251	3500.....37360
40.....35618, 36026	39.....34396, 34584, 35488, 35490, 36096, 36098, 36375, 36376, 36998, 37182, 37183, 37185, 37443	522.....37421	
50.....35461	71.....34192, 34585, 35492, 35869, 36099, 36100, 36730, 37187	558.....35251	25 CFR
70.....36026	73.....37188	1220.....35252	Proposed Rules:
72.....35618, 36026	91.....37620	Proposed Rules:	Ch. I.....36108
74.....35618	93.....34192	101.....36379, 37190	164.....35580
75.....35618	16 CFR	102.....36103	165.....35580
150.....35618	2.....34968	203.....36107	
710.....35178	4.....34968	205.....36107	26 CFR
Proposed Rules:	305.....34014	341.....34781	1.....34971, 35030, 35414, 36256, 36356, 36360, 37669
Ch. I.....36374	Proposed Rules:	862.....37378	31.....35414
20.....37950	Chapter II.....35657	864.....37378	40.....35414
35.....37950	22.....35661	866.....37378	602.....34971, 35030, 36356, 36360, 37669
51.....37724	300.....34780	870.....37378	Proposed Rules:
1003.....34767	301.....34780	872.....37378	1.....34398, 35066, 35418, 36114, 36394, 37450, 37733
11 CFR	303.....34780	874.....37378	31.....35418
102.....35785	1117.....33925	876.....37378	40.....35418
12 CFR	1307.....35058	878.....37378	301.....37450
207.....37651	1500.....33928, 33932	880.....37378	
215.....37930	17 CFR	882.....37378	27 CFR
220.....37651	1.....34376	886.....37378	5.....35623
221.....37651	33.....34376	888.....37378	28 CFR
224.....37651	190.....34376	890.....37378	551.....34742
607.....37400	228.....36258	892.....37378	571.....35456
611.....37406	229.....36258	22 CFR	Proposed Rules:
614.....37400	230.....36258	60.....33909	31.....37866
615.....37400	232.....36262	61.....33909	
618.....37406	259.....36258	62.....33909	29 CFR
620.....37400, 37406	Proposed Rules:	63.....33909	100.....37157
701.....36040	1.....37189	64.....33909	1910.....33910, 34580, 36695
709.....36040	3.....37446	65.....33909	1915.....36695, 37816
745.....36040	228.....36264	514.....34760	1917.....36695
747.....36040	229.....36264	23 CFR	1918.....36695
790.....36040	230.....36264	420.....37548	1926.....36695
791.....36040	232.....36264	511.....37548	1928.....36695
792.....36040	239.....36264	650.....37935	2610.....36054
793.....36040	240.....34781, 36264	655.....33909	2619.....36055
794.....36040	249.....36264	658.....36051	2622.....36054
1630.....37931	250.....36264	Proposed Rules:	2644.....36058
Proposed Rules:	259.....36264	637.....35493	2676.....36055
220.....33923	260.....36264	24 CFR	Proposed Rules:
230.....35271	269.....36264	17.....34578	Ch. XXVI.....35067
325.....37726	270.....36264	200.....36692	Ch. XL.....35067
336.....35480	274.....36264	583.....36886	15.....37540
13 CFR	18 CFR	791.....35253	1915.....34586
101.....37413	284.....35462	813.....36662	1926.....37951
108.....36042	Proposed Rules:	880.....36616	
120.....36042	35.....35274	881.....36616	30 CFR
123.....36042, 36045	19 CFR	882.....36616, 36662	914.....36059
14 CFR	174.....34970	883.....36616	934.....37423, 37432
21.....34572	Proposed Rules:	884.....36616	938.....36937
23.....34572	141.....36102	885.....36616	944.....35255
39.....34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047, 36930, 36932, 37155, 37414, 37655, 37659, 37662, 37932, 37933	142.....36102	886.....36616	Proposed Rules:
71.....34577, 34758, 34759, 34760, 35248, 36050, 37156, 37663	20 CFR	887.....36662	75.....35071
73.....36692	416.....33906	889.....36616	Ch. II.....36108
91.....34578, 37663, 37669	Proposed Rules:	904.....36616	Ch. IV.....36108
	404.....37000, 37002	905.....36616	Ch. VI.....36108
		906.....36616	Ch. VII.....36108
		960.....36616	701.....37952
		982.....36662	784.....37952
		3280.....34294	817.....37952
		3500.....37422	914.....36114
		Proposed Rules:	920.....35289
		43.....34300	944.....35871

31 CFR	Proposed Rules:	43 CFR	
51.....35624	14.....37008	12.....36713	222.....36088
52.....35624		Public Land Order:	226.....36088
550.....35259		7055.....34899	237.....36088
32 CFR	39 CFR	7064.....34582	252.....36088
80.....37680	111.....33911	7065.....35054	Proposed Rules:
90.....34382, 35463, 36367	233.....35851	7067.....35859	Ch. XIV.....36108
91.....34382, 35463, 36367	262.....37159	7068.....35859	209.....35895
155.....35464	266.....35625, 37159	7069.....35267	252.....35895
369.....35261	Proposed Rules:	Proposed Rules:	926.....35294
383.....34382	111.....35873, 37011, 37190	Ch. I.....36108	952.....35294
384.....35262		Ch. II.....36108	970.....35294
389.....34382	40 CFR	Subtitle A.....36108	
552.....34581, 34761	9.....33912, 34070	2800.....35596	49 CFR
706.....35033, 35849	35.....35852	2810.....35596	1.....36987
Proposed Rules:	52.....33914, 34383, 35035, 35036, 35044, 35411, 36700, 37162, 37696, 37698, 37939, 37944, 37947	2880.....35596	171.....38040
553.....34782	55.....36065	44 CFR	172.....35411, 37537, 38040
865.....37953	61.....36280	64.....36370	173.....38040
33 CFR	80.....35854, 36944	322.....36087	178.....38040
1.....36316	81.....35044, 37939	362.....35630	180.....38040
4.....34210	85.....33912, 36969	Proposed Rules:	195.....35465, 36256
26.....36316	86.....33912, 36368	67.....36421	392.....34708
100.....37694	112.....34070	45 CFR	393.....34708, 34712
117.....36062	141.....34320	5b.....36717	571.....35636, 37164, 37167
130.....34210	142.....34320	Proposed Rules:	583.....37294
131.....34210	180.....35627, 35629	606.....37437	1056.....34392
132.....34210	185.....35629	610.....37437	Proposed Rules:
137.....34210	186.....35629	611.....37437	37.....37208
138.....34210	271.....35266	612.....37437	38.....37208
160.....36316	300.....35852	613.....37437	171.....36488
161.....36316	372.....34386	614.....37437	172.....36488
162.....36316	Proposed Rules:	615.....35079	173.....36488
164.....36316	Ch. I.....33940	630.....37437	175.....36488
165.....36316	51.....35292	640.....37437	176.....36488
334.....35850	52.....33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408, 36731, 37018, 37190, 37956, 37957	641.....37437	177.....36488
Proposed Rules:	60.....36130	650.....37437	178.....36488
80.....37003	63.....36130	671.....37437	383.....36338
82.....37003	70.....37957	672.....37437	541.....3508
84.....37003	81.....35079, 37190, 37957	689.....37437	552.....37021
87.....37003	90.....37454	46 CFR	571.....34405, 35298, 35300, 35670, 35672
88.....37003	141.....35891	68.....36088	575.....38038
90.....37003	143.....35891	47 CFR	
165.....35290, 35661	152.....35662	Ch. I.....35631	
322.....34783	174.....35662	1.....37720	
334.....33939	180.....35663, 37019	2.....37439	
34 CFR	185.....33941, 37537	15.....37439	
74.....34722	281.....37455	22.....35054, 37163	
77.....34722	300.....37200	24.....37164, 37566	
641.....34198	42 CFR	43.....35632	
668.....34964, 36368	51a.....36703	73.....34391, 34766, 35055, 35268, 36987	
682.....34964, 35624	405.....36069	74.....35635	
685.....34278	412.....36707	80.....35268	
690.....34964	413.....36707	87.....35268	
Proposed Rules:	414.....36069	Proposed Rules:	
Ch. VI.....34398	417.....36072	Chapter I.....35664	
35 CFR	418.....36707	20.....37734	
Proposed Rules:	431.....36072	22.....37734	
133.....36398	434.....36072	61.....33947	
135.....36398	435.....37702	64.....33947	
36 CFR	440.....37702	69.....33947	
242.....36063	441.....37702	73.....34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894, 36735, 36736, 37020, 37456, 37737, 37738	
292.....36866	1003.....36072	74.....35665	
704.....35034	Proposed Rules:	90.....37734	
Proposed Rules:	57.....36733	97.....36157	
Ch. I.....36108	421.....35664, 36415	48 CFR	
7.....37734	440.....36419	206.....36088	
38 CFR	1001.....37202		
3.....34382, 35265, 35464, 35851, 37695			

LIST OF PUBLIC LAWS

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S.J. Res. 187/P.L. 103-278
Designating July 16 through July 24, 1994, as "National Apollo Anniversary Observance". (July 20, 1994; 108 Stat. 1408; 1 page)
Last List July 11, 1994



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