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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1421

RINS 0560–AC75, 0560–AD02, and 0560–AD26

1994 Wheat and Feed Grain Acreage Reduction Programs and the 1994 Oilseed Price Support Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) issued proposed rules with respect to the 1994 production adjustment program for wheat on April 6, 1993, and for feed grains on August 5, 1993, which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. This final rule amends the regulations to set forth the following determinations: the Acreage Reduction Program (ARP) percentages for the 1994 crops of wheat, corn, grain sorghum, barley, and oats will be zero percent; a paid land diversion (PLD) program will not be implemented for the 1994-crop of wheat and feed grains; producers of malting barley must, as a condition of eligibility for feed grain loans, purchases, and payments, comply with requirements of the zero percent ARP for the 1994 crop of barley; and the 1994-crop price support rates per bushel will be $2.58 for wheat, $1.89 for corn, $1.80 for grain sorghum, $1.54 for barley, $0.97 for oats, $1.61 for rye, $4.92 for soybeans, and $0.087 per pound for canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. These actions are required by section 107B, in the case of wheat, section 105B, in the case of feed grains, and section 205, in the case of oilseeds, of the 1949 Act.

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined to be "economically significant" because it would have an annual effect on the economy of more than $100 million and would materially alter the budgetary impact of entitlements, or loan programs or rights and obligations of recipients thereof. Budget outlays for 1994-crop deficiency payments are expected to range from $1.3 billion to $1.8 billion for wheat and from $2.5 billion to $3.0 billion for feed grains. This final rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are as follows:

Titles	Numbers
Commodity Loans and Purchases	10.051
Feed Grain Production Stabilization	10.055
Wheat Production Stabilization	10.058

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by sections 107B(o) and 105B(o) of the 1949 Act to publish a notice of proposed rulemaking with respect to certain provisions of this rule. A Final Regulatory Flexibility Analysis for the 1994 Wheat and Feed Grain ARP was prepared as part of the Final Regulatory Impact Analysis. Copies of this analysis are available from the above-named individual.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

Background

This final rule amends 7 CFR parts 1413 and 1421 to set forth determinations of the 1994 production adjustment programs for wheat and feed grains and the 1994 price support rates for wheat, feed grains, and oilseeds. General descriptions of the statutory basis for the 1994 Wheat and Feed Grain Program determinations in this final rule were set forth at 58 FR 17087 (April

6, 1993) and at 58 FR 41641 (August 5, 1993), respectively.

1994 Wheat Program

The public was asked to comment on whether the 1994 wheat ARP percentage should be set at 5 percent, 10 percent, or 15 percent or another percentage between 0 and 15 percent. Comments received during the comment period are summarized as follows:

A total of 45 respondents commented on the ARP level. Table 1 shows a breakdown of the comments received by type of respondent.

TABLE 1.—SUMMARY OF COMMENTS ON 1994 WHEAT ARP LEVELS, BY RESPONDENT TYPE

Item	ARP Percentage [1]						
	No ARP	0%	5%	10%	15%	Other >15%	Total
Farm Organizations		8.0	2.0	1.0			11.0
Agri-businesses	1.0	8.0					9.0
Individual Producers		6.0	1.0	3.5	12.0	2.5	25.0
Total	1.0	22.0	3.0	4.5	12.0	2.5	45.0

[1] A comment that gives a range is considered as half of a comment for each of the end points. For example, 0% to 5% is counted as 0.5 for 0% and 0.5%.

Respondents favored lower ARP percentages for the following reasons: (1) Wheat-sector net income is higher with lower ARP levels; (2) the need to send a message to our competitors that the U.S. will not unilaterally reduce production and abandon world markets; (3) higher payment acres after flexibility; and (4) idling acres under the conservation reserve program and annual programs hurt rural economic activity.

Advocates for higher ARP percentages noted that higher ARP levels: (1) result in higher wheat prices; (2) result in lower Government costs; and (3) reduce concerns over stock-building.

After considering these comments, the Secretary of Agriculture (the Secretary) announced, on May 28, 1993, an ARP of zero percent. The Secretary was authorized to make adjustments in the 1994 ARP percentage no later than July 31, 1993. No change was made because estimated 1994 wheat supplies did not change significantly (up 4 percent) from the May 1993 supply estimates. The Secretary determined that a zero percent ARP for wheat would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages, signal U.S. competitors that the U.S. will not idle acreage to support the world price of wheat, and signal to domestic and foreign customers that the U.S. will be a reliable supplier.

The zero-percent ARP option is the only option under which U.S. wheat supplies are estimated to increase over 1993 levels. Table 2 compares supply and demand estimates under four different ARP options based on May 1993 estimates (the month in which the ARP decision was made).

TABLE 2.—COMPARISON OF 1994 WHEAT SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Item	1994 ARP options			
	1	2	3	4
ARP (percent)	0	5	10	15
Participation (percent)	86	85	83	81
Planted Acreage (mil. ac.)	72.5	70.7	68.4	65.8
Production (mil. bu.)	2,414	2,355	2,281	2,200
Domestic User (mil. bu.)	1,225	1,210	1,190	1,170
Exports (mil. bu.)	1,250	1,240	1,230	1,215
Ending Stocks 8/31 (mil. bu.)	677	643	599	553
Average Market Price ($ per bu.)	2.65	2.70	2.80	2.92
Deficiency Payments (mil. $)	2,343	2,096	1,763	1,431
Net Income to Wheat Producers (mil. $)	5,420	5,184	4,956	4,755

The announced ARP level of zero percent is 15 percentage points below the statutory maximum of 15 percent. The 1949 Act provides that an ARP of not more than 15 percent may be implemented if the ending stocks-to-use (S/U) ratio for the previous marketing year is equal to or less than 40 percent. When the 1994 ARP was announced, the S/U for the 1993 marketing year was estimated to be 27.0 percent. Because the 1993 S/U level is below 34 percent, the minimum 7-percent ARP imposed by section 1104 of the Agricultural Reconciliation Act of 1990 does not apply.

A PLD will not be implemented for 1994 wheat because it is unnecessary given the supply and use conditions which led to an ARP of 0 percent.

1994 Feed Grain Program

The public was asked to comment on the appropriate 1994 ARP percentage for corn, grain sorghum, and barley and on whether or not malting barley producers, as a condition of eligibility for feed grain loans, purchases, and payments, should be exempt from complying with requirements of the feed grain ARP. The statutory range for establishing the 1994 ARP percentages, based on the supply and demand estimates published in the proposed rule, was 0 to 12.5 percent for corn and 0 to 20 percent for grain sorghum and barley. The oats ARP percentage is statutorily mandated at zero percent.

Comments received during the specified comment period are summarized as follows:

A total of 34 respondents commented on the ARP percentage. Twenty-nine of the respondents commented on the corn

ARP percentage, 14 of the respondents commented on the grain sorghum ARP percentage, and 17 of the respondents commented on the barley ARP percentage. Table 3 shows a breakdown of the comments received on the corn, grain sorghum, and barley ARP percentage by type of respondent.

TABLE 3.—SUMMARY OF COMMENTS ON THE 1994 FEED GRAIN ARP LEVELS, BY COMMODITY AND RESPONDENT TYPE

Item	ARP percentage					
	0%	5%	7.5%	10%	12.5%	>12.5%
Corn:						
Farm Organizations	1	0	1	0	1	0
Agri-businesses	5	0	0	1	1	0
Individual/Producers	1	0	0	0	1	0
Others	1	0	0	8	7	1
Total	8	0	1	9	10	1
Grain Sorghum:						
Farm Organizations	1	0	0	0	0	0
Agri-businesses	4	0	0	1	0	0
Individual/Producers	1	0	0	0	0	0
Others	1	0	0	5	0	1
Total	7	0	0	6	0	1
Barley:						
Farm Organizations	5	0	0	0	4	0
Agri-businesses	4	0	0	1	6	0
Individual/Producers	1	0	0	0	2	0
Others	1	0	0	5	65	0
Total	11	0	0	6	77	0

In general, most individual producers favored an ARP level of 10 percent or higher while most farm organization and agri-business respondents favored an ARP level of 7.5 percent or less.

Respondents favoring the lower ARP percentages noted that the U.S. needs to produce more to take advantage of export opportunities and confirmed USDA's analysis that a lower ARP level results in higher producer incomes. Advocates for a zero-percent barley ARP indicated the need for adequate supplies to aggressively implement the Export Enhancement Program for barley.

Respondents favored higher ARP percentages because feed grain prices would be higher, Government costs would be lower, and the rural economy would improve.

Two respondents commented on whether or not malting barley producers should be exempt from the 1994 ARP requirement for barley. One respondent favored and one respondent opposed the malting barley exemption.

After considering these comments, the Secretary announced on September 30, 1993, an ARP level of 5 percent for corn, and 0 percent for grain sorghum, barley, and oats, and that malting barley producers would not be exempt from complying with the 1994 barley ARP requirements.

The Secretary was authorized to make adjustments in the 1994 ARP percentages no later than November 15, 1993. On November 15, 1993, the Secretary announced that the 1994 level for corn would be lowered from 5 percent to 0 percent. A change was warranted because 1994 feed grain supplies had decreased 8 percent since the September announcement.

The Secretary determined that zero-percent ARP's for corn, grain sorghum, and barley would maintain U.S. competitiveness in world markets, provide adequate supplies of quality feed and food for domestic and foreign utilization, and support farm income.

The corn ARP level of 0 percent is 12.5 percentage points below the statutory maximum of 12.5 percent. The 1949 Act provides that an ARP of 0 to 12.5 percent may be implemented if the corn ending S/U ratio for the previous marketing year is equal to or less than 25 percent. The corn ending S/U for the 1993/94 marketing year was estimated to be 16.6 percent when the 1994 ARP levels were announced on September 30 and 11.4 percent when the corn ARP was lowered on November 15. In the case of grain sorghum and barley, the 1949 Act provides for ARP percentages from 0 to 20 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 7.5 percent ARP for the 1994 crop unless the 1993/94 corn ending S/U ratio is less than 20 percent. Since the 1993/94 corn S/U ratios estimated on September 30 and on November 15 were below 20 percent, the 7.5-percent minimum ARP does not apply.

Table 4 shows the three different 1994 feed grain ARP options that were considered when determining the final 1994 ARP percentages.

TABLE 4.—1994 FEED GRAIN ARP OPTIONS

Crop	1994 ARP Options (percentages)		
	1	2	3
Corn	0	5	12.5
Grain Sorghum	0	0	5
Barley	0	0	5

Tables 5 through 7 compare the supply and demand estimates of three different 1994 ARP options based on November 1993 estimates for corn, grain sorghum, and barley.

TABLE 5.—COMPARISON OF 1994 CORN SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Item	1994 ARP options		
	1	2	3
ARP (percent)	0	5	12.5
Participation (percent)	74	71	65
Planted Acreage (mil. ac.)	79.5	77.5	74.7
Production (mil. bu.)	8,870	8,645	8,325
Domestic Use (mil. bu.)	6,940	6,900	6,815
Exports (mil. bu.)	1,420	1,400	1,360
Ending Stocks 8/31 (mil. bu.)	1,396	1,231	1,036
Average Market Price ($ per bu.)	2.32	2.40	2.50
Deficiency Payments (mil. $)	2,203	1,618	959
Net Income to Corn Producers (mil. $)	11,633	11,450	11,186

TABLE 6.—COMPARISON OF 1994 GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Item	1994 ARP options		
	1	2	3
ARP (percent)	0	0	5
Participation (percent)	76	75	69
Planted Acreage (mil. ac.)	11.3	11.3	11.1
Production (mil. bu.)	680	680	665
Domestic Use (mil. bu.)	413	418	403
Exports (mil. bu.)	225	222	222
Ending Stocks 8/31 (mil. bu.)	120	118	118
Average Market Price ($ per bu.)	2.12	2.17	2.30
Deficiency Payments (mil. $)	230	203	125
Net Income to Sorghum Producers (mil. $)	835	844	829

TABLE 7.—COMPARISON OF 1994 BARLEY SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Item	1994 ARP options		
	1	2	3
ARP (percent)	0	0	5
Participation (percent)	79	75	76
Planted Acreage (mil. bu.)	8.0	8.0	7.8
Production (mil. bu.)	430	430	420
Domestic Use (mil. bu.)	380	380	375
Exports (mil. bu.)	85	84	84
Ending Stocks 5/13 (mil. bu.)	122	123	118
Average Market Price ($ per bu.)	2.10	2.15	2.25
Deficiency Payments (mil. $)	136	123	91
Net Income to Barley Producers (mil. $)	631	641	639

Malting barley producers will not be exempted from complying with the barley ARP requirement because exempting them would increase the complexity of the program and increase program outlays.

Acreage Reduction Percentage. In accordance with sections 107B(e)(1) and 105B(e)(1) of the 1949 Act, the ARP has been established with respect to the 1994 crop of corn, grain sorghum, barley, and oats at 0 percent. Accordingly, producers will not be required to reduce their 1994 acreage of corn, grain sorghum, and barley for harvest from the crop acreage base established for feed grains for a farm in order to be eligible for price support loans, purchase, and payments for the respective feed grain.

Paid Land Diversion. In accordance with sections 107B(e)(5) and 105B(e)(5) of the 1949 Act, a PLD program will not be implemented for the 1994 crops of wheat and feed grains.

Malting Barley Exemption. In accordance with section 105B(e)(2)(G) of the 1949 Act, producers of malting barley shall as a condition of eligibility of feed grain loans, purchases and payments, comply with the requirements of the zero-percent ARP for the 1994 crop of barley.

Price Support Rates. In accordance with sections 107B(a), 105B(a), and 205 of the 1949 Act, the price support rates have been established with respect to the 1994 crops of wheat at $2.58 per bushel, corn at $1.89 per bushel, grain sorghum at $1.80 per bushel, barley at $1.54 per bushel, oats at $0.97 per bushel, rye at $1.61 per bushel, soybeans at $4.92 per bushel, and canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed at $0.087 per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping

requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1421 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraph (a)(1)(iii) and adding paragraph (a)(1)(iv),

B. Revising paragraphs (a)(2)(iii)(B) and (a)(2)(iii)(C) and adding paragraph (a)(2)(iv),

C. Republishing paragraph (d)(4) introductory text, and adding paragraphs (d)(4)(i) and (d)(4)(ii), and

D. Revising paragraph (e) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1) * * *

(iii) 1993 wheat, 0 percent; and

(iv) 1994 wheat, 0 percent.

(2) * * *

(iii) * * *

(B) Grain sorghum, 5 percent

(C) Barley and oats, 0 percent; and

(iv) For the 1994 crop: corn, grain sorghum, barley, and oats, 0 percent.

* * * * *

(d) * * *

(4) For the 1994 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains.

* * * * *

(e) With respect to the 1991, 1992, 1993, and 1994 crop years, in order to receive feed grain loans, purchases, and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction requirements of this part.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. In § 1421.7, paragraphs (b)(1)(iv), (b)(2)(iv), (b)(3)(iv), (b)(4)(iv), (b)(5)(iv), (b)(6)(iv), (b)(9)(iv), and (b)(10)(iv) are added to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(b) * * *

(1) * * *

(iv) 1994 Wheat—$2.58 per bushel;

(2) * * *

(iv) 1994 Corn—$1.89 per bushel;

(3) * * *

(iv) 1994 Barley—$1.54 per bushel;

(4) * * *

(iv) 1994 Oats—$0.97 per bushel;

(5) * * *

(iv) 1994 Grain sorghum—$1.80 per bushel;

(6) * * *

(iv) 1994 Rye—$1.61 per bushel;

* * * * *

(9) * * *

(iv) 1994 Soybeans—$4.92 per bushel;

(10) * * *

(iv) 1994 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.087 per pound.

* * * * *

Signed on July 20, 1994 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–18656 Filed 8–1–94; 8:45 am]

BILLING CODE 3410–05–P

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7 CFR Part 1427

RIN 0560–AD82

1994 Cotton Loan and LDP Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations with respect to the upland and extra long staple cotton loans and loan deficiency payments (LDP) made by the Commodity Credit Corporation (CCC) in accordance with The Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this interim rule will provide: greater clarity; enhance the administration of CCC programs by providing uniformity between CCC price support programs; eliminate obsolete provisions; provide more authority to State and county committees in administering the programs; lessen administrative actions CCC imposes on producers who violate the loan and LDP agreements; and correct errors.

DATES: Interim rule effective August 2, 1994. Comments must be received on or before September 1, 1994 in order to be assured of consideration.

ADDRESSES: Submit comment to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7641. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3623, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction,

administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB Nos. 0560–0087 and 0560–0129. The content and format of the information collections have not changed as a result of this amendment to 7 CFR part 1427; however, the frequency of reporting has been reduced. ASCS will submit a burden correction worksheet to OMB for review.

Comments

Since producers are currently making decisions regarding upland and extra long staple cotton which may be pledged as collateral for CCC price support loans, it has been determined that it is impractical and contrary to the public interest for CCC to engage in proposed rulemaking requirements with respect to the provisions of this rule. Accordingly, the provisions of this interim rule are effective upon publication in the Federal Register. Comments are requested, however, and will be taken into consideration when developing the final rule. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities.

This interim rule amends regulations found at 7 CFR part 1427 to provide rules for administering CCC price support programs for the 1994 and subsequent crop years.

Section 1427.1 (b) is amended to clarify what information is available in State and county Agricultural Stabilization and Conservation Service offices.

Section 1427.3 is amended to: (a) correct a typographical error; and (b) add the definition of "warehouse receipt".

This interim rule amends § 1427.4(b) to add references to receivers, guardians, or trustees which were inadvertently omitted.

This interim rule amends § 1427.5(b)(1)(v)(B)(4) to clarify that certain extra long staple cotton is ineligible for CCC price support loans.

This interim rule amends § 1427.5(c)(2)(ii) by removing the reference to incentive payments and thereby allow purchases of cotton to make such payments to a producer without affecting the ability of the producer to obtain a price support loan with respect to such cotton.

This interim rule amends § 1427.6(b) to clarify who may disburse loan proceeds to approved cooperative marketing associations.

Section 1427.11 refers to warehouse receipts that may be used as collateral for CCC price support loans. This section has been revised to recognize the existence of electronic receipts by removing specific statements such as "stamped" and "initialed".

Provisions for taking administrative offsets are provided in part 3 of this title and part 1403 of this chapter. Accordingly, this interim rule removes and reserves §§ 1427.14 and 1427.168.

CCC has determined that the liquidated damages can be reduced without affecting the administration of the cotton price support programs. Accordingly, this interim rule amends § 1427.18 and § 1427.175 to: (a) decrease the liquidated damages amounts; and (b) add provisions that provide that any or all of the liquidated damages may be waived under certain conditions.

Section 1427.23 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f). The removed provision was originally included to allow upland cotton producers who lost beneficial interest at the time of ginning an opportunity to file for a LDP on the day such upland cotton was ginned. This required producers to report ginning to the county office on a weekly basis. Since this provision was implemented, CCC developed a more workable procedure that allows producers to request LDP's in advance of ginning with the LDP rate based on the loan repayment rate announced and in effect on the day the upland cotton is ginned in accordance with redesignated § 1427.23(f).

Section 1427.171 is amended to clarify provisions relating to locations that are approved for the storage of CCC loan collateral by removing the reference to commercial warehouse houses.

Section 1427.174 is amended to correct a spelling error.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.1 is amended by revising paragraph (b)(3) to read as follows:

§ 1427.1 Applicability.

* * * * *

(b) * * *

(3) For ELS cotton, the schedules of discounts for micronaire.

* * * * *

3. Section 1427.3 is amended by:

A. Revising the definition of "Authorized loan servicing agent (LSA)", and

B. Adding the definition of "warehouse receipt" in alphabetical order.

§ 1427.3 Definitions.

* * * * *

Authorized loan servicing agent (LSA) means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling the extension of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes;

* * * * *

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, that is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by ASCS or CCC to operate such system; or,

(3) Other such acceptable evidence of title, as determined by CCC.

4. Section 1427.4 is amended by revising paragraph (b) to read as follows:

§ 1427.4 Eligible producer.

* * * * *

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

* * * * *

5. Section 1427.5 is amended by:

A. Revising paragraph (b)(1)(v)(B)(*4*) and

B. Revising paragraph (c)(2)(ii) to read as follows

§ 1427.5 General eligibility requirements.

* * * * *

(b)(1) * * *

(v) * * *

(B) * * *

(*4*) Must not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter;

* * * * *

(c) * * *

(2) * * *

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount to enter into such contract, except as provided in part 1425 of this chapter.

* * * * *

6. Section 1427.6 is amended by revising paragraph (b) to read as follows:

§ 1427.6 Disbursement of price support loans.

* * * * *

(b) Loan proceeds may be disbursed by CCC or by an approved servicing agent bank to approved cooperative marketing associations.

* * * * *

7. Section 1427.11 is amended by:

A. Revising paragraph (a)(1),

B. Revising introductory text of paragraph (e),

C. Revising paragraphs (f)(2) and (f)(3),

D. Revising introductory text of paragraph (g) and revising paragraph (g)(2),

E. Removing paragraph (h), and

F. Redesignating paragraph (i) as paragraph (h) and revising redesignated paragraph (h) to read as follows:

§ 1427.11 Warehouse receipt and insurance.

(a) * * *

(1) Meet the definition of a warehouse receipt,

* * * * *

(e) Warehouse receipts, in accordance with § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only under the following conditions:

* * * * *

(f) * * *

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight
(Name of warehouse)
By (Signature or initials)
Date

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(g) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

* * * * *

(2) If warehouse receiving charges have been paid or waived, the receipt must show such fact.

* * * * *

(h) The warehouse receipt must show the compression status of the bale, i.e., flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

§ 1427.14 [Removed and Reserved]

8. Section 1427.14 is removed and reserved.

9. Section 1427.18 is amended by:

A. Revising paragraph (e),

B. Revising paragraph (f)(2),

C. Adding paragraph (f)(3),

D. Revising paragraph (g)(2), and

E. Adding paragraph (j) to read as follows:

§ 1427.18 Liability of the producer.

* * * * *

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the commodity which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) * * *

(2) Assess liquidated damages in accordance with paragraph (e) of this section.

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, the county committee shall call the applicable loan involved in the violation and require repayment of any market gain

previously realized for the applicable loan, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(g) * * *

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, and with respect to a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

* * * * *

(j) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (e) of this section may be waived as determined by CCC.

10. Section 1427.23 is amended by:

A. Removing paragraph (f)

B. Redesignating paragraph (g) as paragraph (f), and revising redesignated paragraph (f), and

C. Redesignating paragraph (h) as paragraph (g) and revising redesignated paragraph (g) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible cotton, and the producer has the beneficial interest in such quantity as specified in accordance with § 1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) of this section on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

(g) Notwithstanding any other provision of this section, CCC will not accept applications for loan deficiency payments that specify the payment rate beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a nonworkday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

§ 1427.168 [Removed and Reserved]

11. Section 1427.168 is removed and reserved.

12. Section 1427.171 is amended by revising the first sentence to read as follows:

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, of an approved gin. * * *

13. Section 1427.174 is revised to read as follows:

§ 1427.174 Maturity of loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

14. Section 1427.175 is amended by:

A. Revising paragraph (a)(1),

B. Revising paragraph (e),

C. Revising paragraph (f)(2),

D. Adding paragraph (f)(3), and

E. Adding paragraph (i) to read as follows:

§ 1427.175 Liability of the producer.

* * * * *

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan shall be refunded upon demand by CCC.

* * * * *

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for if a producer makes any fraudulent representation in obtaining a loan or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the commodity which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) * * *

(2) Assess liquidated damages in accordance with paragraph (e) of this section.

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, the county committee shall call the applicable loan involved in the violation.

* * * * *

(i) Any or all of the liquidated damages assessed in accordance with the provision of paragraph (e) of this section may be waived as determined by CCC.

Signed in Washington, DC, on July 25, 1994.

Alan King,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–18694 Filed 8–1–94; 8:45 am]

BILLING CODE 3410-05-P

Food Safety and Inspection Service

9 CFR Parts 318, 319, and 381

[Docket No. 90–010F]

Incorporation by Reference; Updating of Text; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Correction to final regulations.

SUMMARY: This document corrects the list of subjects included in the final regulations that were published on June 30, 1994, [59 FR 33641–33643]. The regulations contain updated references to the "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)" book of methods.

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–7164.

SUPPLEMENTARY INFORMATION: On June 30, 1994, the Food Safety and Inspection Service published a final rule updating references to the "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)" book of methods in various sections of the Federal meat and poultry products inspection regulations. The list of subjects of the final rule stated that part 325 of the Federal meat inspection regulations contained a reference to the

AOAC book of methods and that the reference was updated. This is not correct. Accordingly, the list of subjects included with the final regulations published on June 30, 1994, [59 FR 33641–33643] is corrected by removing the reference to 9 CFR part 325.

Done at Washington, DC, on July 25, 1994.

Terry L. Medley,

Acting Administrator.

[FR Doc. 94–18693 Filed 8–1–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210 and 211

[Docket No. 88N–0320]

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls; Partial Extension of Compliance Date; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; partial extension of compliance date; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is announcing a partial extension of the compliance date of and giving interested persons an opportunity to comment on the scope of a provision of the final rule, which published in the **Federal Register** of August 3, 1993 (58 FR 41348), that revised the current good manufacturing practice (CGMP) regulations for certain labeling control provisions. The agency is taking this action to assess further the availability of equipment necessary for compliance with the regulation for items of labeling (other than immediate container labels) and to address concerns about the scope of a particular provision of that rule in partial response to two citizen petitions that were submitted to FDA.

DATES: The final rule published at 58 FR 41348, August 3, 1993, is effective August 3, 1994. The labeling provisions (other than for the immediate container label) in § 211.122(g) must be complied with on August 3, 1995, unless modified as discussed in section II. below. Submit written comments by October 4, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tom C. Kuchenberg, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046, or

Paul J. Motise, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1089.

SUPPLEMENTARY INFORMATION:

I. Partial Extension of The Compliance Date

In the **Federal Register** of August 3, 1993 (58 FR 41348), FDA published a final rule that amended the CGMP regulations to require that certain special control procedures be instituted if cut labeling is used. One of the options available under these procedures requires the use of "appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling during or after completion of finishing operations***." (21 CFR 211.122(g)(2)).

On May 4, 1994, FDA received a citizen petition from five trade associations requesting that the agency take a number of actions including, but not limited to, extending the August 3, 1994, effective date of this rule as it applies to labeling (other than the immediate container labels) as defined in section 201(m) of Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (m)). The petition states that additional time is needed because of the unavailability of bar code or machine readers as well as other equipment necessary to orient the labeling codes properly, and the petition also requests that FDA reopen its administrative record to reassess the scope of a certain provision of the regulation, as discussed in section II. of this document.

On May 6, 1994, the agency received an additional petition from a trade association that requested, among other things, a 1-year stay of the effective date; the petitioner stated that additional time is needed to locate, install, and validate scanning equipment and other necessary equipment to orient items properly for bar code scanning.

Currently, appropriate electronic or electromechanical equipment primarily consists of systems that scan identity codes printed on labeling. If an incorrect code is detected, the defective labeling is ejected from the labeling line. FDA has contacted vendors of this equipment and has not found a general shortage of system hardware. The agency has determined, however, that there may be a shortage of contract engineering firms that are employed by some drug manufacturers to evaluate, select, purchase, install, qualify, and validate labeling verification systems.

FDA believes that proper validation of electromechanical labeling control systems is vital to the effective operation of such systems and the prevention of potentially dangerous labeling mixups. The agency is, therefore, as discussed in section II. of this document, extending to August 3, 1995, the compliance date of § 211.122(g) as it applies to items of labeling other than the immediate container label in order to assess further the availability of equipment necessary for compliance with the final rule and to evaluate adequately other issues raised by petitioners.

II. Reopening of The Administrative Record

The first petition also requests that the agency reopen the administrative record to receive additional comments on the application of § 211.122(g) to items of labeling (other than that of the immediate container label) as defined in section 201(m) of the act. Both citizen petitions contend that final § 211.122(g) expanded the proposed scope of the provision from immediate container labels to all drug product labeling.

Although FDA disagrees with these assertions, it is willing to receive comments on this issue and to evaluate those comments in light of the existing language in § 211.122(g). After assessing the comments, FDA will provide notice in the **Federal Register** of the agency's decision on whether or not to retain § 211.122(g) in its current state. If the agency decides to retain the current provision, compliance will be required on August 3, 1995. FDA notes that the proposed rule is replete with references to "labeling;" § 211.122(g), in fact, expressly addresses "packaging and labeling operations." FDA notes that it expressly directed its proposal to control a method of printing, gang printing, because the cut labeling that necessarily results from such a method has been implicated in a number of recalls. Moreover, in the proposed rule, FDA announced its intent to "revise certain *labeling* control provisions. The changes are intended to reduce the frequency of drug product mis*labeling*." (54 FR 26394 (emphasis added)). Immediately following, in the summary of the proposed rule, FDA focused on the practices targeted for control, stating "The proposal specifies conditions for the use of gang-printed or cut

*labeling****." (54 FR 26394 (emphasis added)).

Furthermore, in the proposal, FDA described the control procedures to be used by "*labeling* and packaging" lines and in proposed § 211.122(g)(1), referred to one of the special control features as the "Dedication of *labeling* and packaging lines to each different drug product * * *." (54 FR 26394 at 26395 (emphasis added)). Likewise, FDA referred to the second special control feature in proposed § 211.122(g)(2), which provides for the "use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct *labeling****" (54 FR 26394 at 26395 (emphasis added)). Despite such explanations in the proposal, FDA will, nonetheless, accept and review comments addressing the scope of § 211.122(g) with respect to its application to labeling, as that term is defined in section 201(m) of the act.

FDA also reiterates its explanation of the terms "cut labels" and "cut labeling" in the preamble to the final rule: "'Cut labels' and 'cut labeling' are *items of labeling* that have been detached from printed stock material prior to being brought to a labeling line****" (58 FR 41348 at 41350 (emphasis added)).

This partial extension of the compliance date and limited reopening of the administrative record grant, in essence, the requests of the citizen petitions to have additional time for compliance with one aspect of the final rule, while reserving judgment on the underlying issues pending FDA's receipt and review of any comments. Compliance with the remainder of § 211.122, including § 211.122(g) as it applies to labels as that term is defined in section 201 of the act, is expected on August 3, 1994. It is important to note, however, that § 211.125 makes a waiver of labeling reconciliation conditional on a 100-percent examination for correct labeling performed in accordance with § 211.122(g)(2).

Interested persons may on or before October 4, 1994, submit to the Dockets Management Branch (address above) written comments on this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under sections 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

Dated: July 27, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–18784 Filed 8–1–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

[Docket No. 91–17; Notice 3]

23 CFR Part 1212

RIN 2127–AE10

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Technical amendment.

SUMMARY: On August 12, 1992 (57 FR 35989), NHTSA and FHWA published a final rule implementing the Drug Offender's Driver's License Suspension Law which requires the withholding of certain Federal-aid highway funds from States that do not enact either legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense or a resolution opposing such legislation. This final rule was codified in the Code of Federal Regulations at 23 CFR part 1212. Specifically, 23 CFR part 1212 sets forth the manner in which States must certify that they are not subject to the withholding of funds, and the disposition of funds that are withheld. This document corrects an error that appears in 23 CFR part 1212.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety programs, Room 5130, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–2722; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–1834.

In FHWA: Ms. Mila Plosky, Office of Highway Safety, Room 3416, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–6902; or Mr. Paul L. Brennan, Office of Chief Counsel, room 4217, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: Section 1212.3 of 23 CFR is entitled "Definitions". An incorrect citation appears at the end of paragraph (d) of this section. This technical amendment notice corrects this error by replacing "1038.11–.15" with "1308.11–.15" in § 1212.3(d) of 23 CFR. Section 1212.7 of 23 CFR is entitled "Apportionment of withheld funds after compliance". The incorrect section of 23 CFR is cited twice in this section. The incorrect citation appears after the words "apportionment under", and after the words "as defined in". This technical amendment replaces "§ 1212.5(a)" with "§ 1212.6(a)" after the words "apportionment under" and before the words "will be made" and after the words "as defined in" in § 1212.7 of 23 CFR.

List of Subjects in 23 CFR Part 1212

Driver licensing, Drug abuse, Grant programs—Transportation, Highway Safety, Reporting and recordkeeping requirements.

In accordance with the foregoing, the following technical amendments are made to 23 Code of Federal Regulations Part 1212 as follows:

PART 1212.3—DEFINITIONS

1. The authority citation for Part 1212 continues to read as follows:

Authority: Pub. L. 101–516; Pub. L. 102–143: delegation of authority at 49 CFR 1.48 and 1.50.

§ 1212.3 [Amended]

2. In § 1212.3 in the last sentence of paragraph (d), change "1038.11–.15" to "1308.11–.15".

§ 1212.7 [Amended]

3. In § 1212.7, change "§ 1212.5(a)" to read § 1212.6(a)" each time it appears.

Issued on: July 27, 1994.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Christopher A. Hart,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 94–18742 Filed 8–1–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards Approval of Supplements to the South Carolina and North Carolina State Plans; Corrections

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

ACTION: Final rule; correction.

SUMMARY: In **Federal Register**, 59 FR 32649, published June 24, 1994, OSHA amended Subpart C, South Carolina, and Subpart I, North Carolina, of 29 CFR Part 1952 to reflect the Assistant Secretary's approval of South Carolina's "Palmetto" Star and North Carolina's "Carolina" Star Voluntary Protection Programs (VPP). For South Carolina, in designating § 1952.97, "Changes to approved plans"; and for North Carolina, in designating § 1952.157, "Changes to approved plan", the designations inadvertently duplicated sections already codified under their respective Subparts. This notice will correct those errors. For the purpose of clarity, the full text of the codification sections for Subpart C—South Carolina, § 1952.97, "Changes to approved plan" and Subpart I—North Carolina, § 1952.157, "Changes to approved plan", are contained in this notice.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, D.C., 20210, Telephone (202) 219–8148.

Signed at Washington, D.C. this 26th day of July, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, for the reasons set forth in the preamble, the rule document (FR Doc. 94–15346) beginning on page 32649 in the issue of Friday, June 14, 1994, amending 29 CFR Part 1952 is hereby corrected as follows:

PART 1952—[AMENDED]

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 657); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. On page 32650, in the second column, § 1952.97 is corrected to read as follows:

§ 1952.97 Changes to approved plan.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved South Carolina's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(b) *The Voluntary Protection Program.* On June 24, 1994, the Assistant Secretary approved South Carolina's plan supplement, which is generally identical to the Federal STAR Voluntary Protection Program. South Carolina's "Palmetto" VPP is limited to the STAR Program in general industry, excludes the MERIT AND DEMONSTRATION Programs and excludes the construction industry. Also, injury rates must be at or below 50 percent of the State industry average rather than the National industry average.

3. On page 32650, in the third column, § 1952.157 is corrected to read as follows:

§ 1952.157 Changes to approved plan.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved North Carolina's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(b) *The Voluntary Protection Program.* On June 24, 1994, the Assistant Secretary approved North Carolina's plan supplement, which is generally identical to the Federal STAR Voluntary Protection Program. North Carolina's "Carolina" VVP is limited to the STAR Program, and excludes the MERIT and DEMONSTRATION Programs. Also, injury rates must be at or below 50 percent of the State injury average rather than the National injury average.

[FR Doc. 94–18732 Filed 8–1–94; 8:45 am]

BILLING CODE 4510–25–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards Related to Deposit and Delivery of Mail

AGENCY: Postal Service.

ACTION: Final rule; amendment.

SUMMARY: This notice amends the final rule published on June 23, 1994 (59 FR 32336–32338), which amended several Domestic Mail Manual (DMM) standards concerning the deposit and delivery of mail.

EFFECTIVE DATE: July 3, 1994.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: The final rule added new DMM D042.1.7 to provide uniform standards for the delivery of Express Mail and accountable mail, effective October 2, 1994. The new DMM D042.1.7f stated the period after which mail is returned to the sender if delivery is not made and the addressee does not respond to a delivery notice. The 15-day standard generally established included an exception for COD (30 days) but inadvertently omitted the existing 5-day standard for Express Mail, which is retained.

The final rule also announced that, effective October 2, 1994, DMM D930.2.0 would be deleted and firm holdout service no longer offered. The final rule is hereby amended to include three supporting revisions to DMM D920, Caller Service. First, DMM D920.1.1 is revised to delete a reference to firm holdout service. Second, DMM D920.1.4, 1.5, and 1.9 are revised to ensure accommodation of previous firm holdout customers. Revised DMM D920.1.4 combines the text of existing 1.4 and 1.5, including a reference to new 1.5 that allows postmasters to except customers who had firm holdout service as of July 3, 1994, from the otherwise applicable requirement (in 1.4) that their mail would have to be addressed to their post office box (caller service) number. Third, the revision to DMM 920.1.9 makes it clear that caller service may be provided to former firm holdout customers.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following units of the Domestic Mail Manual as noted below:

D042 Conditions of Delivery

1.0 General Conditions

* * * * *

1.7 Express Mail and Accountable Mail

* * * * *

f. Notices are left for articles that cannot be delivered. If an article is not called for or redelivery is not requested, the article is returned to the sender after 15 days (5 days for Express Mail, 30 days for COD) unless the sender specifies fewer days on the mail.

* * * * *

D920 Caller Service

1.0 Basic Information

1.1 Purpose

[Revise the third sentence as follows:]

Caller service does not include general delivery service.

* * * * *

1.4 Numbers

[Combine the text of existing 1.4 and 1.5; revise the third sentence as follows:]

Except under 1.5, mail addressed to a caller service customer must use the term "Post Office Box" or "P.O. Box" and the assigned number in the mailing address immediately above the city, state, and ZIP Code.

1.5 Exception

Postmasters may except customers who were receiving firm holdout service as of July 3, 1994, from the standard in 1.4 that correspondents must use the assigned post office box (caller service) number in the address.

* * * * *

1.9 Eligible Customers

Caller service may be provided:

* * * * *

c. To customers who formerly received firm holdout service.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–18779 Filed 8–1–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5017–1]

Regulation of Fuels and Fuel Additives: Renewable Oxygenate Requirement for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA's regulations for reformulated gasoline (RFG) based on the Clean Air Act, as amended, requires that gasoline sold in certain areas be reformulated to achieve the greatest possible reductions in vehicle emissions of toxic and ozone-forming compounds. Among other things, EPA's regulations establish standards requiring a specified oxygen content in reformulated gasoline. This rule promulgates additional regulations which require that 30 percent of the oxygen required by the Clean Air Act to be used in reformulated gasoline be derived from renewable feedstocks. This renewable oxygenate requirement will assure that implementation of the RFG program is consistent with the longstanding federal policy of promoting renewable fuels. The renewable oxygenate requirement is expected to have a positive energy impact by reducing the amount of fossil energy needed to meet the requirements of the reformulated gasoline program. In addition, this program is expected to stimulate the development of new technologies which would lead to reduced emissions of greenhouse gases and further reductions in fossil energy consumption.

EFFECTIVE DATE: This rule is effective on September 1, 1994, except §§ 80.83 (g) and (h) are not effective until OMB has approved the Information Collection Requirements contained in them. EPA will publish a document in the **Federal Register** following OMB approval of the information collection requirements.

ADDRESSES: Materials relevant to this final rule (FRM) are contained in Public Docket A–93–49, located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Information relevant to this rulemaking may also be found in dockets A–91–02 and A–92–12, which are hereby incorporated into docket A–93–49 for the purposes of this rulemaking. The docket may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Paul Machiele, Regulation Development and Support Division, U.S. EPA (RDSD–12), 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4264.

Joann Jackson Stephens, Regulation Development and Support Division, U.S. EPA (RDSD–12), 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4276.

To request copies of this rule contact: Delores Frank, Regulation Development and Support Division, U.S. EPA (RDSD–12), 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline.

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action, as well as the Regulatory Impact Analysis & Response to Comments Document, will be in the form of ZIP files and can be identified by the following titles: ROXY–PRE.ZIP, ROXY–REG.ZIP, and ROXY–RIA.ZIP. To download these files, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

Please note that due to differences between the software used to develop

the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Background

A. Clean Air Act Requirements

The primary purpose of the federal reformulated gasoline program is to improve air quality by reducing motor vehicle emissions of toxic and tropospheric ozone-forming compounds, as prescribed by section 211(k) of the Clean Air Act as amended (CAA or the Act). The Act mandates certain requirements for the reformulated gasoline program. Section 211(k)(2) requires a minimum content of 2.0 weight percent oxygen and maximum content of 1.0 volume percent benzene, and section 211(k)(3) sets minimum performance standards for emissions of ozone forming volatile organic compounds (VOC), oxides of nitrogen (NO_X), and air toxics. To meet the oxygen content requirement, oxygenates must be added to gasoline. The two most common oxygenates used today are methyl tertiary-butyl ether (MTBE) and ethanol. MTBE is an ether derived primarily from isobutylene, a product typically produced from natural gas or petroleum, and methanol, which in turn is also produced primarily from natural gas. Ethanol is an alcohol produced primarily from corn, though it can be produced from other feedstocks as well. A third oxygenate, ethyl tertiary butyl ether (ETBE), is an ether derived from ethanol and isobutylene. A number of other oxygenates such as tertiary amyl methyl ether (TAME) and tertiary amly ethyl ether (TAEE) are currently under consideration by the industry as well. Their ultimate use will depend on their relative economics compared to those oxygenates currently in use.

Section 211(k)(1) of the Act directs EPA to promulgate regulations establishing requirements for reformulated gasoline. It also provides that such regulations require the greatest reductions in VOC and toxics emissions, taking into consideration the cost of achieving such emission reductions, non-air-quality and other air-quality related health and environmental impacts and energy requirements.

B. Historical Background

There is considerable history behind EPA's decision to promulgate a renewable oxygenate requirement. Congress and both the past and the present Administrations have long supported the development and use of renewable fuels for a variety of reasons, including a desire to reduce oil imports, save fossil energy, reduce global warming emissions, and develop domestic sources of fuel. This support has taken the form of a number of legislative and policy initiatives. For example, since 1978 renewable fuels have been eligible for an excise tax credit which today is set at 54¢/gallon. The Departments of Energy and Agriculture have invested hundreds of millions of dollars in research and development related to the production and commercialization of renewable fuels. As a result of these programs, the ethanol industry developed into a significant industry which by 1990 represented roughly one percent of the nation's gasoline consumption.

The 1990 amendments to the Clean Air Act provided ethanol blends with a limited waiver from vapor pressure limits placed on the volatility of conventional gasolines, in order to maintain the ease with which ethanol could be blended with gasoline. Furthermore, the 1990 amendments to the Clean Air Act included several provisions which many expected to further stimulate demand for renewable oxygenates such as ethanol. These provisions included the wintertime oxygenated fuels program which began in 1992 and has already considerably increased the demand for ethanol, and the year-round reformulated gasoline program which is to begin in December of 1994. EPA promulgated final regulations for RFG on December 15, 1993 (59 FR 7716, February 16, 1994).

In the process of developing the regulations for the RFG program, EPA entered into a regulatory negotiation with interested parties shortly after passage of the Clean Air Act Amendments of 1990. Included in the negotiations were representatives of the States, oxygenate producers, farm interests, environmental groups, the oil industry, the automobile industry, the driving public, the EPA, and the Department of Energy. (See 56 FR 31176, July 9, 1991, for an explanation of the members of the negotiating committee and a discussion of the process for selecting them.) After extensive discussions, an Agreement in Principle was signed by all members of the advisory committee in August of 1991.

The 1991 regulatory negotiation agreement formed the basis for EPA's April 1992 Supplemental Notice of Proposed Rulemaking (SNPRM) (57 FR 13416, April 16, 1992) for reformulated gasoline. In order to ensure compliance with the minimum reductions in ozone forming volatile organic compounds (VOCs) required by Congress for the RFG program, this proposal did not extend the volatility waiver for ethanol-blended conventional gasoline to RFG. In response, members of the ethanol industry submitted comments to EPA which expressed their concern that the proposed reformulated gasoline rules would effectively exclude ethanol from the reformulated gasoline market.

Ethanol, when added to gasoline in the amount needed to satisfy the oxygen content requirement of the Act, raises the Reid vapor pressure (RVP) of the resulting blend by about 1 psi, making it more difficult for ethanol blends to meet the mass VOC performance standards than blends using other oxygenates. For ethanol to be used in summertime RFG, a gasoline blendstock with an RVP low enough to offset the increase resulting from adding ethanol would have to be obtained. The contention was that obtaining such blendstocks would be both difficult and expensive, because "sub-RVP" blendstocks would be more costly to refine and distribute and because blendstock production would be controlled by petroleum refiners. The ethanol industry representatives believed that the oil industry would have a tendency to rely almost exclusively on MTBE over ethanol because MTBE does not boost a fuel's RVP and is readily blended at the refinery and distributed through the existing gasoline infrastructure, since, unlike ethanol, it does not raise materials compatibility or water adsorption concerns with the existing gasoline distribution infrastructure. Thus, there would be little incentive to make the sub-RVP blendstock necessary for ethanol blending into summertime RFG. The ethanol industry representatives also contended that refiners would not want to switch oxygenates during the course of the year and would therefore utilize MTBE year-round, thereby eliminating any RFG market for ethanol.

For this reason, ethanol and farm interests sought a summer volatility waiver for ethanol-based reformulated gasolines. Other signatories to the regulatory negotiation agreement, such as the oil industry, methanol and ether producers, states, and environmental groups, opposed such a waiver because it could eliminate most or all of the VOC benefits of the RFG program if ethanol was used in large volumes. At the request of ethanol and farm interests, the Agency held a public hearing to receive testimony on this and other issues in June of 1992 in Chicago.

In an attempt to address the role of ethanol, the Agency subsequently proposed a renewable oxygenate program (ROP) (58 FR 11722, February

26, 1993) to provide incentives for the use of ethanol and other renewable oxygenates in reformulated gasoline. The objective of the ROP was to provide incentives for the use of renewable oxygenates in the reformulated gasoline program in the summer while maintaining the overall environmental benefits of the program. Ethanol was considered a renewable oxygenate because it is produced primarily from agricultural sources such as corn, which can be regenerated. Other oxygenates such as MTBE are produced primarily from nonrenewable resources, such as petroleum and/or natural gas.

For a variety of reasons, as explained in section II of the preamble and section I of the Regulatory Impact Analysis (RIA) for the reformulated gasoline final rule, EPA decided not to promulgate the ROP. First, EPA received comments from virtually all constituencies affected by the rulemaking, including the ethanol industry, stating that the ROP as proposed was neither feasible nor workable. While EPA believed that a feasible program could be structured, EPA also acknowledged that it could represent a considerable burden on the industry. Second, the ROP would have reduced the RFG program's VOC emission control benefits because it provided an incentive for the use during the summer months of an oxygenate which exhibited commingling-related emission increases. (Combining ethanol blends and non-ethanol blends in consumer fuel tanks, even if both have identical low RVPs, results in a mixture with significantly higher fuel volatility and hence significantly higher VOC emissions. This effect is referred to as commingling.) The commingling effect, along with other unique distillation effects of ethanol on evaporative emissions and other provisions of the ROP as proposed, were estimated in the RIA for the RFG final rule to result in approximately a 6.0–7.5 percent increase in VOC emissions compared to an RFG program without such incentives. While difficult to estimate due to uncertainty in future ethanol and ETBE market shares and lack of sufficient data to reliably quantify the distillation effects, such an increase in VOC emissions amounts to a loss of about 40 to 50 percent of the minimum VOC control that is required under section 211(k)(3) for reformulated gasoline during the summer, even though the average RVP of the RFG produced by refiners remained the same. Thus, EPA's analysis indicated that the proposal would not maintain the environmental benefits of reformulated gasoline. A third concern with the ROP was that the program would have created an incentive for the use of renewables but in no way assured their use. Upon consideration of these and other factors, the Agency decided not to finalize the ROP. Other options considered did not resolve the concerns raised with the ROP as proposed. (The reader is referred to section II of the Preamble and section I of the RIA for the reformulated gasoline final rule for a description of the options and alternatives to the ROP considered.)

Hence, the final rule for reformulated gasoline does not include provisions to provide incentives for the use of renewable oxygenates. This left substantial uncertainty regarding the magnitude of the role renewable oxygenates would play in the roughly 35 percent of the U.S. gasoline market expected to be covered by the RFG program.

C. Renewable Oxygenate Requirement Proposal

To address the issues discussed above, at the same time EPA issued the final rules for RFG, it also proposed (58 FR 68343) a year-round requirement that 30 percent of the mandatory oxygen content specification for reformulated gasoline be obtained from renewable oxygenates. To ensure that the ozone benefits from the reformulated gasoline program are not adversely affected by that requirement, EPA proposed that during the VOC control period (i.e., the summer months) only renewable oxygenates that do not exhibit volatility-related commingling effects when mixed with gasoline would receive renewable oxygenate credit. All approved renewable oxygenates, including ethanol, were expected to be acceptable during the non-summer months when commingling-related volatility increases have relatively little effect on VOC emissions and when ozone exceedances are rare. Also included in the proposal were provisions for averaging and credit trading in order to provide maximum flexibility to refiners and fuel importers in complying with the program.

EPA presented several justifications for proposing a renewable oxygenate requirement for reformulated gasoline. The Agency concluded that expanding the use of renewable fuels produced from resources such as corn, grain, wood, organic waste products, and municipal solid waste could help cut dependence on foreign oil and reduce primary energy use by 20% or more as compared to nonrenewable oxygenates. The Agency also believed that renewable oxygenates offered potential air quality advantages (such as lower emissions of VOCs and greenhouse gases) as well as jobs-creation benefits. The Agency also stated its belief that the 30 percent requirement for renewable oxygenates was an appropriate level to ensure that renewables were not excluded from the reformulated gasoline oxygenate market while allowing the remaining 70 percent of the market to be open to all fuels, regardless of their renewables content.

The proposed renewable oxygenate requirement would be applied in conjunction with the reformulated gasoline program. It did not alter the performance standards or other provisions for the reformulated gasoline outlined in the final rulemaking for reformulated gasoline. In addition, the proposal did not mandate the use of any particular oxygenate, but rather ensured some minimum use of the class of oxygenates deemed renewable, defined in the proposal as ethanol and methanol from renewable sources, and their ether derivatives. This proposal was designed to supplement and not negate the Agreement in Principle arrived at through regulatory negotiation.

EPA received over 12,000 comments in response to the renewable oxygenate proposal. The vast majority of these comments were letters supporting the proposal written by farmers, ethanol producers, and their supporters. Several hundred responses containing detailed, substantive, technical comments were received from representatives of the oil industry, the ethanol industry, corn farming and other agricultural interests, methanol producers, environmental groups, federal agencies, and state and local governments. Some of these comments supported the proposal while others opposed it. Detailed responses to many of the comments are provided in subsequent sections of this preamble and in the Regulatory Impact Analysis (RIA) in the docket.

The remainder of this preamble is organized into the following sections:

II. Overview of the Renewable Oxygenate Requirement
III. Renewable Oxygenate Requirement for Reformulated Gasoline
IV. Enforcement of the Renewable Oxygenate Requirement
V. Federal Preemption
VI. Environmental, Energy, and Economic Impacts
VII. Public Participation
VIII. Compliance with Regulatory Flexibility Act
IX. Statutory Authority
X. Administrative Designation and Regulatory Analysis
XI. Compliance with the Paperwork Reduction Act

II. Overview of the Renewable Oxygenate Requirement

EPA is hereby promulgating a renewable oxygenate requirement for reformulated gasoline similar to that proposed on December 15, 1993 (58 FR 68343, December 27, 1993). EPA believes that this action will ensure that the requirements for the reformulated gasoline program promulgated on December 15, 1993 (59 FR 7716, February 16, 1994) are consistent with existing government programs and initiatives supporting renewable fuels. For many years, both Congress and the Executive Branch have promoted through various actions the use of renewable fuels and the development of the renewable fuels industry for various energy, economic, environmental, and agricultural policy objectives. Renewable fuels have been viewed as a key element of policies to enhance domestic energy security, reduce oil imports, conserve fossil energy resources, and reduce emissions of greenhouse gases.

Congress, along with present and past Administrations, has supported these goals through a variety of mechanisms. The Departments of Energy (DOE) and Agriculture (USDA) have invested hundreds of millions of dollars over the past 20 years to research and develop renewable fuel feedstocks and production techniques. Congress has supported the increased use of renewable fuels since the late 1970's through various legistative actions. The Energy Security Act of 1980 established a number of federal policies to expand fuel ethanol production and use. The Omnibus Budget Reconciliation Act of 1987 stated the intent of Congress to expand ethanol use. Under the Alternative Motor Fuels Act (AMFA) of 1988, the Alternative Fuels Council identified a significant role for ethanol. The National Energy Policy Act (EPACT) of 1992 includes provisions to stimulate the use of a wide-range of alternative (nonpetroleum) fuels, including several renewable fuels. Congress and prior Administrations have also stimulated renewable fuel use through mechanisms such as the 1.0 psi volatility waiver in the CAAA for gasoline (other than reformulated gasoline) blended with ethanol (the major renewable fuel in use today), the oxygen content requirements of the wintertime oxygenated gasoline and reformulated gasoline programs, and various economic incentives such as tax credits since 1978 (currently equal to 54 cents per gallon of renewable fuel).

These programs, combined with additional tax incentives in many states and continued innovation in production techniques, have helped the renewable fuels industry develop and grow. It has become economically attractive to add ethanol to conventional gasoline in many areas of the country, primarily by splash-blending ethanol with gasoline. This process involves mixing ethanol into finished gasoline at the terminal. (Due to materials compatibility concerns and the hygroscopic properties of ethanol, ethanol generally is not added into the existing gasoline distibution system at the refineries.) The resulting ethanol blend, commonly known as gasohol, has higher volatility than either the ethanol or the original gasoline in isolation.

Until EPA's Phase I volatility controls went into effect in 1989, gasoline volatility was essentially unregulated. EPA's volatility control program reversed the upward trend in gasoline volatility, and the resulting considerable increase in evaporative VOC emissions, by establishing limits on the volatility of summer gasoline. In promulgating the volatility control program, however, EPA granted a one pound per square inch (psi) volatility waiver for ethanol-containing blends. This waiver permitted continuation of splash blending of ethanol into gasoline without regulatory impediment, thereby avoiding what could have been a significant disruption to the existing market for fuel ethanol. For ethanol to continue to be blended in the absense of the waiver, refiners would have had to produce and market a special low volatility gasoline specifically for blending with ethanol. Since there was no assurance refiners would be willing to do so, the rule could have caused a dramatic decrease in the market share for ethanol blends that had developed under the existing Congressional and Administration programs. EPA believed it was important to avoid such a disruption to the ethanol industry, and as a result, granted a 1.0 psi volatility waiver.

EPA believed that such a waiver would not significantly jeopardize the rule's air quality objectives for several reasons. First, even with the waiver the volatility of ethanol blends would be reduced considerably. In fact, the volatility of the ethanol blends would be reduced by the same amount (though not to the same level) as that of non-ethanol blends. Second, ethanol's market share was small, particularly in most ozone nonattainment areas, so the potential impact on ozone levels was thought to be small. At the then existing market share for ethanol, the waiver reduced by only about 3 percent the volatility control that otherwise would have been achieved by both phases of the volatility control program. Third, the rulemaking neither required the use of oxygenates such as ethanol in gasoline nor was it expected to increase their use. Were this not the case, the environmental impacts of the waiver could have been considerably greater. Congress later incorporated a similar volatility waiver in the 1990 amendments to the Clean Air Act, when it established statutory limits on the volatility of conventional gasoline.

As a result of the Federal and State initiatives and with the continued blending flexibility afforded by the volatility waiver, the market for ethanol grew from a fledgling industry in 1978 to a market which stabilized at approximately 0.8 billion gallons per year by 1990, an amount equivalent to slightly less than 1% of nationwide gasoline consumption.

With the passage of the CAAA of 1990, the industry once again began to expand considerably. The oxygenated fuels program required by section 211(m) of the CAA requires that, during the winter months, all gasoline sold in certain cities with a history of exceedences of EPA's national ambient air quality standard (NAAQS) for carbon monoxide (CO) must contain oxygenates. Under this program (which began with the winter of 1992–93), ethanol has captured approximately 30% of the resulting oxygenate market. As a result, the demand for ethanol has grown by roughly 50% to an estimated 1.25 billion gallons in 1993.

The oxygenate requirements of the reformulated gasoline program contained in section 211(k) of the CAA also provide the potential to expand considerably the market for ethanol and other renewable oxygenates. RFG is required in the nine cities with the nation's worst ozone pollution problem and has been adopted for many other ozone nonattainment areas as well as a key component in their efforts to improve air quality. The areas which will use RFG are estimated to represent 35% of all gasoline sold in the United States.

The VOC emission performance standards for reformulated gasoline raised concerns in the ethanol industry that just as under the gasoline volatility control program, they will be unable to compete in the RFG market without a volatility waiver. However, section 211(k)(3) of the CAA establishes minimum emission performance standards that RFG must meet, with no allowance for a volatility waiver for ethanol-blended RFG. Furthermore, as discussed in the RFG final rule (59 FR 7716), providing such a waiver for

ethanol-containing RFG would have jeopardized the emission benefits which Congress mandated the RFG program to achieve. For these reasons, the final regulations for reformulated gasoline do not contain such a volatility waiver for summer RFG.

Thus, ethanol cannot be splash-blended into unmodifed gasoline blendstocks and still have the resulting blend comply with the RFG emission performance standards. Instead, either special reduced-volatility ("sub-RVP") blendstocks would be necessary during the summer, or the ethanol would have to be converted into ETBE. Many in the ethanol industry have continued to express concern that refiners would not produce such blendstocks. If that were to occur, ethanol producers would lose access during the summer months to those current markets which will be covered by the RFG program. This loss of access, the ethanol industry contends, could also lead to a reduced market share in RFG areas in the winter months, even though no volatility restrictions apply during those months. EPA has received numerous letters from various members of Congress emphasizing their belief that the RFG program was intended to provide a significant new market for ethanol and other renewable oxygenates. EPA has also received numerous letters from members of Congress opposing a renewable oxygenate requirement. In general, they were not opposed to the use of renewable oxygenates, but rather to EPA requiring their use. As discussed in section III.A, there was also a considerable amount of discussion concerning this issue during the Congressional debate over the 1990 CAAA.

As stated in the RFG final rule, EPA continues to believe that ethanol will not be excluded from the oxygenate market under the RFG program. Rather, EPA believes that many refiners will find it economically attractive to blend ethanol in RFG. As a result, EPA believes a market for ethanol will continue following implementation of the RFG program. The RFG program represents a major new market for oxygenates such as ethanol. Nevertheless, EPA has received comments stating that without promulgation of today's rulemaking or other similar measures, creation of additional ethanol and renewable oxygenate blending capacity beyond that currently underway is in doubt. EPA recognizes that concerns over the marketability of ethanol in RFG have created substantial uncertainty for ethanol producers and investors.

EPA believes that today's action will reduce that uncertainty and make the RFG program consistent with long-running Congressional and Administration policies to promote renewable fuels. This program represents an attempt to harmonize the goals of greater reliance on renewable fuels and air quality improvements through the use of RFG. Specifically, the renewable oxygenate requirement will ensure that RFG regulations do not inappropriately limit the growth of the renewable oxygenate industry. It will ensure that several oxygenates will be used in the RFG program and provide the renewable oxygenates a minimum market.

It should be noted that the program encourages the use of all renewable oxygenates, not any one renewable oxygenate (as discussed more fully in section III). By providing market certainty the program will encourage expanded private investment in new, more efficient and environmentally beneficial renewable fuel production technologies. Such potential renewable oxygenates include ethanol from cellulosic plant material and waste cellulose and MTBE derived from methanol which was produced from municipal solid waste, landfill gas, or sewage sludge.

The program establishes a minimum 30% market share for renewable oxygenates. This level represents a market share for renewables that EPA believes would likely have been achieved through open competition with nonrenewable oxygenates in the absence of VOC emission restrictions, based on experience under the oxygenated fuels program. At this market share an estimated 1.7 volume percent (on an ethanol equivalent basis) of reformulated gasoline will be derived from renewable resources.

EPA is promulgating the renewable oxygenate program because of the important benefits of the program. First, EPA believes the program will help conserve fossil energy resources and minimize any detrimental effects the reformulated gasoline program may have on energy consumption. Second, EPA believes that the program has the potential to provide global warming benefits by providing stimulus to the market to develop new, more efficient production processes for renewable oxygenates and their feedstocks. In addition, EPA believes that the program as structured maintains the environmental benefits of the reformulated gasoline program as promulgated on December 15, 1993, and has the potential to increase these benefits through the incentives it provides for increased ETBE use during the summer months.

The reformulated gasoline program promulgated in December of 1993 is projected to cause an increase in fossil energy consumption, as discussed in more detail in sections III.H and VI of this notice. Today's action is intended to mitigate to some extent the increase in fossil fuel consumption that otherwise would result from implementation of the RFG program. Today's action also provides the certainty needed to encourage private investment in more advanced and energy-efficient production facilities and more diverse feedstock utilization. This will not only increase the fossil energy benefits of this program, but also provide the opportunity for reductions in greenhouse gas emissions.

Today's action will also create incentives to utilize ETBE during the summer months. Its use, relative to MTBE or ethanol, has the potential to achieve slightly greater VOC emission reductions beyond those required by the final rule for RFG. Ethanol-containing gasoline, when mixed with other gasoline, causes the mixture to produce greater VOC emissions than the original fuels would produce. This can occur even in a vehicle fuel tank. This effect is called commingling and is discussed in sections III.C and VI of this notice and in the Regulatory Impact Analysis for the reformulated gasoline final rule. The effect of such commingling on VOC emissions is not controlled directly by the RFG program. As a result, to the extent that ETBE use displaces ethanol use during the summer months, additional VOC emission benefits are possible. In addition, ETBE possesses front-end distillation characteristics relative to both ethanol and MTBE which are also not controlled in the reformulated gasoline final rule, and which may provide further (though not quantifiable with any certainty at the present time) VOC emission benefits during the summer should its use increase as a result of the incentives created by today's program.

Finally, EPA believes that this program is designed in a way which provides maximum compliance flexibility for refiners and minimizes their burden. The program is an annual program with provisions for a refiner to average over the course of the year or trade credits with other refiners anywhere in the country. EPA believes that by designing the program in such a way, the objectives can be met at a minimum cost. These provisions are especially important during the initial startup of the program. While the renewable oxygenate program takes

effect for refiners beginning December 1, 1994, individual refiners do not need to blend any renewable oxygenate into their gasoline until later in the year or at all if they so desire. They will just have to demonstrate that they met the requirements over the course of the entire year through either the blending of greater than 15% renewable oxygenates in the latter part of the year, or the purchase of credits from other refiners. As a result, the averaging and trading provisions effectively provide refiners with additional time to meet the initial requirements of the program.

III. Renewable Oxygenate Requirement for Reformulated Gasoline

A. Legal Authority

1. Introduction

The final rule adopted today is a reasonable exercise of the discretionary authority granted the agency under section 211(k)(1) of the Act. EPA interprets the first sentence of section 211(k) as broad authority to adopt reasonable requirements for reformulated gasoline, unless otherwise prohibited by the Clean Air Act or other statutory provision. EPA interprets the second sentence of section 211(k)(1) as authorizing EPA to adopt regulations for the reformulated gasoline program that result in the greatest emission reductions achievable, and at the same time tend to optimize the resulting impacts on cost, energy requirements, and other health and environmental impacts. In effect, EPA has full authority to adopt emission reduction standards and other requirements that achieve this result.[1]

2. Analysis of the Text of the Statute

An analysis of EPA's authority starts with the text of the statute. Under the first sentence of that paragraph, EPA is authorized to:

> promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas.

Under the second sentence of section 211(k)(1), EPA's regulations are to:

> require the greatest achievable reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

Section 211(k)(1) provides EPA general authority to establish reasonable requirements for reformulated gasoline, including emissions reduction requirements. Other provisions in section 211(k) address various specific elements of the program, such as minimum requirements for various fuel parameters (section 211(k)(2)), minimum emissions reduction requirements (section 211(k)(3)), certification requirements (section 211(k)(4)), prohibited acts (section 211(k)(5)), state opt-ins, (section 211(k)(6)), and credit programs (section 211(k)(7)).

This interpretation of section 211(k)(1) is supported by the plain meaning of that provision. On its own terms, the first sentence stands as a general grant of authority to establish any reasonable requirement for reformulated gasoline, with no explicit restriction on this authority other than a one year deadline for agency action.

The first sentence of section 211(k)(1) both grants authority to the agency and establishes a deadline for agency action. This structure is not at all uncommon, and was employed by Congress in several similar provisions adopted in 1990. See, e.g., section 211(h)(1) (regulation of Reid vapor pressure), section 211(i)(2) (regulation of motor vehicle diesel fuel), section 211(l) (regulation of gasoline detergent additives), and section 202(a)(6) (regulation of refueling emissions from motor vehicles). The general framework of section 211(k) is also not unique—a grant of broad general authority in (k)(1) followed by several detailed provisions that ensure certain minimum actions are taken. This is consistent with the approach taken by Congress in various other provisions of Title II of the Clean Air Act. For example, Congress granted EPA broad, general authority to regulate motor vehicles and their fuels, as in section 202(a) and section 211(c)(1). These grants of broad, general authority were then supplemented by detailed provisions providing specific actions that Congress expected in these areas. See, e.g., section 202(b), (f), (g), (h), and (i), as well as sections 211(c)(2), 211(g), prior to the 1990 amendments, and the various paragraphs of section 211 cited above.

The regulations adopted today are a reasonable exercise of this discretionary authority. They further Congressional goals by fostering achievement of the important benefits that Congress expected to flow from this program. They are not prohibited by any provision of the Act or any other law, and are well within the range of authority granted by Congress.

The plain meaning of the second sentence of section 211(k)(1) corroborates EPA's view on it authority to issue this rule. This provision requires promulgation of regulations that require a certain result. The result desired by Congress is clear—the greatest achievable reductions, taking into consideration cost, energy, environmental and other impacts. There is no indication that EPA's authority is limited to establishing emissions reduction standards. In fact, this provision would authorize EPA to adopt all reasonable requirements designed to achieve the required result. The regulation adopted today is designed to ensure that the emissions reduction requirements for reformulated gasoline are achieved in a manner that reasonably optimizes the energy, cost, environmental, and other impacts of this program. The regulations adopted today, in combination with the regulations promulgated in December 1993, act together to achieve this result.

Finally, EPA believes that section 211(k)(4) does not preclude the renewable oxygenate provisions proposed herein. Section 211(k)(4) states that the Administrator "shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—(i) comply with the requirements of paragraph (2), and (ii) achieve equivalent or greater reductions * * * than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3)." This could be interpreted as requiring certification of a fuel that met the oxygen and other requirements of paragraph (2) and the emissions requirements of paragraph (3) even if it did not comply with the proposed renewable oxygenate requirement. Section 211(k)(1), however, authorizes EPA to establish requirements above and beyond those required under paragraph (2) and (3), and section 211(k)(1) and (4) must be read together to provide a meaningful interpretation to both provisions. EPA believes that a reasonable interpretation requires certification of a fuel as reformulated as

[1] Various commenters argued that statements in the Regulatory Impact Analysis supporting the FRM signed on 12/15/93 showed that EPA believed it did not have the legal authority to require the use of renewable oxygenates. To the contrary, EPA's proposal, also signed on 12/15/93, clearly described EPA's view that it did have the authority to require the use of renewable oxygenates. The statements in the RIA address renewable oxygenate requirements that would be significantly different from that proposed in December and would raise many of the same concerns described in the preamble to the final rule, such as increased emissions in the summertime from increased use of ethanol in the summertime. The prior statements in the RIA are not relevant to the proposal issued by EPA in December.

long as it complies with the requirements of paragraphs (2) and (3), as well as any additional requirements established under paragraph (1). Since the renewable oxygenate provision is an additional requirement established under section 211(k)(1), certification is not required under section 211(k)(4)(B) unless a fuel or slate of fuels complies with the requirement.

3. Analysis of the Legislative History

The legislative history of the reformulated gasoline provision supports and is consistent with EPA's interpretation of section 211(k). Changes made to various bills during the course of congressional review, as well as floor debates in the respective houses, indicate EPA was provided broad general authority to adopt requirements designed to achieve the objectives for this program. EPA's renewables requirement does just that, without inappropriately impinging on refiners' and importers' operational flexibility.

a. *House of Representatives*—The bill reported by the House Committee on Energy and Commerce included provisions on reformulated gasoline that roughly paralleled the current provisions of section 211(k)(1). Under that provision, EPA was required to:

promulgate regulations under section 211 establishing specifications for cleaner gasoline to be used in conventional gasoline fueled vehicles. Such standards shall require the greatest reduction in ozone-forming volatile organic compounds and air toxic emissions achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, and health, environmental and energy impacts.[2]

This provision is similar to current section 211(k)(1) in that it provides general authority to establish "specifications" for reformulated gasoline, and separately requires that these regulations include requirements to obtain the greatest achievable reductions in VOCs and air toxics. The Committee Report's description of this provision is fairly brief, with no indication that this general authority is limited to establishing emission reduction requirements.[3]

Certain changes were made to this provision prior to its adoption by the House, reflecting an intent to expand at least somewhat the scope of agency authority. First, while the Committee bill authorized EPA to establish "specifications" for cleaner gasoline, the House bill used broader language authorizing EPA to establish "requirements," as currently found in section 211(k)(1). Likewise, the second sentence of the Committee bill provision referred to "such standards," while the House bill broadened this to "such requirements."[4] The House intended to broaden EPA's authority, not limit it, and these changes were eventually adopted by Congress.

The Committee bill was amended in several other significant ways prior to final passage by the House. For example, many of the specific reformulated gasoline requirements now found in section 211(k)(2) through (10) were first debated and adopted on the floor of the House. Nonetheless, the general structure of section 211(k)(1) stayed the same with the exceptions noted above. This indicates that from the very beginning the House intended to provide EPA with broad general authority to establish reasonable requirements for a reformulated gasoline program. The vast bulk of the legislative history in the House is directed at the subsequent adoption of fairly specific minimum requirements for reformulated gasoline, with no indication that Congress intended to otherwise limit this broad, general grant of agency authority.

b. *Senate*—The legislative history in the Senate likewise shows a desire to broaden EPA's authority in this area. The bill reported out of the Senate Committee on Environment and Public Works started from a more restrictive position and authorizing EPA to:

(1) * * * promulgate regulations establishing specifications for fuel quality which will minimize, to the extent economically and technically achievable, emissions [of various pollutants] * * *. (2) In order to achieve and maintain attainment of ambient air quality standards, the Administrator may promulgate regulations * * * establishing specifications for fuels (including regulations requiring the availability or sale of fuels meeting the specifications in a nonattainment area or areas) to reduce emissions of pollutants subject to a standard under this title or hazardous air pollutants from motor vehicles. In establishing such specifications and availability requirements the Administrator shall consider other environmental effects which would result from production and use of fuels meeting the specifications.[5]

This provision is much narrower than that reported out of the House Committee. The authority to establish "specifications" is clearly limited to specifications to reduce emissions of specified pollutants, and the specifications are limited to those aimed at achieving and maintaining attainment of the NAAQS. It also clearly requires that such specifications and requirements be written as performance standards.

Most of the amendments and debate on this provision focused on a number of detailed minimum requirements that parallel the current reformulated gasoline provisions found in section 211(k)(2) though (10). However, certain very important changes were made to the general authority provisions. First, the second paragraph of the provision was replaced in its entirety with broader language that more closely parallels the version adopted by the House. The Senate approved a floor amendment by Senator Daschle requiring that:

The Administrator, pursuant to paragraph (1) * * * promulgate regulations establishing specifications for reformulated gasoline to be used in conventional gasoline fueled vehicles [in specified ozone nonattainment areas].[6]

This amendment removed the limitation that the specifications could only be designed to reduce emissions and achieve and maintain attainment, significantly broadening EPA's authority. Nonetheless, the provision passed by the Senate was narrower than the House bill. Even though paragraph one of the provision was somewhat similar to the second sentence of current section 211(k)(1), the Senate bill did not contain a general grant of authority as found in the first sentence of section 211(k)(1). It also more narrowly authorized EPA to establish specifications, instead of requirements.

c. *Conference Committee Bill*—The Conference Committee on the House and Senate bills rejected the Senate's narrower limits on general authority and instead reported out the broader, more general authority provision found in the House bill.[7] This provision was then adopted in the final bill. This legislative history indicates that both houses, to different degrees, moved to broaden the agency's authority to implement the reformulated gasoline program. The final bill adopted by Congress rejected the narrower approach from the Senate and instead approved the more general language from the House. While there was little discussion of this, the textual changes described above lead to the conclusion that Congress intended to provide EPA with broad general authority to establish regulatory

[2] H. Rep. No.-101–490, 101st Cong. 2d Sess. 60 (1990); reprinted at 1 A Legislative History of the Clean Air Act Amendments of 1990 at 3021 (1993) ("Leg. Hist.").

[3] 2 Leg. Hist. at 3321–21.

[4] S.1630 as passed by the House of Representatives; 2 Leg. Hist. at 2059.

[5] S. Rep. at 639–40. The relevant portions of the Mitchell-Dole substitute, Amendment No. 1293, debated on the floor of the Senate, were identical to the bill reported out of the Senate Committee. 5 Leg. Hist. at 7552–54.

[6] 3 Leg. Hist. at 4383–88, 4 Leg. Hist. at 6816–18.

[7] 1 Leg. Hist. at 1548.

requirements for reformulated gasoline. There are no indications that Congress intended otherwise. EPA's interpretation is therefore fully consistent and supported by this legislative history.

d. *Floor debates in the two houses*—The legislative history does contain extensive floor debate about the reformulated gasoline provisions. While these focus primarily on the specific requirements found in section 211(k)(2) though (10), they still provide important insight on overall Congressional intent for this program.[8] First, Congress expected that this motor vehicle fuel program would provide several important benefits for the nation. Most obviously it would lead to major reductions in air pollution in the largest metropolitan areas with the worst ozone nonattainment problems, reducing ozone forming VOCs and toxic pollutants. Reformulating the gasoline used in conventional vehicles would constitute a significant component of the federal program to control motor vehicle pollution. There was a clear concern that gasoline had gotten more polluting over the prior twenty years, primarily through increased levels of aromatic compounds in gasoline, used to replace the octane previously obtained from lead additives. Benzene and aromatics were seen as the predominant air toxic threat.

Second, Congress emphasized that reformulated gasoline would provide benefits in the form of improving our energy security, reducing our reliance on foreign oil, and providing a major opportunity for the agricultural sector of our economy to market renewable alcohols and their derivatives. This would come from the use of oxygenates as gasoline additives, including renewable oxygenates like ethanol and ETBE. In effect, Congress intentionally designed the reformulated gasoline program to obtain emissions reductions benefits in a way that would promote these other very important benefits.[9]

Third, the structure developed by Congress to obtain these various benefits involved a complex balance between imposing detailed requirements and preserving refiner flexibility.[10] The floor debates include detailed responses by individual members of Congress to various arguments that Congress was mandating "government gas" or a "recipe," or was mandating use of only one oxygenate, such as ethanol.[11] The floor debates also show there was no common understanding of terms such as "fuel neutral," or "government gas," or even whether certain provisions did or did not require the use of a specific oxygenate such as ethanol. These debates do make clear, however, that Congress designed the detailed provisions in section 211(k)(2) through (10) to ensure achievement of various benefits from this program, while retaining an appropriate degree of refiner flexibility.

Various statements were made by different members of Congress that any oxygenate could be used that met the oxygen content and emissions reduction requirements for reformulated gasoline.[12] These statements reflect Congress' interest in retaining appropriate refiner flexibility. However, they only address compliance with the oxygen content requirement mandated under section 211(k)(2) and the emissions reduction requirements mandated under section 211(k)(1) and (3), and do not address compliance with additional requirements established under section 211(k)(1). They do not indicate an intention to preclude EPA from appropriately exercising its authority under section 211(k)(1) to either require greater than the minimum reductions called for in section 211(k)(3) or to establish additional requirements like the renewable requirements. Given the ambiguity in the debates on this issue and the Act's provision that the requirements of (k)(2) be issued under the (k)(1) rulemaking authority, EPA believes this rule may also be considered a reasonable implementation of the (k)(2) oxygen content requirement.

This legislative history indicates that while Congress itself did not choose to mandate any one oxygenate or class of oxygenate, it also did not restrict EPA's ability to require the use of a class or category of oxygenates if that would reasonably ensure achievement of these benefits and would not inappropriately limit the operational flexibility of refiners and importers. The renewables requirement is entirely consistent with this approach. It is designed to achieve important goals, and includes provisions specifically designed to maximize the flexibility of refiners in meeting the requirement.[13]

[8] The Conference Committee Report contains limited discussion of the reformulated gasoline program, and the Reports for the bills reported out of the respective House and Senate Committee's are of limited use as these bills were changed significantly prior to passage. The floor debates, however, do contain extensive discussion of the bills.

[9] For example, the following statements are from the floor debate on the Conference Committee bill: 1 Leg. Hist. at 851–856 (Sen. Durenberger); 1 Leg. Hist. at 1154–71 (Sen. Simpson); 1 Leg. Hist. at 969 (Sen. Baucus); 1 Leg. Hist. at 1073 (Sen. Dole); 1 Leg. Hist. at 1187 (Rep. Dingell); 1 Leg. Hist. at 1195 (Rep. Waxman); 1 Leg. Hist. at 1209 (Rep. Sharp); 1 Leg. Hist. at 1263–67 (Rep. Madigan); 1 Leg. Hist. at 1315 (Rep. Hall); 1 Leg. Hist. at 1435 (Rep. Richardson). Similar statements were made during consideration of the respective House and Senate bills.

[10] This complex balance can be seen in the various specific requirements of section 211(k). Congress established both specific content requirements (section 211(k)(2)) and minimum requirements for either a performance standard or a "formula," whichever EPA determined to be more stringent (section 211(k)(3)(A) and (B)). A certification program was also established, with EPA to certify any fuel that obtained emissions reductions of a fuel that met the requirements of section 211(k)(2) and (3). A credit program was also established for the three specific content requirements established in section 211(k)(2) and (3). Both the emissions performance standards and content requirements of section 211(k)(2) and (3) act as performance standards in light of the certification equivalency provision of section 211(k)(4). For example, the "formula" of section 211(k)(3)(A) acts as a performance standard based on section 211(k)(4).

[11] From the debate on the Conference Committee: 1 Leg. Hist. at 853, 855 (Sen. Durenberger); 1 Leg. Hist. at 1233 (Rep. Fields); 1 Leg. Hist. at 1263 (Rep. Madigan); 1 Leg. Hist. at 1270 (Rep. Synar); 1 Leg. Hist. at 1325 (Rep. Hall); 1 Leg. Hist. at 1395–7 (Rep. Moorehead). From the debate on the House bill: 2 Leg. Hist. at 2606, 2694–7, 2701–2, 2750–58 (Rep. Richardson); 2 Leg. Hist. at 2716 (Rep. Dingell); 2 Leg. Hist. at 2717 (Rep. Lent); 2 Leg. Hist. at 2722 (Rep. Michel); 2 Leg. Hist. at 2733–34 (Rep. Synar). From the debate on the Senate bill: 4 Leg. Hist. at 6812, 15, 19 (Sen. Daschle); 4 Leg. Hist. at 6820–21 (Sen. McClure); 4 Leg. Hist. at 6824 (Sen. Grassley); 4 Leg. Hist. at 6825 (Sen. Nickles); 4 Leg. Hist. at 6829–30 (Sen. Wirth); 4 Leg. Hist. at 6836 (Sen. Dole); 4 Leg. Hist. at 6836 (Sen. Johnston).

[12] See, e.g., 4 Leg. Hist. at 6812 (Sen. Daschle), and 1 Leg. Hist. at 1216 (Rep. Sharp, noting that "[t]he Administrator may not discriminate among these different oxygenates, and should encourage fair competition among them. As long as the percentage weight requirement is met, *and other requirements of new 211(k) . . . are satisfied*, any oxygenate should be allowed to satisfy new United States needs.") Also see 1 Leg. Hist. at 1325 (Rep. Hall). EPA's renewables requirement is fully consistent with this—refiners may use any oxygenate as long as the resulting gasoline meets the oxygen content and renewable requirements established under section 211(k).

[13] Certain commenters claimed that the requirement was inconsistent with Congressional intent as expressed in the debate over the Energy Policy Act of 1992. Congress rejected an amendment to that bill which would have required that an increasing portion of the octane in all gasoline be obtained from domestically produced, renewable, nonpetroleum sources. The floor debate on this amendment indicates several reasons various members of Congress were opposed to this amendment, including concern that there would not be enough supply of ethanol, concern over possible interference with implementation of the Clean Air Act (based on a confusing provision addressing the interrelationship of the two laws and authority under the amendment for DOE to waive the requirement for air quality reasons), as well as concern over not being fuel neutral. EPA therefore believes that the rejection by the House of Representatives in 1992 of an amendment to an unrelated statutory provision, apparently based on a wide number of different reasons, is not relevant to Congress's prior intent in 1990 when it amended the Clean Air Act. Section 1508 of the Omnibus Budget Reconciliation of 1987 is much more relevant on the issue of Congressional intent and supports EPA's interpretation and rule. 42 U.S.C. 7545. In that provision, Congress found that the

Continued

Most of the congressional debate focused on the various detailed requirements of section 211(k) such as the content requirements of section 211(k)(2), and the emissions standards of section 211(k)(3). There was relatively little debate or discussion concerning the scope of EPA's general authority in section 211(k)(1). However, there are indications that this was considered a reservoir of broad, general authority.[14] There was no indication that section 211(k)(1) did not mean what its plain language indicates—that Congress provided EPA with broad, general authority to establish the requirements for reformulated gasoline, including requirements that tend to optimize the energy and other benefits obtained by the emission reductions requirements.

4. Conclusion

EPA's interpretation of its authority under section 211(k)(1) is a reasonable interpretation based on the plain language of the provision. The legislative history supports this interpretation and fails to show a contrary intent. The changes made in the reformulated gasoline provisions, and textual changes made in the two houses and in conference indicate an intent to broaden EPA's general authority. The floor debates support this and fail to show a contrary intent.

EPA's exercise of authority under section 211(k)(1) also helps to obtain the important benefits identified by Congress for reformulated gasoline. The legislative history makes it clear that in addition to emissions reductions, Congress expected that reformulated gasoline would benefit the nation by obtaining various energy and other benefits from the expanded use of oxygenates, including specifically the benefits from using renewable oxygenates like ethanol and ETBE. EPA's interpretation and this rule are fully consistent with this Congressional goal.

Congress established a complex statutory structure to ensure achievement of these various goals while retaining an appropriate degree of refiner flexibility. EPA's final rule is carefully designed with refiner flexibility in mind, and draws an appropriate balance between obtaining the benefits from using renewable oxygenates and retaining refiner flexibility. For example, the rule establishes as close to a performance standard as is currently possible, does not mandate one specific fuel or fuel additive, allows for a phase-in over two years to minimize disruption, allows averaging over a long time period, and allows for generation, use and trading of credits to show compliance. It also is carefully designed to minimize any adverse environmental impacts.

EPA's interpretation of its authority is consistent with the plain language of the statute and its legislative history, and furthers the goals identified by Congress for this program. As such it is a lawful exercise of agency authority under section 211(k).

B. Program Overview

The renewable oxygenate requirement is one component of the reformulated gasoline program. It does not alter the emission performance standards or other provisions for the reformulated gasoline program contained in the final rule for reformulated gasoline (See 59 FR 7716; February 16, 1994). In addition, it does not mandate the use of any particular oxygenate, but rather ensures a specified minimum use of a range of oxygenates derived from renewable resources.

As mentioned previously, EPA is requiring that 30 percent of the required 2.0 weight percent oxygen content of all reformulated gasoline be produced using renewable oxygenates. Renewable oxygenates must meet two criteria for them to be used to comply with the requirements of the program. First, they must be produced from non-fossil fuel feedstocks (i.e., other than petroleum, natural gas, coal, or peat), or their oxygen content must derive from oxygenates produced from such feedstocks, as described more fully in section III.C.1 of this notice. Second, to be considered "renewable" when blended into VOC-controlled RFG, the oxygenate must not cause commingling-related increases in fuel volatility (i.e., the oxygenate must have a linear vapor pressure blending curve). In addition to the requirements of this program, renewable oxygenates must also be approved for use in gasoline in keeping with the provisions of section 211(f) of the Act, and must be approved for use in reformulated gasoline (i.e., certifiable under either the Simple or Complex Model, as discussed in the final rule for the RFG program).

The oxygenates which are expected to meet these requirements, at least in the near term include: (1) Any alcohols derived from biomass or waste products other than untransformed fossil fuels, except when used in RFG designated as "VOC-controlled," and (2) all approved ethers produced from renewable feedstocks, when used in either VOC-controlled or non-VOC-controlled RFG. EPA recognizes that some non-ether oxygenates, including some alcohols, may not cause commingling-related increases in fuel volatility. Upon submittal of sufficient data demonstrating that addition of a non-ether renewable oxygenate does not cause a nonlinear increase in RVP, the Administrator may permit the oxygenate in question to receive credit under today's renewable oxygenate program when blended into VOC-controlled RFG. However, methanol and ethanol will not be granted such permission, since the nonlinearity of their effect on RVP is well-established at the present time.

The program will be phased in over the course of two years. Fifteen percent of the minimum 2.0 weight percent oxygen content of reformulated gasoline is required in the form of renewable oxygenates, as defined above, from December 1, 1994 through December 31, 1995 (hereafter referred to as the "first year of the program"). Thirty percent of the minimum oxygen content in reformulated gasoline is required to be from renewable oxygenates in 1996 and each year thereafter. As a result, on average reformulated gasoline will be required to have at least 0.30 weight percent oxygen content (15 percent of 2.0 weight percent) provided by renewable oxygenates in the first year of the program and 0.60 weight percent oxygen content provided by renewable oxygenates in subsequent years.

A program phase-in is necessary because the reformulated gasoline program takes effect at refineries December 1, 1994. As discussed more fully in section III.F of this notice, EPA

United States was increasingly dependent on the Middle East for its energy needs, that ethanol could be used in gasoline to produce a cleaner burning fuel and reduce pollution, and that ethanol was a renewable resource and its increased use would reduce farm program costs and grain surpluses and create new jobs. That bill explicitly states the sense of Congress that EPA should use its authority under the Clean Air Act to require greater use of ethanol as a motor fuel. EPA's renewable's requirement is fully consistent with this statutory provision.

[14] From the debate on Conference Committee bill: 1 Leg. Hist. at 855–6 (Sen. Durenberger noted that the performance standards and the formula were minimum requirements, and EPA had authority to require greater emissions reductions if appropriate); 1 Leg. Hist. at 968–69 (colloquy between Sen. Durenberger and Sen. Baucus on same point); 1 Leg. Hist. at 1219 (Rep. Sharp discusses the threat that EPA could exercise its authority to reinstate a program akin to the 1970's oil price and allocation controls); 1 Leg. Hist. at 128–9 (Rep. Bliley) ("It is vital that [section 211(k)(1)] be viewed as residual authority to modify the more specific requirements throughout. . . ."). From the debate on the Senate bill: 4 Leg. Hist. at 5052–3 (Sen. Symms recognized that the bill reported out of the Committee on Environment and Public Works provided EPA broad, general authority when he noted that "the bill directs the Administrator . . . to promulgate regulations establishing specifications for fuel quality. This, in essence, would give the Administrator the authority to mandate specific fuel formulations. . . .").

is concerned that insufficient time is available for ethanol producers to adjust their production schedules, for ether suppliers to set up contracts for the purchase of renewable alcohols, for fuel producers to obtain supplies of renewable oxygenates for addition at the refinery or for blending with refinery-produced reformulated blendstock for oxygenate blending (RBOB), and for terminal operators to build and obtain permits for sufficient ethanol and ether storage and blending facilities in order to meet the full 30 percent requirement in 1995. Reformulated gasoline producers may also have to adjust their gasoline production plans to accommodate a different mix of oxygenates than they might have used in the absence of today's rule. The phase-in addresses these leadtime concerns, ensures a more orderly startup of the program, and minimizes the risk of any market disruptions.

The applicable renewable oxygenate requirement (15 percent or 30 percent) applies year-round. The requirement is measured on an oxygen-equivalent basis (i.e., credit given according to the oxygenate content of the RFG) and is based on a per gallon oxygen content of 2.0 weight percent which is consistent with the minimum per gallon oxygen content standard in the RFG program. However, the renewable oxygenate requirement must be met on an annual average basis and need not be met on a per-gallon basis. This requirement applies to all refiners or importers of reformulated gasoline and/or RBOB. It does not apply to oxygenate blenders, pipeline operators, or terminal operators, though such parties are required to abide by any restrictions regarding the type of oxygenate that may be blended into RBOB provided by refiners. Specifically oxygenate blenders, pipeline operators and terminal operators will have to adhere to the RBOB blending limitations not only of the RFG final rulemaking, but also the additional limitations resulting from today's rulemaking. If a state exercises the option discussed in section III.G of this notice to address shoulder season concerns, the enforcement requirements on terminal operators may be slightly altered.

Refiners and importers of reformulated gasoline are also permitted to generate and trade, on a nationwide basis, credits earned from use of renewable oxygenates in excess of the applicable minimum requirement to other producers desiring to use a lesser volume of renewable oxygenates. Such credits can be used to satisfy part or all of a refiner's renewable oxygenate requirement for the same calendar year that the credits are earned. No banking of credits between calendar years is allowed. The averaging and trading provisions established today for the renewable oxygenate program will have no adverse environmental impact since today's action does not alter the VOC, toxics, and NO_X emission performance standards for reformulated gasoline.

The effect of these averaging and trading provisions is to greatly expand the flexibility afforded refiners, particularly during the initial startup of the program. While the renewable oxygenate program takes effect for refiners beginning December 1, 1994, individual refiners do not need to blend any renewable oxygenate into their gasoline until later in the year or at all if they so desire. They will just have to demonstrate that they met the requirements over the course of the entire year through either the blending of greater than 15% renewable oxygenates in the latter part of the year, or the purchase of sufficient credits from other refiners. As a result, the averaging and trading provisions effectively provide refiners with additional time to meet the initial requirements of the program, and allows them to smoothly ramp up their use of renewable oxygenates during the course of the first year to the full 30% requirement in 1996.

The renewable oxygenate requirements are placed at the refinery level and will apply to reformulated gasoline sold in all the covered areas, including the opt-in areas and the two covered areas in the State of California (Los Angeles and San Diego). Details of the enforcement program are discussed in section IV of this notice. Refiners who produce reformulated gasoline for use in California beginning in March 1996 are exempt from most federal reformulated gasoline reporting, recordkeeping, and similar enforcement requirements. As a result, refiners producing California reformulated gasoline are not currently required to distinguish between gasoline volumes sold in Los Angeles or San Diego and gasoline sold in other parts of California. However, the renewable oxygenate provisions promulgated today will apply to reformulated gasoline sold in Los Angeles and San Diego, as discussed in section IV of this notice in greater detail.

The Agency received a number of comments concerning impacts of the program on VOC emissions during the "shoulder season." After considering the issue, EPA has decided that a limited change to the program to address the shoulder season concerns is warranted. As discussed in section III.G, EPA has included in the final rule a provision which would allow EPA to extend the limitations on the blending of certain renewable oxygenates which exhibit volatility-related commingling effects to the shoulder season within individual states upon receipt of a petition from the Governors of the states if certain requirements are met.

C. Renewables Requirement and Definition

1. Renewables Definition

The definition of renewable oxygenates adopted in this final rule has been expanded from that contained in the proposal, but nevertheless it is intended to limit credit toward the renewable oxygenate requirement to those oxygenates which EPA expects to yield net fossil fuel savings. The final definition is structured so as to exclude from the renewables definition oxygenates produced in their entirety from nonrenewable sources such as coal, oil, peat, and natural gas due to their non-renewable, fossil nature. The definition includes oxygenates derived wholly from renewable biomass sources including but not limited to corn and other grains, other food products, and cellulosic plant material. It also includes oxygenates derived from waste products such as waste cellulose and plastics, sewage, sawdust, scrap tires, and methane recovered from landfills. EPA recognizes that some of these waste products may have been derived from fossil hydrocarbon sources. Including these sources in the set of permissible feedstocks will not by itself result in increased generation of such wastes, however, and hence will not increase consumption of materials which can be used as fossil fuels.

The definition excludes waste products that are untransformed from their original fossil fuel form. As a result, methane captured from landfills would qualify as a renewable feedstock but natural gas currently flared at the wellhead or refinery would not qualify as a renewable feedstock, since it would be used in its untransformed state as an oxygenate feedstock and is in fact a fossil fuel.

It should be noted, however, that the definition includes oxygenates whose oxygen content comes from another renewable oxygenate. As a result, ethers derived from renewable alcohols and isobutylene which was produced from oil or natural gas would qualify as a renewable oxygenate, whereas ethers derived from nonrenewable alcohols would not qualify regardless of the source of isobutylene.

Like all gasoline additives, renewable oxygenates must meet the requirements of section 211(f) of the Clean Air Act or be waived from those requirements. In addition, reformulated gasoline containing renewable oxygenates must be certifiable under the appropriate RFG emission model (as set forth in § 80.42 and § 80.45 of the Code of Federal Regulations).

2. Renewable Oxygenates for Summer RFG

Alcohols and other oxygenates which cause commingling-related volatility increases used in VOC-controlled reformulated gasoline will not receive credit toward the 30 percent renewable oxygenate requirement for two reasons. First, EPA does not want incentives created by the renewable oxygenate program to diminish the VOC benefits of the RFG program during the high ozone season. As discussed in the RFG final rule and RIA and elsewhere in this notice, a program which would encourage increased use of ethanol (and by extension any other oxygenates with a similar non-linear vapor pressure blending curve) in summer RFG introduces a number of serious concerns related to increased VOC emissions. Second, as discussed in the proposal, the process energy needed to offset the direct vapor pressure boost from ethanol, the primary renewable oxygenate used in gasoline today, negates the fossil energy savings from ethanol. The vapor pressure boost must be offset to comply with the VOC emission performance standards for summer RFG. EPA would expect a similar situation to apply to other oxygenates that increase the vapor pressure of gasoline.

Direct RVP increases are controlled and accounted for in summer reformulated gasoline by the RFG program. However, alcohols such as ethanol and methanol can create commingling problems in vehicle fuel tanks which are not reflected in the RFG emission models. Commingling can significantly increase average in-use fuel volatility which leads to higher emissions of VOCs, an ozone precursor. EPA believes that by not granting credit toward the renewable oxygenate requirement during the summer for commingling oxygenates, today's program will not encourage increased use of these oxygenates during the high ozone season, thereby avoiding the VOC emission increases that would result from such increased use. In fact, today's provision has the potential to stimulate the use of ETBE during the summer months, which could displace ethanol use that otherwise may have existed under the RFG program, thereby reducing commingling related emission increases during the high ozone season.

As discussed in the Regulatory Impact Analysis [15] (RIA) for the RFG Final Rule, a thirty percent ethanol blend market share in a Phase I VOC-controlled gasoline pool in VOC Control Region 1 would increase the effective average RVP of the gasoline pool (even if the ethanol blends and non-ethanol blends have the same RVP) and thereby increase total VOC emissions (including both exhaust and non-exhaust VOC emissions) relative to a scenario in which ethanol blends had zero market share. EPA estimated in the RIA for the RFG Final Rule that the commingling-related increase in VOC emissions from a thirty percent market share for ethanol-blended RFGs would result in a VOC increase of approximately two to three percent. In other words, the commingling effect would reduce RFG's Phase I VOC benefits by up to twenty percent. While EPA was aware of the commingling effect during the development of the Complex Model, the effects could not be reliably estimated in time for proposal and, since adding the commingling effect to the Complex Model would have represented a considerable change to the model, EPA deferred adding the effect to the Complex Model at the time of the RFG final rule.

The commingling effect does not occur when ethers are blended with gasoline. Furthermore, such blends are projected by DOE [16] to require less fossil energy than would RFG containing nonrenewable oxygenates. As a result, this program allows renewable ethers blended into VOC-controlled RFG to receive renewable oxygenate credit during the high ozone season. Under the final rule, the Administrator may allow renewable alcohols other than ethanol and methanol and renewable oxygenates other than alcohols and ethers to receive such credit if sufficient information demonstrating the absence of any commingling effects is submitted for the approval of the Administrator. As with any fuel additive, they would also have to meet the requirements of section 211(f) of the CAA, and the RFG containing such an additive must be certifiable under the Simple Model or Complex Model, whichever is applicable.

Outside of the ozone season, VOC reductions are not required in reformulated gasoline for ozone control and RVP is not controlled. At such times, renewable alcohol blends would produce the desired fossil energy savings and potential greenhouse gas emission reductions. Therefore, EPA will give credit to renewable alcohols blended into non-VOC-controlled RFG, the use of which is restricted to the non-high ozone season. The only exception to this, as discussed in section III.G, is during shoulder season months where based on a request from the Governor of a State, EPA has extended the non-commingling season beyond the VOC control season. Should that occur, oxygenates which exhibit commingling effects would not be given credit toward the renewables requirement in that State during the shoulder season as well.

3. Performance-Based Definition of Renewable

In its proposal, EPA solicited comments on the proposed definition of renewable oxygenates and, in particular, on the potential for establishing a performance requirement based on energy consumption and/or greenhouse gas emissions to define renewable oxygenates. After further consideration and evaluation of the comments received, EPA has decided not to promulgate a numerical type of performance-based standard for renewable oxygenates for a number of reasons. First, the degree of scientific uncertainty associated with quantifying energy consumption and emissions of different greenhouse gases throughout the entire life cycle of various oxygenates is considerable. Second, even if life cycle emissions could be estimated, based on comments on the proposal and discussions with EPA's Global Change Division there is currently insufficient scientific consensus on the relative warming potential of various greenhouse gases, notably VOC and NO_x (the bulk of the emissions other than CO_2), to provide reliable comparisons. Third, EPA has concluded that at the present time it would be difficult and costly to collect and verify the necessary data to implement a performance-based standard for renewable oxygenates, to the point where the recordkeeping and reporting burden could discourage new, more efficient feedstock and oxygenate production practices. Fourth, EPA believes that the definition of renewable oxygenates contained in this rule is sufficient to provide certainty that fossil energy savings are being achieved without the establishment of a numerical performance standard. As

[15] Final Regulatory Impact Analysis for the Reformulated Gasoline Program, FSSB, RDSD, OMS, OAR, US EPA, December 1993, document number V-B-1, EPA Docket A-92-12.

[16] "Energy Requirements and CO_2-Equivalent Emissions of RFG," U.S. Department of Energy, June 6, 1994 and March 17, 1994 (draft).

discussed below in section III.C.4, the group of oxygenates derived from renewable sources are expected to achieve energy and greenhouse gas emission performance levels roughly equivalent to or better than those achieved by ethanol alone. For these reasons, EPA does not believe it to be appropriate at the present time to institute a performance standard for renewable oxygenates. However, the Agency reserves the right to alter its definition of "renewable" to a performance-based standard in the future if a reasonable, workable, and enforceable definition can be developed.

4. Renewable Alcohols/Ethers Limitation

In the December NPRM, the only oxygenates included in the proposed definition of renewable oxygenates were ethanol and methanol produced from renewable feedstocks and their ether derivatives. However, EPA recognizes that for a number of reasons the production of other oxygenates from renewable feedstocks is likely to produce fossil energy savings similar to that for renewable methanol and ethanol. First, many of these other oxygenates may at times be produced as co-products or by-products of methanol or ethanol production. As a result, they should have similar fossil energy balances. In fact, if by including them in today's definition they are not forced to be separated out from the ethanol and/or methanol to make them pure, it could help reduce energy expenditures. Second, even if not co-products, they are likely to be produced from similar feedstocks using similar production practices as those currently used for renewable ethanol and methanol. As a result, the energy balance should not be significantly different. In fact, the energy balance could very well be better, since the energy balance of either the oxygenate production itself, or that associated with blending it into RFG, may be the reason prompting the production of the other oxygenates in lieu of ethanol or methanol. Third, in order for these other oxygenates to compete in the marketplace with renewable ethanol or methanol they will need to be cost competitive. Since the energy inputs represent a significant portion of the costs of renewable oxygenate production, these other oxygenates are unlikely to be produced (unless they are co-products as discussed above) unless they are at least as energy efficient as the alternatives. Furthermore, if they are able to compete, the oxygenate they are likely to displace from the marketplace will be the marginal renewable oxygenate production which is the most costly and inefficient to produce and therefore provides the least energy savings to begin with. Fourth, while EPA does not expect these oxygenates to represent a large portion of the renewable oxygenate market, their exclusion from the definition might hinder their entry into the market and hinder the development of new, energy efficient renewable oxygenate production technologies.

As a result, EPA is including other oxygenates produced from renewable feedstocks in its definition of permitted renewable oxygenates under today's rule. As discussed above, however, such oxygenates cannot be blended during the high ozone season unless either they are converted to an ether form, or it can be demonstrated that they do not cause a volatility increase when commingled with other gasoline blends.

Although several commenters supported the petition process which EPA proposed as an optional means to respond to future developments in oxygenate technology, the Agency is limiting this petition process to determining whether the renewable oxygenate exhibits commingling effects which are relevant to their use under this program during the summer months. As discussed above, EPA is extending the definition of renewable oxygenate based on its determination that all oxygenates derived from renewable sources and expected to be used to comply with this program should exhibit energy benefits similar to those resulting from ethanol use.

D. Averaging and Trading

EPA is promulgating averaging and trading provisions, as proposed, for the oxygenates in reformulated gasoline receiving renewable credit under today's program. Refiners are allowed to average the renewable oxygen content of reformulated gasoline over the calendar year. During the first year, however, the averaging period will run for 13 months, from December 1, 1994 through December 31, 1995, to track the time period for the other RFG requirements. Refiners are also allowed to trade credits earned by exceeding the renewable oxygenate requirement to other refiners. No banking of credits from one year to the next, however, is allowed, in order to keep the program as simple as possible.

Averaging and trading provide refiners many benefits. For example, averaging provides refiners with production flexibility, since every gallon need not meet the renewable oxygenate requirement. Trading provides additional flexibility by permitting refiners to specialize: it may be more cost-effective for some refiners than others to produce reformulated gasoline with a renewable oxygenate content. Trading enables those refiners for whom it is less cost-effective to buy renewable credits from those who find it more cost-effective to blend renewable oxygenates. Averaging and trading also allow refiners to avoid any cost associated with compliance margins, since refiners will not need to blend renewable oxygenates in excess of the 30 percent requirement to assure compliance.

These provisions are especially important during the initial startup of the program. While the renewable oxygenate program takes effect for refiners beginning December 1, 1994, individual refiners do not need to blend any renewable oxygenate into their gasoline until later in the year, or at all if they so desire. They will just have to demonstrate that they met the requirements over the course of the entire year through either the blending of greater than 15% renewable oxygenates in the latter part of the year, or the purchase of credits from other refiners. As a result, the averaging and trading provisions effectively provide refiners with additional time to meet the initial requirements of the program, and allows them to smoothly ramp up their use of renewable oxygenates during the course of the first year to the full 30% requirement in the second year (1996).

1. Averaging Period

USDA submitted comments to the Agency encouraging a season-specific averaging program, rather than an annual averaging program. USDA argued that requiring the renewables requirement to be met separately for VOC-controlled and non-VOC-controlled gasoline would increase the energy and environmental benefits. Specifically, USDA suggested that a season-specific program would provide additional incentives to convert ethanol that would otherwise have been blended directly into summer RFG into the form of ETBE. USDA argued that the resulting reduction in summer ethanol use would further reduce commingling effects and lead to additional VOC emission reductions due to the distillation characteristics of ETBE. USDA suggested that a season-specific program would provide the potential for ethanol market share to expand beyond 30 percent in future years. The reader is referred to the RIA for a detailed discussion of the seasonal averaging program suggested by USDA.

EPA has considered the issues raised by USDA, and has decided to retain the annual averaging period proposed in the

December NPRM, based on an analysis of the logistical, energy, environmental, and cost impacts of splitting the summer and winter seasons. First, seasonal averaging would require ETBE use in VOC-controlled reformulated gasoline, which presents serious capacity problems in the short-term. Although only minor modifications are necessary in order to produce ethers from ethanol rather than methanol, it will take some time to make those ether production facility conversions and to acquire the necessary construction and operating permits. EPA's analysis indicates that insufficient ETBE capacity would be available to fully meet the summer requirements of a season-specific renewable program in 1995 and likely also 1996. As a result, a seasonal averaging program would have to be delayed and/or phased in. Since, as discussed below, EPA anticipates the Phase II RFG requirements to stimulate the use of ETBE, a phased-in requirement might have little actual impact on ETBE use. In addition, a split season program would introduce additional complexity and expense to the renewable oxygenate and reformulated gasoline programs. ETBE is more expensive on an oxygen content basis than either MTBE or ethanol, and ETBE provides smaller toxics emission reductions than other oxygenates included in EPA's RFG emission models, which refiners would have to offset through other fuel controls. Thus, forcing ETBE use in summer gasoline in order to meet a season-specific renewable oxygenate requirement could have increased the cost of compliance with the annual toxics requirement of the reformulated gasoline rule, especially under Phase I of the RFG program, and complicated implementation of the RFG program given the short leadtime available. This problem would have been particularly severe during the initial years of the program, since the refinery modifications necessary to offset the increase in toxics emissions can require several years to complete, and since the value of ETBE's RVP benefits will increase only when the Phase II RFG standards are implemented.

Furthermore, EPA concluded that the purposes of the program could be achieved without a season-specific program. The renewable oxygenate program is being promulgated to provide two primary benefits: reducing the fossil energy impact of RFG, and stimulating the development of renewable fuels which can lead to greenhouse gas emission benefits, this would supplement the VOC and toxics emissions reduction benefits from RFG. ETBE use per se is not required to obtain these benefits. Based on the DOE analysis, ETBE use during the summer does not provide any additional fossil energy benefit than ethanol use in the winter, and in fact, results in a slightly smaller fossil energy savings. The program may also achieve some marginal crude oil savings and some additional VOC emission benefits with the use of ETBE during the summer months (due to the favorable front-end distillation characteristics of ETBE relative to ethanol and MTBE). However, EPA does not believe a split season is necessary to stimulate the use of ETBE in the summer months, particularly when the Phase II RFG standards take effect.

In summary, EPA believes that a season-specific program would offer minimal energy and environmental benefits, would increase complexity and impair compliance flexibility resulting in increased costs in complying with the program, would likely run into near-term capacity limitations, and would have no impact on the overall use of renewable fuels. As a result, EPA considers a season-specific program to be unnecessary in order to achieve the objectives of this program.

E. Level of Renewables Required

1. Existing Renewables Market Share

During the rulemaking process, EPA considered requiring greater and lesser levels of renewable oxygenates and requested comment on the appropriateness of the proposed 30 percent level for renewables. Under the winter oxygenated fuels program, which began in 1992, ethanol has been used in approximately 30 percent of the oxygenated gasoline. That program includes certain areas that will require RFG, but in general it focuses on non-RFG areas with wintertime carbon monoxide (CO) problems. Based on this experience, it appears that splash-blended ethanol can be expected to be used in at least thirty percent of the oxygenate market when the RVP increase resulting from the blend is not constrained, given existing incentives for the use of ethanol and other renewable oxygenates. The 30 percent requirement for the renewable oxygenate program helps assure that, at minimum, renewable oxygenates will be used to an extent similar to what would have occurred in the RFG-related oxygenate market had the air quality imperatives of the RFG program not required constraints on RVP levels. This will avoid a situation where the requirements and complexity of the RFG program limit the growth of renewable oxygenate use. Today's renewable oxygenate requirement will in effect set a floor to avoid reduced use of renewable oxygenates in the future. It does not set a ceiling, and should not interfere with growth of renewable oxygenate use. There are no similar restrictions placed on the remaining 70 percent of the RFG oxygenate market. As discussed below in section III.E.4, if MTBE dominates this portion of the RFG oxygenate market as anticipated, MTBE use will still grow dramatically over its current demand.

2. Renewables Production Capacity

In the December proposal, EPA stated that given the current absence of renewable methanol capacity, ethanol and its ether derivatives were likely to be the primary oxygenates used to meet the renewable oxygenate requirement in the short term. Based on 1990 data, EPA estimated that the 30 percent renewable oxygenate requirement would require an average production of roughly 630 million gallons of ethanol per year, or about 60 percent of EPA's estimate of current ethanol production capacity of roughly one billion gallons per year. EPA has updated these estimates, as discussed more fully in the RIA, and now estimates that approximately 670 million gallons per year of ethanol will be needed to meet the requirements of the renewables program alone in the 1995–1996 time frame. Other analyses have reached similar conclusions; for example, USDA's analysis indicates that the 30 percent renewable oxygenate requirement would require an average production of 680 million gallons per year. As discussed below in section III.F, EPA believes that this new demand can be met, provided there is a phase-in of the program in 1995. A phase-in will give oxygenate producers, refiners, and terminals one additional year to obtain permits, construct facilities and negotiate contracts before the full program goes into effect in 1996.

3. Comments Regarding the Level of Renewables

The majority of comments from ethanol suppliers and feedstock producers who addressed the appropriate level of renewable oxygenates supported the 30 percent requirement. The primary rationale for their support was that the current market share for ethanol in the oxygenated fuels program should be maintained.

Comments were received recommending both higher and lower levels of renewable oxygenates. Higher levels were suggested in the belief that

the ethanol industry needed the additional encouragement through just such an incentive to grow at a more desirable rate. At this point in time, however, the 30 percent renewables requirement in those areas covered by the RFG program represents a considerable stimulus to the renewable oxygenate industry. EPA believes that a larger renewable oxygenate requirement would call into question the near-term feasibility of the renewables program. Furthermore, EPA believes that the 30 percent level is all that is necessary to overcome the ethanol blending limitations in RFG caused by the VOC performance standard, since this is the level ethanol was able to achieve absent any blending restrictions under the winter oxygenated fuels program. In addition, the 30 percent renewables requirement being promulgated today is a minimum requirement. It does not prevent renewable oxygenates from increasing their share of the gasoline oxygenate market.

Many of those opposing the 30 percent requirement argued that it could create the potential for supply disruption and significant cost increases in the short-term. The oil and MTBE industries objected to the necessity for a renewable oxygenate program out-of-hand. They argued that since ethanol already has a large portion of the current wintertime oxygenated fuel market and since the market for ethanol would likely increase when the RFG program begins in 1995, the 30 percent renewable oxygenate program was unnecessary. Others, notably state air pollution control officials, recommended that the 30 percent requirement be lowered to 10 percent in order to mitigate any potentially negative environmental and energy impacts, as well as to allow the market more input in selecting the oxygenates used in the program. EPA has considered these comments but continues to believe that the 30 percent requirement is appropriate and feasible given the energy and environmental benefits of the renewables requirement and long-running governmental policies to promote renewable fuels. The basis for these conclusions is discussed elsewhere in this notice and in the RIA.

4. Implications for Non-Renewable Oxygenates

EPA believes the 30 percent level will provide the benefits identified above and stimulate the development of a diverse supply of oxygenates for the oxygenate market. The 30 percent requirement will ensure a strong role for renewable oxygenates in the RFG program while still permitting the majority of the RFG oxygenate market share to be open to any oxygenate, regardless of the feedstocks used to produce it. Even with today's rule, production of MTBE and its methanol feedstock is projected to increase because of the increased demand for oxygenates in the United States as the RFG program takes effect. MTBE demand would increase by 3.1 billion gallons annually if it is used in all of the remaining 70 percent of the RFG oxygenate market. Such an expansion equals an approximate increase of 170 percent from current MTBE usage levels. While EPA acknowledges that MTBE and methanol demand might be even greater in the absence of today's rule, it is important to note that the RFG program is likely to result in dramatic growth in MTBE, methanol, and ethanol production. Furthermore, MTBE producers can modify their facilities at relatively modest expense to produce ETBE if its use should prove economically advantageous given the requirements of the RFG program and today's rule.

Similar conclusions hold true for the natural gas industry. Natural gas is used to produce methanol and isobutylene, which in turn are used to produce MTBE. Since MTBE production is projected to grow from current levels as a result of the RFG program, EPA expects the demand for natural gas for oxygenate production to grow as well. Furthermore, isobutylene derived from natural gas is expected to play a major role in ETBE production. It should also be noted that oxygenate production represents a small portion of total demand for natural gas.

For these reasons, EPA does not believe that today's action will result in significant adverse effects on the MTBE, methanol, or natural gas industries, as their markets will dramatically increase with or without today's action. This is particularly the case since a considerable amount of ethanol was likely to have been used to satisfy the RFG program requirements absent today's rule. As discussed in section III.F, based on the expansion of ethanol production capacity planned prior to this rule, ethanol could potentially have been used to fulfill 15 percent of the oxygenate requirement of the RFG program.

F. Timing and Phase-In

1. Introduction

In the NPRM, EPA proposed to require that renewable oxygenates be used to meet 30 percent of the 2.0 weight percent oxygen requirement for the RFG program. However, at that time EPA was concerned whether adequate supplies of renewable oxygenates would be available and whether the distribution infrastructure was sufficient during the initial years of the program without disrupting existing markets for such oxygenates or incurring excessive costs. With that in mind, the proposal requested comments concerning these issues. More specifically, comments were requested on the appropriate level of the renewable oxygenate requirement, leadtime requirements associated with providing adequate renewable oxygenate supplies, the potential need for a phase-in period, and any other supply-related issues. In response, EPA received considerable information on the current and projected supply of renewable oxygenates, as well as less complete information regarding the logistics of renewable oxygenate distribution. The detailed analysis is contained in the Regulatory Impact Analysis (RIA), and is summarized below. Based on the projected supply of renewable oxygenates over time and the leadtime required to establish blending and storage facilities, EPA has concluded that, while the market can readily bear a 30 percent requirement given adequate leadtime, a phase-in of the 30 percent requirement is necessary. Therefore, EPA is requiring that 15 percent of the RFG program's 2.0 weight percent oxygen requirement be met from renewable oxygenate sources in 1995, and that the full 30 percent of the oxygen requirement be met from such sources in 1996 and thereafter.

The purpose of EPA's analysis was to determine whether sufficient renewable oxygenate supply, distribution, tankage, and blending capacity would be available in 1995 and 1996 to meet the program requirements. Failure to have sufficient supply, distribution, tankage, or blending capacity for the considerable increase in renewable oxygenate demand could result in shortages or price spikes and could interfere with the orderly implementation of the reformulated gasoline program.

In addition, EPA considered it to be desirable for a variety of reasons to limit to the extent possible any need to displace substantial amounts of ethanol from existing markets. First, displacing ethanol from existing markets would do nothing to expand the use of renewable oxygenates and achieve the resulting benefits. Second, shifting ethanol from existing markets to RFG markets would not stimulate the introduction of more advanced renewable fuels production technology. Third, as described in sections III.H and VI of this notice, the use of ethanol from new or expanded

plants is projected to displace more fossil energy than would ethanol from existing plants. Fourth, relatively high prices for ethanol would be needed to displace it from existing markets, leading to higher than necessary price increases for RFG during the initial years of the program. Ethanol purchase contracts may already be established for 1995, and breaking such agreements in order to shift ethanol from existing gasoline markets to RFG markets might be difficult and costly. Furthermore, approximately half of current ethanol consumption occurs in states which offer substantial tax credits for ethanol blends. These credits are equal in value to between 10 and 20 cents per gallon of ethanol. To induce ethanol suppliers to shift ethanol from such markets to unsubsidized markets would likely require a purchase price in excess of current market prices for ethanol equal to or greater than the value of the tax credits available in existing markets. In addition, ethanol is currently used in many markets to provide the added octane for mid-grade and premium gasolines. These gasoline grades enjoy a considerable retail price premium which can be reflected in the price paid for the ethanol. These price premiums for ethanol blended mid-grade and premium gasolines may not be available to the same extent in the new renewable oxygenate markets, particularly for the full amount of ethanol expected to be blended under the renewable oxygenate program.

The analysis examined each element of the renewable oxygenate supply process separately. First EPA evaluated which renewable oxygenates would be likely to be used to fulfill the program requirements during the early years of the program and what volume of oxygenate that represented. Second, feedstocks for the production of these oxygenates were examined to determine whether sufficient feedstock supplies would be available. Third, EPA examined the adequacy of projected production capacity for the dominant oxygenates for the first years of the program. Fourth, EPA investigated whether transportation and distribution networks were adequate to support the program during the initial years. Fifth, EPA examined the projected storage and blending capability during this time frame. EPA examined the capability over time of each link in the renewable oxygenate production and distribution chain to handle the demands of the renewable oxygenate program, and concluded that a phase-in of the 30 percent requirement is necessary and that the phase-in being promulgated today is an appropriate response to leadtime concerns.

2. Likely Renewable Oxygenates

Ethanol is likely to be the dominant renewable oxygenate used to meet the renewable oxygenate requirements, especially during the initial years of the program, since it is the only renewable oxygenate currently produced in large quantities. Since ethanol cannot be blended during the summer months to meet the requirements of the program, its use will be concentrated during the winter months. ETBE, the simplest ether derived from ethanol, also is likely to be used in significant quantities since it, unlike ethanol, can be blended during the summer months to meet the requirements of the program. As discussed below in section III.F.6, however, ETBE production capacity is expected to be virtually non-existent in 1995 due to construction and permitting time constraints. Its use is expected to increase by 1996 through the conversion of existing MTBE facilities so that the requirements of the program are met by a combination of ethanol use in the winter and ETBE use year-round. Other renewable oxygenates are not expected to be available in significant quantities before 1997 given the leadtime required to design and construct new renewable production facilities. ETBE use is expected to increase further during the summer months once the Phase II RFG standards take effect in the year 2000, since ETBE use will make it easier (relative to MTBE) for refiners to achieve the more stringent VOC performance standards.

3. New Renewable Oxygenate Demand

Before EPA could evaluate the adequacy of the renewable oxygenate supply, distribution, and blending capacity, it was necessary to estimate the program's demand for renewable oxygenates. The estimate was derived in terms of new ethanol demand, since as discussed above only ethanol or ETBE are expected to be used in significant quantities during the first few years of the program, and since the use of ETBE would not alter the total amount of ethanol required by today's rule because the oxygen in ETBE is derived solely from ethanol. The ethanol demand created by the program was estimated by multiplying the projected 1995 volume of reformulated gasoline covered by the Federal RFG program (including the two covered California areas) of 38.7 billion gallons per year by the volume percent of ethanol (5.76 percent) necessary to meet to 2.0 weight percent oxygen requirement in 30 percent of RFG. As a result, today's program is estimated to require about 670 million gallons of ethanol to meet the full 30 percent requirement. In actual practice, refiners may blend greater or lesser amounts of ethanol in any individual gallon of RFG, depending on such factors as tax credits and price and availability of various oxygenates.

The actual amount of new ethanol production required by today's rule is smaller than 670 million gallons because some ethanol is currently sold in areas covered by the RFG program. Based on the monthly reporting by Information Resources, Inc. (IRI) for 1993, it appears that as much as 280 million gallons of ethanol is already being used in areas covered by the reformulated gasoline program (State-wide data was weighted based on population to reflect ethanol consumption only in the RFG areas within the State). Not all of this can be credited toward the renewable oxygenate program, however, unless the summertime use is converted to ETBE. Based on the IRI data, as much as 180 million gallons of ethanol is currently being used during those months of the year in which EPA would expect non-VOC-controlled gasoline to be produced (on average September 15 through March 31). Thus, the amount of additional wintertime ethanol production required to meet a 30 percent renewable oxygenate requirement in 1995 would be approximately 490 million gallons (390 million gallons in new, year-round capacity in later years once ETBE production capacity can be brought on-line). A 15 percent phase-in of the program would require approximately 155 million gallons of additional ethanol production. While this volume of ethanol could be met using existing capacity by displacing ethanol from existing ethanol markets, EPA believes, for reasons discussed earlier, it is desirable to minimize displacing significant amounts of ethanol from existing markets.

4. Feedstock Capacity

The next step in EPA's analysis was to determine whether sufficient feedstocks were available to permit this increase in renewable oxygenate production. According to comments received from agricultural interests, corn is the feedstock for 90 percent of current ethanol production and is expected to provide the vast bulk of the feedstock for new ethanol capacity added in the near term. Of the total 8.7 billion bushels of corn produced in an

average year,[17] approximately 360 million bushels (approximately 4 percent of average annual corn production) was used to produce an estimated 900 million gallons of ethanol. Therefore, the estimated 490 million gallons of new ethanol demand resulting from today's rule would increase corn demand by approximately 195 million bushels, or about 2 percent. Based on this analysis, EPA has concluded that the feedstock demands for this program can be satisfied solely with corn without significant difficulty. In addition, other feedstocks can be used to produce renewable oxygenates, including waste products from farms, dairy operations, bakeries, and the soft drink industry; from cellulosic sources such as grasses and fast-growing energy crops, and from such sources as municipal solid waste. Based on the diversity and immense supply of these potential feedstocks, EPA has concluded that feedstock supplies are sufficient to support the requirements of the renewable oxygenate program being promulgated today.

5. Ethanol Supply and Production Capacity

Current (1993) ethanol operating production capacity nationwide has been estimated by DOE to be approximately 1.15 billion gallons. Data from IRI for 1993 estimates ethanol consumption at roughly 1.25 billion gallons, and EPA received comments from an ethanol producer that 1994 ethanol production was projected to be 1.25 billion gallons. As a result, current ethanol production would be more than sufficient to meet the requirements of today's rulemaking as long as no constraints were placed on the volume of ethanol that could be diverted from existing markets. However, as discussed above, there are several reasons why EPA considers it appropriate to minimize to the extent possible diverting ethanol from existing markets to satisfy the renewable oxygenate program. As a result, EPA examined the amount of current excess ethanol capacity and projected new ethanol capacity to determine the amount of renewable oxygenates that would be available to supply the needs of the program being promulgated today during the initial years of the program.

The U.S. Department of Agriculture estimates that the current ethanol production capacity is as high as 1.4 billion gallons per year. One commenter representing the ethanol industry submitted a list of existing ethanol plants and their operational capacity which suggested that current ethanol production capacity is also nearly 1.4 billion gallons per year. Based on this production capacity information and on the current domestic ethanol consumption estimates, it appears that there may be approximately 150 million gallons of excess ethanol production capacity (some of which may currently be exported) currently available that could be used to supply the requirements of the renewable oxygenate program. However, not all of this production could be used to supply ethanol for blending during the winter; only approximately 80 million gallons could be supplied from current excess capacity during the winter months.

In addition to current excess capacity, a considerable amount of new capacity is expected to come on-line in the remainder of 1994, 1995, and 1996, according to information supplied by the Renewable Fuels Association and USDA. This information suggests that approximately 305 million gallons per year of additional ethanol capacity is currently under construction and will become available in 1995. (Additional amounts are possible, but more speculative.) Furthermore, plans were being made for another 304 million gallons of annual capacity to be brought on line in 1996, though much of that apparently depended on the outcome of today's rulemaking. USDA estimated similar increases in ethanol capacity over this time period. It should be noted that not all of the additional capacity available in 1995 would be available at the beginning of the year, and not all of it could be dedicated to production only during the winter months as would be required until ETBE production capacity comes on-line. A similar situation would occur in 1996. After considering these factors, EPA has concluded that approximately 93 million gallons of additional ethanol production from new capacity will be available for blending during the winter months to meet the program requirements in 1995, and an additional 157 million gallons to meet the program requirements during the winter months in 1996.

It should be noted that additional ethanol capacity also may become available from corn processors, many of whom already have feedstock processing facilities in operation and would only need to install the capital equipment necessary to ferment the starch and separate the ethanol. Such processors may be able to install ethanol production capacity relatively quickly. Based on comments received, however, EPA cannot conclude with any degree of assurance that such additional capacity will become available.

Based on the foregoing analysis, EPA believes that as much as 173 million gallons of new ethanol production can be made available during the winter months to meet 1995 program requirements and 330 million gallons during the winter months to meet the 1996 requirements. After taking into consideration the 180 million gallons of ethanol currently blended in the RFG markets during the winter months, a total of 353 million and 510 million gallons of ethanol should be available for blending during the winter months in both 1995 and 1996, respectively. As shown in the following table, absent a phase-in and ETBE production capacity, 317 million gallons of ethanol would have to be diverted from existing markets in 1995 and 160 million gallons would have to be diverted in 1996.

[17] According to information provided by John W. McClelland of USDA, "Memorandum for Richard Wilson, Director, Office of Mobile Sources, U.S. Environmental Protection Agency," June 20, 1994.

SUMMARY OF ETHANOL SUPPLY/DEMAND (MM GAL) AND NEED FOR DISPLACEMENT

	1995 (15% Phase-in)	1995 (No Phase-in)	1996
New Renewable Oxygenate Ethanol Demand	335	670	670
Existing EtOH Demand in RFG Areas During Winter [1]	180	180	180
Net New Winter Capacity Required	155	490	490
Current Winter Excess Capacity	80	80	80
1995 New Winter Capacity [2 3]	93	93	164
1996 New Winter Capacity [2 3]	0	0	89
Shortfall (Displaced from Existing Markets)	.....	317	157 [4]

[1] Based on IRI estimates.
[2] If additional summer production can be stored until the winter, then this estimate could be increased slightly.
[3] Annual available new capacity is derived from expected capacities of ethanol plants under design/construction prorated by their projected start-up dates.
[4] Will be reduced to the extent ETBE capacity can come online.

To the extent that existing ethanol storage capacity can be used to store ethanol produced during the summer for use in the winter, and to the extent that ETBE can be produced from ethanol produced during the summer and be blended into summer RFG, the amount of ethanol displaced from existing markets would be reduced. Based on comments received by EPA, the amount of ethanol storage capacity appears to be approximately 116 million gallons. If this storage capacity were devoted to storing summer ethanol for use in winter RFG, then ethanol displacements from existing markets would fall to 201 million gallons in 1995 (with no phase-in) and 41 million gallons in 1996. As discussed in the next section, EPA does not anticipate that significant amounts of ETBE can be available in 1995, though sufficient amounts to meet the needs of the program could potentially be available in 1996. ETBE blended into VOC-controlled RFG receives credit under today's rule, so its availability would allow the new summer ethanol production capacity to satisfy part of the renewable oxygenate requirement and would reduce the displacement of winter ethanol from existing, non-RFG markets. Based on this analysis, EPA believes that insufficient renewable oxygenate production capacity is likely to be available to supply the 30 percent renewables requirement by 1995 without a considerable shift of supply from existing markets, but that adequate capacity should exist by 1996.

6. ETBE Capacity

ETBE, the simplest ether derived from ethanol, offers several advantages to refiners over ethanol or MTBE. Unlike ethanol blends, ETBE blends can be shipped through pipelines. ETBE has a higher octane value than MTBE or ethanol, which would be valuable to refiners struggling to satisfy octane demand while simultaneously reducing high-octane components such as aromatics and olefins in order to comply with the RFG toxics and NOx requirements. Like MTBE, ETBE does not produce commingling-related increases in RVP levels and hence is eligible for credit year-round under today's rule. ETBE also has a lower blending RVP than ethanol or MTBE, which in the near term would permit refiners who use ETBE to remove less butane to reach a desired RVP level. Beginning in the year 2000, ETBE's low blending RVP should be even more attractive when the more stringent Phase II performance requirements for RFG take effect. Finally, larger amounts of ETBE than MTBE or ethanol are needed to satisfy RFG's oxygen requirement, and these larger amounts of ETBE would dilute undesirable gasoline properties such as sulfur to a greater extent than would the other two oxygenates.

However, ETBE typically costs more to produce than MTBE or ethanol per unit oxygen. Because of these cost disadvantages current ETBE production levels are very low. EPA expects ETBE production to grow even without today's rule in order to achieve the low RVP levels needed to meet RFG's Phase II VOC performance standards. Today's rule will make ETBE production even more attractive, since ETBE-blended RFG can receive renewables credit throughout the year. However, EPA has concluded that large amounts of additional ETBE capacity cannot be expected for 1995. At least one year and perhaps longer is expected to be required before significant volumes of ETBE become available. According to current ether producers, existing MTBE plants are likely to require one to three years to convert to ETBE production. Up to a full year is needed to acquire construction permits and complete the requisite engineering work. Conversion of the MTBE plant to produce ETBE is estimated to require from six months to two years, and several months of trial production may be needed before full production of ETBE can commence. Furthermore, ETBE production is also dependent on the development of adequate ethanol production, unless the ethanol is merely diverted from existing markets. Based on this information, EPA does not expect significant amounts of ETBE production to be possible until the summer of 1996.

Furthermore, ether production process licensers also indicated that plant conversion to ETBE production could reduce throughput (relative to MTBE throughput), depending on the plant and the type of equipment installed. The reduction is caused by differing reaction conditions and the different nature of the reactants involved. Since considerable MTBE capacity would have to be converted to ETBE production to satisfy the full 30 percent renewables requirement, EPA is concerned that this loss of throughput might create shortages of oxygenates during the first year of the RFG program. EPA believes that phasing in the renewables requirement will reduce the risk of such shortages and allow a more orderly phase-in of ethanol and ETBE production capacity.

7. Transportation

EPA has also analyzed whether the additional ethanol produced under today's rule can be transported from where it would be produced to where it would be consumed. According to the Army Corps of Engineers (Corps), water-based transportation is the most economical method of shipping ethanol both within the Midwest and from the Midwest to East Coast and West Coast markets. For plants and markets without access to water-based transportation, railway transportation is the most likely transportation mode. EPA has analyzed each piece of the transportation network, specifically: (1) The river barge capacity on the Mississippi River, (2) the ship or ocean barge capacity

between the Gulf of Mexico and East and West Coast markets, and (3) the transportation capacity for ethanol movement from ports to retail markets.

Based on a 1992 report by the Army Corps of Engineers regarding barge traffic on U.S rivers, it appears that transportation by barge of all of the new ethanol production resulting from today's renewable oxygenates program would represent less than 1 percent of U.S. river barge capacity. As a result, EPA has concluded that today's program is unlikely to cause noticeable changes in shipping patterns or shipping prices. Based on current barge shipping prices, the cost for shipping ethanol from the Midwest to the Gulf of Mexico is estimated to cost 4–5 cents per gallon.

The barges used on inland waterways cannot be used on the open ocean. Hence ethanol destined for East Coast or West Coast markets must be transferred to ocean-going freighters or tankers. Nevertheless, based on conversations with New Orleans port officials, current shipping capacity should be more than adequate to supply the shipping requirements demanded by today's rule. Transportation from the Gulf to either Coast is expected to cost 5–7 cents per gallon.

Not all the ethanol shipped from the Midwest to other markets would have to be shipped by ocean-going vessels, however, since some of the ethanol could be used in ether plants located in the Gulf area to produce ETBE, which then would be blended into gasoline and shipped by pipeline to markets in Texas, the Midwest, or the East Coast. Pipelines are considered the most economical method of transporting liquids, and the costs of shipping ETBE to RFG markets by pipeline would be comparable to the costs of shipping MTBE to such markets.

Furthermore, the averaging and trading provisions incorporated into today's action can be used to limit to some extent the amount of oxygenate transportation that is necessary. As much as 12 percentage points out of the total 30% renewable oxygenate requirement could theoretically be met with ethanol blended in the Midwest RFG markets where transportation constraints are limited, and the credits traded to refiners marketing RFG in more distant markets.

Given the foregoing analysis (which is discussed more fully in the RIA), EPA does not believe that transportation presents a bottleneck to implementation of today's rule, although there are cost implications. Furthermore, EPA did not receive any comments suggesting that transportation would present implementation problems for the renewable oxygenate rule.

8. Storage and Blending Capacity

Given sufficient production of ethanol and adequate transportation from the point of production to their final markets, the remaining lead-time issue is that associated with adequate ethanol storage and blending capacity at the terminals where it is blended with gasoline. When the ethanol is offloaded at its end-use market, it must be stored in large terminal storage tanks. The capacity of these tanks must be sufficient to offload the entire shipment. Once offloaded, the ethanol then must be blended with gasoline. Some terminals splash-blend ethanol with essentially no additional equipment or facilities, while others use more sophisticated blending equipment. EPA did not receive comments of a nature sufficient to evaluate the adequacy or inadequacy of current ethanol storage and blending facilities. In order to determine whether adequate storage and blending capacity to support the renewable oxygenates program exists, EPA estimated the storage and blending capacity being used to meet the current demand for ethanol in the RFG areas and compared that with the storage and blending capacity that would be necessary to meet the program requirements. In order to estimate the current storage and blending capacity, EPA examined the peak monthly ethanol blending rates reported by IRI for each RFG market during 1993. EPA extrapolated this peak blending rate over the entire non-VOC control season to estimate the current blending capacity available to support the renewable oxygenate program. The results of this analysis are shown in the following table.

ETHANOL STORAGE AND BLENDING CAPACITY IN RFG MARKETS

State (RFG areas only)	Peak Market Share [1 4]	Winter Ethanol Blending Capacity (MM gals) [2 3]	% of total RFG that contains renewable O_2 [5]
Illinois/Indiana	36	59	2.6
Kentucky	16	9	0.4
Wisconsin	13	18	0.8
Midwest Total	.....	86	3.8
Connecticut	13	10	0.5
Delaware	36	7	0.3
D.C.	36	5	0.2
Maryland	3	4	0.2
New Jersey	8	10	0.5
New York	29	60	2.7
Pennsylvania	19	38	1.7
Virginia	17	19	0.9
Northeast Total	.....	153	7.0
Texas	4	9	0.4
California	5	20	0.9
Total	.....	268	12.1

[1] Peak market share for ethanol blended in any month in 1993 based on IRI data (assuming ethanol blended at 10 vol%).

[2] Wintertime ethanol only and no ETBE capacity.

[3] Peak ethanol volume blended in any month in 1993 (based on IRI data) extrapolated over the winter season, expressed as millions of gallons.

[4] Assumes ethanol blended at 3.5 wt% oxygen.

[5] Phase-in would require total of 15% in 1995 and 30% in 1996; percentages are based on proration of ethanol content to 2.0 wt% oxygen.

Based on this analysis, adequate tankage and blending equipment exists for roughly 12 percent of the oxygenate required by the reformulated gasoline program to be supplied by ethanol during the winter months only. This is well short of the total 30 percent required by the program, and even short of a 15 percent phase-in level. In order to implement the program smoothly, this shortfall will have to be made up by one of three means: first, pass a greater volume of ethanol through existing tankage and blending equipment; second, construct new ethanol storage and blending capacity at terminals; or third, supplement ethanol blended at terminals with ETBE blended at refineries.

It is reasonable to assume that some additional ethanol could be blended at the existing facilities by increasing the throughput of storage tanks and blending equipment, particularly in the Midwest where the close proximity to ethanol production facilities allows for greater flexibility in receiving and blending ethanol shipments. EPA does not believe it unreasonable to assume that ethanol throughput could be

increased by 25 percent or more in 1995, since it is unlikely that existing facilities were all designed to operate at their current peak levels with no provisions made for market growth. To the extent throughput can be increased by even more than 25 percent in some markets it could be used to offset (through credit trading) any shortfall in other markets. As a result, a phase-in level of 15 percent should be achievable in 1995 even without expanding ethanol storage and blending facilities. Even if this were not the case, it is reasonable to assume that some additional storage and blending capacity beyond that available in 1993 may have been planned to be available in 1995 to keep up with the planned increases discussed above in ethanol production by 1995.

It is not reasonable, however, to assume that existing facilities could increase their throughput by the 150 percent necessary to achieve the full 30 percent requirement of today's program. Furthermore, as discussed above, no appreciable ETBE production capacity is expected to be available until the summer of 1996. As a result, the only way to meet the full 30 percent requirement of the program in 1995 would be through the addition of new ethanol storage and blending capacity. Current estimates of the time necessary to obtain permits, construct new storage and blending facilities, and make them fully operational vary, but range between approximately 6 and 18 months. Thus, sufficient time would not be available to bring on-line additional ethanol storage and blending facilities for use until the fall of 1995. The expanded ethanol blending capacity available by this time is unlikely to be sufficient to supply the full 30 percent requirement over the course of the entire year. Even if it were sufficient, it would not have been available for the entire year and hence would not be sufficient to satisfy the 30 percent requirement. In order to meet the full 30 percent requirement in 1995, storage and blending capacity in excess of what would be needed in subsequent years would have to be built in 1995. While it is very difficult to predict specific market responses, especially given the compliance flexibilities built into the program, it does not appear that sufficient ethanol storage and blending capacity is likely to exist for 1995 without either a phase-in of the program or extraordinary measures to provide additional blending capacity (e.g., tanker truck shipments from terminals outside the RFG areas).

The situation is different for 1996, however. It may be possible by 1996 for a considerable amount of ETBE to be blended at the refineries during both summer and winter months. Since refinery-blended ETBE would not require specialized blending facilities at terminals, increased ETBE use might reduce considerably the 150% increase in ethanol blending capacity that would otherwise be necessary. Furthermore, the additional time provided by a phase-in would allow for the construction of additional ethanol storage and blending facilities, most of which could be in place at the beginning of the annual averaging program in January of 1996. Much of this additional ethanol blending capacity is likely to be added in the Midwest to take advantage of lower ethanol transportation costs and State tax exemptions. However, even if every gallon of RFG in the Midwest contained 10 volume percent ethanol, only 40% of the renewable oxygenates required by the program could be met by Midwest ethanol usage in RFG. As a result, until a significant amount of ETBE production comes on-line, ethanol storage and blending capacity in RFG markets outside the Midwest will have to expand by as much as 100 percent (i.e., capacity would have to double).

9. Summary and Conclusions

Based on the foregoing analyses, EPA believes that given the compliance flexibilities built into the program it is feasible for sufficient feedstocks, production capacity, transportation capacity, and blending capacity to be available to meet the full 30 percent renewables requirement by 1996. However, EPA is concerned that neither supply nor blending capacity will be adequate in 1995 to satisfy the full 30 percent requirement. While a supply shortfall could be filled by diverting ethanol from its current markets to RFG markets, such diversions would be costly and would not meet any of the objectives of today's rule, as has been discussed earlier in this notice. Furthermore, even if such diversions were to occur, EPA is concerned that insufficient blending capacity would be in place in 1995 to blend the requisite volumes of ethanol into non-VOC-controlled RFG. The risks of this are significant and the consequences could be dramatic with shortages, price spikes, and other market disruptions. For these reasons, EPA has decided that a phase-in of the 30 percent renewables requirement is both necessary and prudent. During the first year of the program (December 1, 1994 through December 31, 1995), 15 percent of the RFG program's minimum 2.0 weight percent oxygen requirement must be met by renewable oxygenates. In 1996 and subsequent years, the minimum renewables content will increase to 30 percent of the RFG program's minimum oxygen content. Even with such a phase-in, it is still likely that some shifting will occur from current markets into the markets created by today's program as a result of local economic conditions and logistical considerations. However, these shifts are likely to be small relative to the overall size of the renewable oxygenate program and would not materially alter the benefits of today's rule.

G. Shoulder Season/Non-commingling Season

1. Summary of the Issue and Comments

EPA received comment on the ozone impacts of the renewable oxygenate proposal, particularly during the "shoulder season" periods of April 1 through May 31 and September 16 through October 31 when the reformulated gasoline high ozone period is not in effect. During these periods, VOC-controlled RFG is not required at the retail level. Commenters expressed concern that the likely increase in ethanol market share in non-VOC-controlled RFG would increase VOC emissions both directly (since the RVP increase from splash-blended ethanol would not be constrained by vapor pressure limits in non-VOC-controlled RFG) and indirectly (since greater commingling effects would occur as the market share for ethanol-blended RFG increases). Commenters representing state air quality regulators (NESCAUM, STAPPA/ALAPCO, and CARB), argued that the net result of such increases in average RVP levels during the shoulder season would be increased VOC emissions and higher ozone levels, especially in the Northeast and California. NESCAUM suggested that EPA extend the season in which volatility-increasing alcohols would not receive renewable credit to April 1st through October 31st in order to eliminate the risk of any potential ozone increases.

Other commenters such as the Clean Fuels Development Coalition and the Ethanol Ad-Hoc Committee argued that the use of ethanol-blended RFGs during the shoulder season would not cause additional ozone exceedances for two reasons. First, the spillover of VOC-controlled RFG, primarily ether-containing RFG, would reduce shoulder season RVP levels below current levels. Second, they believed other pollution reduction programs being implemented over the next several years would reduce ozone precursor emissions during the shoulder season. The combined effect would reduce such

precursors by more than any increases due to increased ethanol use, thereby negating any detrimental environmental effects.

2. EPA Analysis of the Renewable Program's Shoulder Season Emission Impact

Although EPA agrees that increased ethanol use in non-VOC-controlled gasoline is likely, the Agency's analysis indicates that any detrimental environmental effects should be negligible. The reformulated gasoline program requires VOC-controlled fuel at the terminal from May 1–September 15. Refiners have indicated that they would begin shipping such fuel as early as March 1 in order to assure that low-volume terminals and retail stations have fully converted to VOC-controlled RFG by May 1 and June 1, respectively, as required by the RFG program.

Since most fuel is sold at high-turnover retail outlets, EPA's analysis shows that many vehicles will begin operating on VOC-controlled RFG during April. Also, most vehicles will continue to operate on VOC-controlled RFG until late September or early October, since the fuel distribution system requires some time to replace summer fuel with winter fuel after terminals are permitted to switch to winter fuel on September 16. Experience with the federal volatility program supports these conclusions, as discussed in the RIA.

EPA concludes that while increased ethanol use is likely in RFG sold from mid-October through late March, increased ethanol use resulting from this program will be essentially zero in May and will be minimal in April, late September, and early October. Furthermore, ethanol's commingling effect changes relatively little at ethanol market shares between 30 and 70 percent and decreases at higher market shares. As discussed in section III.F, a number of States in the Midwest and Northeast which will participate in the RFG program already have peak ethanol market shares approaching or even above 30 percent. In addition, experience with the winter oxygenated fuels program indicates that ethanol blends may well have represented 30 percent or more of the winter RFG demand in some RFG markets without today's rule (including some midwestern and northeastern RFG markets), suggesting that any increase in ethanol use which might occur during the shoulder season would cause little if any increase in commingling effects. Both of these factors suggest that emission impacts resulting from ethanol's vapor pressure boost and commingling effects during the shoulder season will be less than otherwise anticipated. Since ETBE use in summer RFG would likely reduce ethanol use in winter RFG, the extent of any ethanol-related VOC increase during the shoulder season is likely to decrease as ETBE capacity and usage increase. Finally, it should be noted that VOC emissions are unconstrained during the non-VOC control season under both the RFG and volatility control programs since such emissions are not associated with ozone exceedances because they do not occur outside the summer months in most of the country. Thus, today's rule is unlikely to result in increased VOC emissions during the period when such emissions are controlled under current EPA fuel programs.

3. EPA Analysis of the Extent of the Shoulder Season Air Quality Problem

In examining the shoulder season issue, EPA evaluated the extent of the air quality problem during the shoulder season. EPA has found that ozone violations outside the May 1 to September 15 period (the period during which all gasoline at terminals, and much of the gasoline at retail stations, is expected to be VOC-controlled) are minimal for those RFG areas outside of California and Texas. Ozone monitor exceedances during September 16–October 31 and the month of April in the Northeast comprised fewer than 4 percent of all such exceedances recorded in RFG areas in 1986–1988. More recent 1990–1992 data for the Northeast confirm the earlier results: less than 2 percent of all ozone monitor exceedances recorded in RFG areas occurred in the Northeast in April, late September, and October (and none in other winter months). Further examination of the 1990–1992 data revealed that the documented ozone violations involve just two distinct ozone episodes. These episodes (one in late April and one in mid-September) happened very near the time of year when much of the RFG sold at retail stations is expected to be VOC-controlled. The various control measures that apply year-round that will be implemented to attain the ozone standard on the highest exceedance days should reduce ozone concentrations below the National ambient air quality standard for ozone in the shoulder season. Furthermore, given the analysis of fuel turnover discussed previously, EPA believes that the renewable oxygenate program is unlikely to contribute to increased ozone exceedances or additional high ozone episodes in the Northeast.

However, the 1990–1992 data also indicate that a substantial number of ozone violations occurred during the shoulder seasons in the reformulated gasoline areas in California and Texas. Violations appear to occur throughout the year in both states. However, the state of California has imposed additional fuel regulations within its borders to address air quality problems, and more stringent volatility requirements go into effect throughout the state of California in 1996. These controls will already cover the April–October time frame in southern California, and the state of California can extend this if they believe additional volatility controls during the period are appropriate.

Although Texas did not submit comments to the Agency on this issue, the possibility does exist that the renewable oxygenate program may increase VOC emissions outside the high ozone season in Houston and Dallas-Fort Worth. To address this problem, EPA has considered further restricting the times during which ethanol would receive renewables credit in this rule. However, the year-round nature of Texas' current ozone exceedances could make such a solution impractical. Furthermore, EPA's analysis of ethanol production and blending capacity indicates that further restrictions on the times when ethanol would receive renewables credit could exacerbate the supply, distribution, and blending concerns for 1995 and 1996 discussed in section III.F. As a result, EPA does not believe at this time that revising the design of a national program (through such means as extending the period when alcohols do not receive credit toward the renewables requirement on a nationwide basis) is appropriate. Furthermore, EPA believes that revising the design of the program on less than a national basis (e.g., just for Texas and/or California), would be inappropriate at this point in time without taking into consideration the unique requirements within each State.

4. Provisions of Today's Rule Regarding the Shoulder Season

As discussed above, EPA does not expect today's rule to result in increased ozone exceedances during the shoulder season. However, EPA recognizes that States may wish to further restrict the times during which ethanol blended into RFG would receive credit toward the renewable oxygenate requirement in order to address their unique air quality problems. As a result, EPA will extend the non-commingling season, during which oxygenates such as ethanol which demonstrate commingling-related

increases in RVP will not receive credit toward the renewable oxygenate requirement, to any or all covered areas within a State at the State's request, subject to certain limitations as discussed below.

California is not subject to the preemption of state and local fuel controls under section 211(c)(4) of the Act and, therefore, has broad flexibility in adopting its own state fuel control programs. While other states are subject to these provisions, they can also implement their own fuel control programs if they are approved as part of their state implementation plan (SIP) as being necessary to attain the national ambient air quality standards. As a result, the states could take action on their own without petitioning EPA to modify its program. However, this petition provision allows the states the additional flexibility of having the federal fuel control program modified (in this limited manner) to adjust to their unique air quality needs.

The request for extension of the non-commingling season must be signed by the Governor of the State for which the extension is to apply. The petition must include evidence demonstrating that each of four criteria have been met. First, the petition must include data collected subsequent to the implementation of the renewable oxygenate program showing that an increase in oxygenates which produce commingling-related RVP increases (such as ethanol) has occurred in the fuel sold in the petitioning State during the shoulder season, and that this increase is likely to continue. Second, the petition must include evidence demonstrating a pattern of violations during the shoulder season of the ozone National Ambient Air Quality Standards over the previous three years, based on ozone monitoring data, which would warrant the extension being requested. In effect, this second criterion would require that the pattern of ozone violations extend into the shoulder season. Third, the petition must include an analysis demonstrating that the pattern of ozone violations is likely to continue even with implementation of all other ozone air quality control measures and programs currently planned by the State. Fourth, the petition must demonstrate that its findings were made by the Governor through a process that was responsive to public input and that included public notice and an opportunity for a public hearing. These provisions are intended to provide States with air quality concerns the ability to prevent any direct or indirect increase in VOC emissions during the non-summer season, while simultaneously providing assurance that any such extension is granted only for those areas where restrictions on blending ethanol and other commingling oxygenates may help address a genuine air quality problem.

Once a valid petition is received satisfying the noted criteria, EPA will publish a notice in the **Federal Register** and tentatively establish the non-commingling season as requested by the governor and the effective date for the new restrictions on blending of commingling oxygenates. These restrictions will take effect on the first day of the next complete non-commingling season beginning one full year after the petition is received. If a petition is received within three months of the publication of the notice in the **Federal Register** which demonstrates to the satisfaction of the Administrator either that the four criteria were not met or that the change to the non-commingling season is not feasible by the effective date in the notice, EPA retains the right to either reject the State's request for an extension or extend the effective date by up to two additional years, based on analysis of the information contained in both petitions (the State petition and the opposing petition). For example, a satisfactory request to extend the non-commingling season to encompass April which is received by the Administrator on April 20 of, say, 1997 would take effect on April 1, 1999 if no opposing petitions were submitted.

Any changes in the duration of the non-commingling season as a result of these provisions will be enforced at the terminal, as discussed in section IV. It should be noted that the criteria discussed above imply that the non-commingling season will not be extended prior to 1997 for any State.

H. Program Benefits

The reformulated gasoline program promulgated December 15, 1993 will increase fossil energy use due to the need to reduce RVP, the increased production and use of oxygenates, and fuel economy losses resulting from fuel reformulation (as discussed in 59 FR 7716, February 16, 1994, and the Regulatory Impact Analysis found in Public Docket No. A–92–12). As explained below, the use of renewable oxygenates in reformulated gasoline under the renewable oxygenate program being promulgated today should reduce the fossil energy used by the reformulated gasoline program, particularly in the long term. Today's renewable oxygenate program also helps assure that the RFG program is compatible with long-running national policies and programs to obtain the benefits associated with the use of renewable fuels and could, according to the Renewable Fuels Association, result in decreased imports of MTBE. Furthermore, the renewable oxygenate requirement will help assure that the environmental benefits of the reformulated gasoline program will be achieved and has the potential to enhance those benefits, as discussed more fully below. And finally, the renewable oxygenate program offers the potential for reduced greenhouse gas emissions in the future as more efficient renewable oxygenate production technologies are introduced.

1. Energy Benefits

The energy benefits of the renewable oxygenate program are strongly dependent on the oxygenates used and the timeframe considered. Technical and economic factors suggest that in the early years of the program, the renewable oxygenate requirement will be met primarily with ethanol. According to a study prepared by the Department of Energy,[18] if the 30 percent renewables requirement is met by either using ethanol produced in current-technology ethanol plants in winter RFG, or ETBE in summer RFG, the overall fossil energy consumed in RFG production and use would be smaller than would be the case if nonrenewable MTBE (the other oxygenate currently expected to capture a large share of the RFG oxygenate market) were the only oxygenate used in RFG.

The renewable oxygenate program will also help to diversify the country's transportation energy supply away from fossil energy (predominantly oil and natural gas) towards renewable energy by stimulating production of renewable fuels such as ethanol and renewable methanol. This program will have a large impact on the renewable energy industry in general and the ethanol industry in particular because the amounts of renewable fuels involved are large relative to historical production levels.

[18] "Analysis Memorandum: Energy Requirements and CO_2-Equivalent Emissions of RFG," prepared by Margaret Singh, Argonne National Laboratory, for Barry McNutt, U.S. Department of Energy, June 6, 1994 and March 17, 1994 (draft). Other comments and studies were also provided to EPA claiming vastly different energy and global warming impacts than the DOE report. However, these other comments tended to focus on comparisons of ethanol and ETBE-blended RFG with conventional gasoline, instead of focusing on comparisons of ethanol and ETBE-blended RFG with MTBE blended RFG. As a result, the DOE analysis contains the most relevant information regarding the impact of today's rule on fossil energy consumption and global warming emissions.

The energy benefits of this program become more pronounced in later years. Improvements in the energy efficiency of ethanol production, achieved through such means as the use of cogeneration or waste products to provide process energy, will further reduce the fossil energy required to produce ethanol. Additional gains can be achieved by reducing energy consumption and fertilizer use in corn farming through changes in farming practices, using more energy-efficient equipment, increasing per-acre crop yields, and decreasing fertilizer use. Comments submitted by the Department of Agriculture and others, as well as previous studies by DOE and EPA cited in the proposal, indicate that as new feedstocks for ethanol such as cellulose are commercialized, and as renewable methanol production becomes viable, the fossil energy benefits of this program would increase substantially relative to nonrenewable MTBE use. By providing a secure minimum market for renewable oxygenates, today's program will help provide the certainty needed to encourage private investments in modern, high-efficiency agricultural practices and renewable oxygenate production technology.

2. Environmental Benefits

a. *Summer Ozone-Related Benefits.* In addition to the energy benefits cited above, EPA believes this program has the potential to provide environmental benefits in the near term, with the potential for even greater environmental benefits in the future. These potential benefits stem from the incentives this program creates for the use of ETBE in summer RFG. Short-term limitations in ETBE capacity suggest that most of the near-term program requirements will be met through the use of ethanol blended into winter RFG. In the short term, summer RFG will not be affected by the program except to the extent that (1) renewable MTBE is substituted for nonrenewable MTBE, and (2) small amounts of ETBE capacity become available. Replacing nonrenewable MTBE with renewable MTBE would not alter the emission benefits of the RFG program. However, ETBE use helps assure that the VOC emission reductions sought by the RFG program are achieved or exceeded in-use. Since ETBE production consumes ethanol, ETBE use in summer RFG is likely to reduce direct ethanol use in summer RFG. (Even though ethanol used in summer RFG would not receive credit toward the 30% renewables requirement, such use is still permitted under the RFG program.) Ethanol's commingling effect discussed in section I tends to increase VOC emissions, so conversion of summer ethanol to ETBE (which does not have a commingling effect) should reduce VOC emissions.

Replacing summer ethanol with ETBE may yield other benefits as well. ETBE-blended fuels with a given Reid vapor pressure (RVP) produce less vapor (and hence smaller nonexhaust VOC emissions) when heated above 100 degrees Fahrenheit than do ethanol fuels with the same RVP. A large fraction of summer VOC emissions are generated when gasoline is heated beyond 100 degrees Fahrenheit, so replacing ethanol or MTBE with ETBE in summer reformulated gasolines may yield additional VOC emission reductions. These reductions, which are related to the front-end distillation properties of different oxygenated fuel blends, have not been included in EPA's Simple or Complex Models for reformulated gasoline since sufficient data to quantify accurately the size of these reductions is not yet available. However, sufficient data is available to confirm expectations based on scientific theory that such reductions would occur.

The size of the commingling and distillation benefits resulting from substitution of ETBE for ethanol in summer RFG depends on the market share of ethanol-blended gasolines in each market. As discussed above, EPA cannot quantify such benefits with certainty; however, the Agency estimates that if a 30 percent market share for ethanol blends in summer RFG were replaced entirely by ETBE blends, total VOC emissions could be reduced by as much as 5 percent beyond the reductions that would have occurred without changes in the market share for ethanol blends. Thus, by encouraging the conversion of summer ethanol into ETBE, the renewable oxygenate requirement will help assure that the RFG program achieves the maximum possible VOC reduction.

b. *Shoulder Season Environmental Impacts.* EPA received comments raising the concern that the use of ethanol in the "shoulder season" (the months bordering the high-ozone season) could lead to ozone violations in certain areas. The comments raise two separate mechanisms by which ethanol use could increase emissions of ozone precursors. First, ethanol addition to gasoline causes fuel volatility to increase by approximately 1 psi, and during the shoulder season this increase is not constrained by the RFG program. Second, ethanol-blended fuels can produce emission increases due to the commingling and distillation effects described in the preceding section.

EPA has considered the shoulder season issue in detail and has concluded that the emission reductions anticipated as a result of the RFG program should in most cases more than offset any emission increases due to the increased use of ethanol in the shoulder season. The basis for this conclusion is presented in section III.G of this notice and is discussed in detail in the RIA. Nevertheless, EPA has decided to allow States to petition the Administrator to extend the season during which ethanol blended into gasoline would not receive credit toward today's rule. The provisions governing the petition process are described in detail in sections III.B and III.G of this notice.

c. *Global Warming Benefits.* In addition to the potential to reduce summer VOC emissions, the proposal for this rule stated that the renewable oxygenate requirement has the potential to reduce emissions of carbon dioxide (and possibly other greenhouse gases) resulting from the production and use of reformulated gasolines. However, the study by the Department of Energy cited previously indicates that with current technology, the use of renewable oxygenates leads to similar carbon dioxide-equivalent emissions (global warming potential of all emissions expressed as an equivalent mass of CO_2 emissions) as those resulting from the use of nonrenewable MTBE. Testimony from the Oak Ridge National Laboratory on behalf of the National Corn Growers Association given at the January 14, 1994 public hearing on this rule also indicated that the use of renewable oxygenates (ethanol in particular) would have no impact on, and in some cases could lead to a reduction in, the greenhouse gas emissions associated with the use of gasoline. Overall, current technologies for ethanol production and use appear to have at best minimal benefits relative to nonrenewable MTBE production and use.

But as noted by EPA in the proposal and as supported by comments received from the Department of Agriculture (see sections II and VI of this notice) and others, the use of new feedstocks (particularly agricultural and municipal waste products) and new, more efficient production technologies is likely to result in reduced emissions of CO_2 related to fuel ethanol use. In addition, improved farming techniques can reduce emissions of other greenhouse gases, particularly N_2O. EPA expects that expanding the market for renewable oxygenates such as ethanol will accelerate the introduction of more efficient feedstock and oxygenate production technologies. Improved

efficiencies in these processes would result in reduced emissions of CO_2 and other greenhouse gases. Hence, EPA believes that while the renewable oxygenate program may not provide global warming benefits currently, it will help stimulate the implementation of more efficient agricultural and oxygenate production practices, leading to reduced emissions of greenhouse gases than would occur with nonrenewable oxygenates.

IV. Enforcement

A. Overview of Enforcement Scheme

1. General Requirements

The enforcement scheme for the renewable oxygenate requirements is similar to that used for the other reformulated gasoline requirements. The renewable oxygenate average standard applies to importers, and to refiners separately for each refinery,[19] and has a calendar year averaging period.[20] No per-gallon standard is included. Renewable oxygen credits may be created by any refiner who uses more renewable oxygenate than is required, and renewable oxygen credits could be used by any refiner to achieve compliance with this standard. The conditions and requirements for credit creation, transfer and use that would apply to renewable oxygen credits are the same as the conditions and requirements that apply under reformulated gasoline for benzene and oxygen credits.

The renewable oxygenate standard will be subject to a phase-in schedule. Under § 80.83(b)(1), reformulated gasoline and reformulated gasoline blendstock for oxygenate blending (RBOB), on average, must have an oxygen content from renewable oxygenate that is equal to or greater than 0.30 weight percent from December 1, 1994 through December 31, 1995. The 0.60 weight percent standard shall apply beginning on January 1, 1996.

The renewable oxygenate regulation adds two types of RBOB that were not included previously in the reformulated gasoline regulation. These two generic RBOB types are "any renewable oxygenate," and "renewable ether only" RBOB. A third type of RBOB, "non VOC controlled renewable ether only" RBOB has also been added and is appropriately used in those areas which have been granted extended non-commingling seasons (see "D. Shoulder Season," below). The proposed renewable oxygenate rule allowed refiners to take credit for downstream blending of renewable oxygenate only if a contractual relationship between blender and refiner exists and if the refiner conducted a quality oversight and sampling program. EPA received several comments from parties who felt that the renewable oxygenate regulation could contain more flexibility. EPA agrees with these comments and adopted the approach described in the following paragraphs.

Refiners are responsible for meeting the renewable oxygen standard for reformulated gasoline and RBOB and have two options for including renewable oxygenate in the compliance calculations required by § 80.83(d). Under the first option, a refiner may claim credit for downstream renewable oxygenate blending only if there is a contractual relationship between the refiner and blender and the refiner carries out a suitable oversight program over the blender. The requirements for a downstream oxygenate blending oversight program are the same as those contained in §§ 80.69 (a) (5) through (7) of the reformulated gasoline regulations. Among other requirements, the refiner must have a contractual relationship with the oxygenate blender and must comply with sampling and testing requirements.

Under the second option, a refiner may assume that 2.0 weight percent oxygen from ethanol is blended with "any renewable oxygenate" RBOB. For "renewable ether only" RBOB, the refiner may assume that ETBE resulting in 2.0 oxygen by weight is to be blended. EPA has chosen the 2.0 weight percent assumption because it is consistent with the final reformulated gasoline RBOB provisions at § 80.69(D). Additionally, a refiner may chose to produce "any renewable oxygenate" RBOB in lieu of "any oxygenate" RBOB for blending with ethanol, effectively reducing the number of RBOBs it produces to three types.

Under the final reformulated gasoline regulation, downstream blenders are prohibited from violating the assumptions/instructions for RBOB used by refiners. Blenders, although not responsible for compliance with the renewable oxygenate mandate, are still responsible for adding appropriate oxygenate of the type specified in the RBOB transfer documentation under the final renewable oxygenate regulations. Under § 80.83(c)(2)(i)–(ii), no person may combine any oxygenate with "any renewable oxygenate" RBOB, "non-VOC controlled renewable ether only" RBOB, "renewable ether only" RBOB unless the oxygenate meets the "renewable oxygenate" definition. The "renewable oxygenate" definition is discussed in greater detail in section III of this preamble.

Sections 80.83 (d) and (e) specify compliance calculations and conditions for the creation and transfer of credits. These criteria for creation of credits are the same as those specified in §§ 80.67(h)(1)(i) through (iv) and §§ 80.67(h) (2) and (3) of the reformulated gasoline regulations.

The renewable oxygenate rule includes recordkeeping requirements, specified in § 80.83(f). Refiners are required to maintain records demonstrating the renewable nature, volume, type, and purity of the oxygenate used and product transfer documentation for all renewable oxygenate, reformulated gasoline, or RBOB for which the refiner is the transferor or transferee. These same recordkeeping requirements also apply to oxygenate blenders who blend oxygenate with RBOB designated as "any renewable oxygenate," "non-VOC controlled renewable ether only" or "renewable ether only." The records required by § 80.83(f) must be retained for a period of five years and must be delivered to the Administrator or the Administrator's designated representative upon request.

In today's final rule, EPA is requiring that refiners maintain records showing the renewable nature of all oxygenates. Under the proposed rule, records demonstrating the renewable nature of renewable ethanol were not required. However, today's final rule seeks to ensure that all oxygenates claimed as renewable do, in fact, come from renewable sources.

Section 80.83(g) deals with reporting requirements. All refiners are required to submit reports related to compliance with the renewable oxygenate standard for reformulated gasoline, compliance calculations for the renewable oxygenate standard, and the transfer of renewable oxygen credits. These renewable oxygenate reports go beyond the reporting requirements included in the reformulated gasoline final rule issued in December 1993.

Refiners are required to report, on a per-batch basis, the total weight percent oxygen and weight percent oxygen attributable to renewable oxygenates contained in the gasoline they produce.

[19] The remainder of this preamble section refers to refiners and importers collectively as refiners, but all references to refiners apply equally to importers unless otherwise noted. Note that downstream oxygenate blenders would not be not subject to the renewable oxygenate requirements.

[20] Reformulated gasoline produced during 1994 for use in 1995 will be averaged with gasoline produced in 1995 under the reformulated gasoline regulations. This approach to averaging of gasoline produced during 1994 would be followed for renewable oxygenate averaging, creating an averaging period that is longer than one year for 1994–1995 only.

For all types of renewable RBOB, the refiner must report the weight percent oxygen subsequent to oxygenate blending, subject to the conditions set forth in § 80.83(c). These requirements supplement the quarterly reports requirements found in existing § 80.75(a) of the reformulated gasoline regulations.

Refiners are also required to submit, on an annual basis, a report for all reformulated gasoline and RBOB produced during the previous calendar year averaging period. These requirements supplement the fourth quarterly report requirements found in existing § 80.75(a). The fourth quarterly report must include (among other specified items) information regarding the total volume of reformulated gasoline and RBOB, the compliance total for renewable oxygen, the actual total for renewable oxygen, information about credits generated and transferred, and information about the party to whom (or from whom) credits were transferred.

EPA intends that the attest engagement requirements for reformulated gasoline will apply to the renewable oxygenate standard. Sections 80.128 and 80.129 contain agreed upon procedures for refiners and importers and downstream blenders, respectively. These new provisions supplement the reformulated gasoline attest engagement requirements found in subpart F of that regulation. Furthermore, other provisions contained in the reformulated gasoline regulations, and not specifically discussed in this preamble, would apply to the renewable oxygenate standard in the same manner as they apply to other reformulated gasoline standards. These include, among other things, the definitions of parties; the designation requirements; testing requirements, including sampling and testing; and controls, prohibitions, liabilities, and defenses.

There are no gasoline survey requirements associated with the renewable oxygenate requirement, because there is no covered area-specific standard associated with this program.

2. Requirements Specific to the State of California

Today's renewable oxygenate rule also applies to all gasoline that is sold in the Federal reformulated gasoline areas of Los Angeles and San Diego. Refiners of California gasoline, as defined in § 80.81 of the reformulated gasoline regulation, are responsible for all renewable oxygenate provisions (including recordkeeping and reporting), except where a specific enforcement exemption has been granted under § 80.81 of the reformulated gasoline regulation. Today's regulation specifically provides that California gasoline must meet, to the extent the requirements relate to the renewable oxygenate rule, the designation of gasoline requirements for the two types of renewable RBOB; the annual attest engagement requirements; and downstream blending requirements of § 80.69. Section 80.84(h) of the renewable oxygenate regulation includes specific provisions for California gasoline sold within reformulated gasoline covered areas as specified in § 80.70. Under § 80.83(h)(2), California gasoline is presumed to be used in the Los Angeles or San Diego covered area if the gasoline is produced by a refinery located within Los Angeles or San Diego. Gasoline is also presumed to be used in the Los Angeles or San Diego covered area if the gasoline is transported to a facility within one of these areas or to a facility from which gasoline is transported within one of these areas. Refiners may refute these presumptions through the production of appropriate documentation showing that the gasoline, in fact, is transported for use outside of the Los Angeles or San Diego reformulated gasoline areas. These areas are specified in § 80.70.

Under § 80.83(h)(3), California gasoline is considered to be designated as VOC-controlled if the Reid Vapor Pressure (RVP) of the gasoline, or RBOB subsequent to oxygenate blending, is or is intended to meet a standard of 7.8 pounds per square inch (psi) or less in the case of gasoline intended for use before March 1, 1996, or 7.0 psi or less in the case of gasoline intended for use on or after March 1, 1996.[21]

B. Blendstock Issues

EPA's proposed oxygenate rule would have only allowed refiners to include in renewable oxygenate compliance calculations the renewable oxygenate that is added by downstream oxygenate blenders where the refiner carried out an appropriate quality assurance program over downstream oxygenate blenders. A quality assurance program is intended to ensure that when refiners claim credit for downstream blending of renewable oxygenate that the oxygenate added is renewable, that the renewable oxygenate is added to the RBOB produced by the refiner, and that the volume of renewable oxygenate claimed is correct.

EPA received several comments from refiners regarding renewable oxygenate blendstocks in response to this proposal. Some commenters felt that the proposed renewable oxygenate requirement would be difficult, if not impossible, to implement as it would force refiners and importers to implement costly oversight programs over independent blenders.

A commenter also stated that the proposed renewable oxygenate rule's reliance on RBOB availability is "at odds with" the reformulated gasoline program requirements for RBOB production and handling. Under the final reformulated gasoline rule, the commenter notes, RBOBs having different oxygenate requirements are segregated to the point of oxygenate blending. For example, the commenter points out, "any oxygenate" RBOB must be segregated from "ether-only" RBOB. The segregation requirements, combined with the renewable oxygenate mandate, will (according to the commenter) exacerbate the problems associated with supplying the needed amount of RBOB.

EPA agrees for the most part with these comments and has provided for greater downstream oxygenate blending of renewables similar to the final reformulated gasoline rule. As explained in greater detail in the general overview section ("A," above), the final renewable oxygenate regulations allow for two compliance options. The first option permits the refiner to claim the actual amount of renewable oxygenate added by the downstream blender and requires that both a contractual relationship and a testing and oversight program exist. The second option allows the refiner to designate RBOB as one of two generic renewable types[22] and to claim credit for downstream blending of renewable oxygenate based on specified assumptions.

Under § 80.83(f), oxygenate blenders are required to maintain and, upon request, deliver to the EPA Administrator, or the Adminstrator's designated representative, records demonstrating the renewable nature and source of the oxygenate used; characteristics in terms of volume, type, and purity; and product transfer documentation for renewable oxygenate, reformulated gasoline, or RBOB for which the blender acts as transferor or transferee. Although these blender recordkeeping requirements vary from the renewable oxygenate proposal, they

[21] Beginning March 1, 1996, the California Air Resources Board (CARB) will enforce regulations which set the maximum RVP for the air basin containing the Federal reformulated gasoline areas of Los Angeles and San Diego at 7.0 pounds per square inch (psi). These requirements apply during the period of April 1 through October 31 (March 1 for upstream parties).

[22] For areas which have been granted an extended non-commingling season, there are three generic RBOB types.

are consistent with recordkeeping requirements associated with other reformulated gasoline requirements and will not impose a significant additional recordkeeping burden. As discussed in greater detail in "A. Overview of the Enforcement Scheme," above, EPA has created new categories of renewable RBOB to allow greater refiner flexibility in the renewable oxygenate requirement.

C. The Renewable Oxygenate Requirement for California Areas

The renewable oxygenate requirements apply to Federal reformulated gasoline sold in the two covered areas in the State of California, Los Angeles and San Diego. However, refiners who produce reformulated gasoline for use in California are exempt from most reformulated gasoline enforcement mechanisms beginning in 1995. *See* § 80.81. This California exemption is based on the fact that beginning in March 1996, all gasoline used in California will be subject to the California Phase II reformulated gasoline standards ("California gasoline"), which EPA has concluded are at least as stringent as the federal Phase I reformulated gasoline emissions standards. As a result, refiners who produce California gasoline are exempt from most federal reformulated gasoline enforcement requirements, including designating gasoline as either reformulated or conventional gasoline, recordkeeping[23] and reporting. Refiners of California gasoline are not exempt, however, from meeting the federal reformulated gasoline standards, including the renewable oxygenate standard.

In the proposed rule, EPA suggested a simple method to ensure that an appropriate volume of California gasoline meets the renewable oxygenate requirement. Specifically, EPA proposed that each refiner who produces California gasoline be required to meet the renewable oxygen standard for 54% of its volume California gasoline. The 54% figure was derived from the historical volume of gasoline used in the Los Angeles and San Diego markets as a portion of the entire state's market.

EPA received several comments with respect to the "54% proposal." Some commenters, including industry and trade associations, felt that EPA has no legal authority under § 211(k) of the Clean Air Act to require all California refiners to meet the renewable oxygenate standard for 54% of their entire volume of California gasoline. These commenters argued that imposing the renewable oxygenate requirement in this manner would amount to requiring renewable oxygenate in Federal non-reformulated as well as reformulated gasoline. Two other commenters expressed support for EPA's 54% proposal, however, as a simple solution to a difficult program issue.

EPA also received comments indicating that the Northern and Southern California markets are truly distinct and that the burden on refiners to account for gasoline they market in the Los Angeles and San Diego area would not be great. One commenter stated that EPA may be able to make a rebuttable presumption that all gasoline produced in the Los Angeles and San Diego areas or imported into those areas is reformulated gasoline for the purpose of the renewable oxygenate mandate. However, this commenter also stated that refiners should be able to rebut the presumption with respect to gasoline exported out of the Los Angeles and San Diego area.

After consideration of the comments received, and as discussed above, EPA has decided to impose the renewable oxygenate requirement only for gasoline used in the Los Angeles and San Diego areas. EPA believes that it is possible to have an effective renewable oxygenate program for the two Federal reformulated gasoline program areas, and recognizes that its authority under section 211(k)(1) is limited to reformulated gasoline areas.

EPA received comments from a California state agency which recommended a change in the proposed implementation date of January 1, 1995 to coincide with the March 1, 1996 refinery production deadline for California reformulated gasoline. Combined with this was a request to phase in the proposal over a 22 month period as follows: 10% on March 1, 1996, 20 percent on January 1, 1997, and 30% on January 1, 1998. EPA does not believe that a three year phase-in or delay is necessary and has received no compelling evidence that California refiners would be particularly disadvantaged with respect to lead time. EPA has included a phase-in schedule in today's rule for all covered areas.

Various comments related to California's air quality outside of the Federal VOC-controlled gasoline season are discussed elsewhere in this preamble. One commenter suggested that, since California has been allowed to develop its own reformulated gasoline regulations "it might make sense" to let California decide which renewable oxygenates qualify for the renewable oxygenate requirement and when they qualify. The commenter felt that California officials might conclude, after modeling air quality effects, to allow ethanol even during the summer months.

EPA responds that California is subject to the reformulated gasoline requirements of § 211(k) of the Clean Air Act, although an exemption from certain recordkeeping and enforcement requirements has been granted for purposes of the California program. To ensure that the objectives of the renewable oxygenate program are met, EPA believes that it is important that the Federal reformulated gasoline areas located within the State of California to be subject to this program. EPA has a strong interest in consistent application of the renewable oxygenate requirements across all reformulated gasoline areas and does not believe that it is appropriate for state officials to decide which oxygenates satisfy the Federal requirement.

EPA received other comments specifically related to application of the renewable oxygenate rule to California. A few commenters felt that California should be exempt from the renewable oxygenate requirement as an outgrowth of California's exemption from most reformulated gasoline enforcement mechanisms. EPA does not agree. Although refiners of California gasoline have been exempted from many enforcement requirements, they are not exempt from the requirement that their gasoline meet Federal reformulated gasoline standards. Likewise, EPA believes that Federal reformulated gasoline in California should be subject to the renewable oxygenate standard, with appropriate exemption from certain enforcement procedures.

Comments received from a California state agency indicated that oversight should rest with the California Air Resources Board (CARB). EPA responds that there is currently no state mandate to correspond to the renewable oxygenate mandate contained in these regulations, thus, this appears to be a moot issue.

D. Shoulder Season

EPA received some comments from parties concerned that the renewable oxygenate requirement might lead to exceedances of the ozone standard during the "shoulder season" (i.e. the time period immediately before and after the Federal VOC control season) due to increased use of ethanol. These comments, and EPA's response, i.e., a petition process which would allow the Governor of any state affected by the

[23] Refiners of California gasoline are required to keep records required by California State law for five years, however.

reformulated gasoline program to request an extension of the non-commingling season beyond the VOC control season, are addressed elsewhere in section III.G of this preamble.

To ensure that the state shoulder season petitions are implemented effectively, § 80.83(i) creates a category of RBOB, called "non VOC controlled renewable ether only" which may be blended with ETBE or another oxygenate that does not exhibit commingling effects when blended with other gasolines. If a Governor's petition for an extended non-commingling season is granted, terminals will be required to keep "non VOC controlled renewable ether only" RBOB on hand for blending with appropriate oxygenates during the extended non-commingling season.

E. Other Issues

Some commenters asserted that EPA should allow temporary "good faith exemptions" to refiners that make a showing that complying with this proposal would "result in extraordinary economic hardship." The reformulated gasoline rule contains an exemption for "inability to produce conforming gasoline in extraordinary circumstances." See § 80.73 of the reformulated gasoline regulations. This exemption does cover extreme and unusual circumstances outside of the control of the refiner and would encompass such circumstances as "Acts of God" or natural disasters. EPA recognizes that this exemption may apply to the renewable oxygenate mandate. EPA does not believe that an additional exemption for purely economic reasons is appropriate, particularly given that the renewable oxygenate mandate is a year 'round credit program.

V. Federal Preemption

This program is based on section 211(k) of the CAA. The provisions for the prohibition of state and local controls under section 211(c)(4) therefore do not apply.

VI. Environmental, Energy, and Economic Impacts

A. Environmental Impacts

1. Overview

Today's renewable oxygenate rule is projected to have a number of direct and indirect environmental impacts resulting from changes in the type of oxygenates that likely would have been used to fulfill the requirements of the RFG program. Determining the precise nature of these impacts is difficult because the renewables program provides considerable flexibility in meeting the 30 percent renewables requirement. In the case of VOC, NOx and air toxics, however, the impact of today's rule is constrained because the renewables program will take place within the context of the reformulated gasoline program. Today's rule may also have effects on carbon monoxide, global warming, and non-air quality aspects of the environment since these effects are not constrained by the RFG emission models or performance standards.

Today's rule does not alter the VOC, NOx, or toxics emission performance standards for reformulated gasoline. Therefore, the emission performance of reformulated gasoline as measured using the relevant RFG emission model (the Simple Model in 1995–1997 or the Complex Model in 1998 and beyond) will remain essentially unchanged. Today's rule will affect VOC, NOx, or toxics emissions only to the extent that the effects of fuel changes resulting from today's rule are not included in the applicable RFG certification models. These effects (predominantly the commingling and front-end distillation effects of adding oxygenates to gasoline) should be beneficial for VOC emissions to the extent that ETBE displaces either ethanol or MTBE use during the summer months. Exact quantification of these benefits is difficult because the changes in ETBE use and the quantification methodology are both uncertain.

Health studies of ETBE are being initiated, since virtually no health data exist at present. These studies in conjunction with studies of potential ETBE related exposures would contribute to our understanding of potential public health risk. This work is designed to resolve existing uncertainties as to whether unique concerns may exist with ETBE as compared to the ethanol, MTBE, and/or other compounds it could displace.

Concerns with respect to potential VOC emission increases outside of the VOC control season were raised in the comments on the proposal. However, VOC emissions are not directly controlled outside of the VOC-control season under the RFG program (although some control due to early compliance with the requirements is expected based on past experience with other programs). The issue of VOC emission increases during the "shoulder season" is addressed in detail in section III.G.

The remainder of this section is divided into four parts. First, the air quality effects of the renewable oxygenate rule in 1998 and later years (when the Complex Model is in effect) are discussed. Second, the air quality effects of today's rule during the Simple Model years (1995–1997) are discussed. Third, the global warming impact of today's rule is discussed. Fourth, the non-air quality effects of today's rule is discussed.

2. Air Quality Impacts Under the Complex Model

As discussed in section III, the renewable oxygenate program is expected to stimulate the use of ETBE during the summer months and increase the use of ethanol during the winter months. According to the Complex Model, these oxygenates provide smaller toxics benefits than do MTBE or TAME when used at identical oxygen content levels. Any changes in oxygenate type resulting from today's rule will have no effect on overall air toxics emission performance, however, since the Complex Model will account for the effects of changes in oxygenate type and the emission performance standards are unchanged by today's rule. As discussed in section VI.C of this notice, however, the increase in ethanol and ETBE use may increase the cost of complying with the RFG toxics emission performance standards.

In addition to impacts on toxics compliance, any shifts in oxygenate use resulting from today's program will also cause changes in the concentrations of other fuel parameters in the final gasoline blend, since different oxygenates require different volumes to meet the same oxygen content requirement. Changes in these other fuel parameters (referred to as the dilution effect) can affect VOC, NO_X, and air toxics performance. However, the RFG performance standards remain unchanged by today's rule, and the Complex Model will account for the VOC, NO_X, and toxics emission effects of any dilution-related changes in the level of aromatics, olefins, sulfur, E200, E300, or benzene. As a result, EPA has concluded that today's rule will not alter the VOC, NO_X, and toxics emission benefits of the RFG program. As discussed in section VI.C of this notice, however, refiners may experience positive or negative economic impacts in maintaining the required emission performance of their reformulated gasoline as a result of today's rule.

Two other effects of today's rule are not reflected in the Complex Model and may affect summer nonexhaust VOC and toxics emissions, however. First, commingling-related emissions during the VOC control season would be reduced to the extent that ETBE replaces ethanol in summer RFG.

Second, increased summer ETBE use (and reduced summer ethanol use) would improve the front-end distillation characteristics of summer RFG, thereby potentially reducing summer nonexhaust VOC and toxics emissions to some degree. These effects, however, are contingent upon changes in the amounts of ETBE and ethanol that are blended into RFG during the summer months as a result of this rulemaking. Since it is uncertain how much ETBE and ethanol would have been used during the summer months absent today's rulemaking, and is still uncertain how much of each oxygenate will be used as a result of today's rulemaking, it is not possible to quantify these benefits. Furthermore, even if the volumes of oxygenate use were known, the effect of front-end distillation changes (other than RVP) on nonexhaust VOC emissions is not yet quantifiable with a sufficient degree of certainty. Limited data and scientific theory suggest it is a real effect, as discussed in the Regulatory Impact Analysis for the RFG final rule, but reliable quantification is not yet possible.

Carbon monoxide emissions are not regulated directly by either the RFG program or today's rule. However, carbon monoxide emissions can be affected by gasoline properties. Higher oxygen levels are known to result in large reductions in carbon monoxide emissions, and lower RVP levels are known to result in small reductions in carbon monoxide at temperatures above 45 degrees Fahrenheit. Both of these effects are currently incorporated in EPA's MOBILE5a in-use emission model.

Since the oxygen content requirements of the RFG program are not altered by today's rule and since summer RVP levels are controlled by the RFG performance standards, no change in CO emission levels is anticipated during the summer months. Furthermore, based on EPA's MOBILE5.a emission factor model, there would be no effect on CO emissions of an increase in RVP levels during the winter months (when RVP is not constrained by the RFG program) due to increased ethanol use on the colder days when most carbon monoxide exceedances occur, since the model does not show an effect of RVP on CO emissions below 45 degrees Fahrenheit. The only effect of today's rule on CO emissions would be a potential small increase due to increased RVP levels resulting from increased ethanol use on those winter days with temperatures above 45 degrees Fahrenheit.

Other fuel parameters may also affect carbon monoxide emissions. However, a model for CO incorporating other fuel parameters is not yet available. Any such effects would be limited by the constraints placed on these fuel parameters by the VOC, NO_X, and air toxics RFG emission performance standards.

3. Air Quality Impacts Under the Simple Model

The air quality effects of today's rule under the Simple Model are, for the most part, expected to be similar to those under the Complex Model, since the effects on fuel composition are expected to be similar with two main exceptions. First, significant ETBE use is not expected to be possible before the summer of 1996. Second, EPA anticipates that in order to meet the requirements of today's program and the existing RFG program, refiners may find it necessary for the first few years to blend additional oxygenates into their RFG beyond the level necessary to meet the 2.0 weight percent oxygen requirement. In particular, refiners may find it necessary to blend up to 10 percent ethanol by volume during the winter months in RFG markets with the supply, distribution, and blending capacity to do so. Until the distribution and blending infrastructure for ethanol use is expanded, it is unlikely that this increase in ethanol use will be offset through oxygenate trading given the limitations of the RFG program. Since ETBE use will be limited, and since the volume of ethanol used will be similar to the volume of MTBE displaced during the winter (10 vs. 11 volume percent), dilution effects may be small during the first few years of the program.

While the effects of dilution on emission performance may not be reflected fully in Simple Model compliance calculations since it does not account for all the fuel effects included in the Complex Model, EPA would expect any resulting air quality effects to be minimal for several reasons. First, as discussed above, EPA expects the dilution effects to be minimal during the first years of the program. Second, RFG producers are required under the Simple Model to not exceed their 1990 baseline levels of sulfur, T90, and olefins. These caps limit the risk of any detrimental air quality effects related to differences in dilution. Furthermore, the economic incentives of gasoline production may result in refiners producing at or near these caps, regardless of the type or volume of oxygenate used. Third, refiners are unlikely to invest in processing equipment to produce gasoline during 1995–1997 which will make it more difficult for them to comply with the 1998 requirements under the Complex Model. Fourth, any remaining risks are limited to the three-year period during which the Simple Model is in effect. Fifth, some refiners may opt to use the Complex Model prior to 1998, which would have the effect of controlling any detrimental environmental effects related to changes in dilution or oxygenate type.

As discussed above with regard to the impacts on air toxics emissions resulting from changes in oxygenate type, today's rule does not alter the performance standards under the Simple Model. Nevertheless, EPA does recognize that the reduced toxics emission benefits of ethanol and ETBE relative to MTBE under the Simple Model (as under the Complex Model) may increase toxics compliance costs, as discussed in section III.C. In addition, depending on how refiners chose to adjust their fuels to offset the loss in air toxics performance, the complex model may suggest some degradation in in-use (as opposed to certification) air toxics emissions performance with the use of ethanol or ETBE instead of MTBE which is not accounted for by the Simple Model. As explained in more detail in the RIA, this situation arises due to differences between how the Simple Model and Complex model predict air toxics emission performance. If some refiners choose to maintain air toxics emission performance by reducing aromatics instead of benzene, then the complex model suggests less in-use emission performance is achieved in-use with ethanol or ETBE than with MTBE. However, EPA expects few refiners to choose to maintain air toxics emission performance by reducing aromatics for two reasons. First, aromatics control is, in general, believed to be the more costly of the two approaches. Second, refiners are unlikely to invest in processing equipment to comply with the simple model for 1995–1997 which will not also provide compliance under the complex model in 1998. Regardless of which approach refiners take, however, this issue does not exist for that fuel certified under early use of the complex model, and disappears entirely in 1998 with mandatory use of the complex model.

EPA also believes the commingling and distillation-related emission effects of today's rule to be minimal under the first few years of the program. The renewable oxygenate program does not provide incentives to increase summer ethanol, so commingling- and distillation-related nonexhaust VOC and

toxics emissions from summer RFG should be unaffected.

As discussed previously, today's rule is not expected to significantly increase carbon monoxide emissions in the long term. In the short term, however, today's rule may reduce carbon monoxide emissions as refiners blend additional oxygenates during the first few years of the renewable oxygenate program (as discussed above). This increase in oxygenate content would reduce carbon monoxide emissions, and such reductions would occur during the winter months when carbon monoxide exceedances are most common.

4. Global Warming Impacts

According to the DOE report, today's rule is unlikely to result in global warming benefits in the near term. In the longer term, however, today's rule is expected to stimulate investment in higher-efficiency renewable oxygenate production processes which could offer significant global warming benefits. Additional discussion of the potential global warming benefits of today's program is contained in section III.H of this notice.

5. Non-Air Quality Impacts

The Agency is concerned about other environmental impacts of the renewables requirement such as water pollution and soil erosion. Comments were submitted to the Agency stipulating that, as a result of the renewables program, corn may be grown in place of soybeans and hay plant rotations which could result in decreased soil quality including compaction, salination, acidification, and loss of biological activity. New corn production to support increased ethanol demand in response to today's rule could also increase soil erosion and affect water quality and water flow. Corn farming was alleged to be the primary cause of agro-chemical contamination of groundwater. In addition, the increased barge shipments of ethanol resulting from this program were alleged to increase the environmental risks and clean-up costs associated with potential ethanol spills.

As discussed in section III.F, EPA has concluded that the renewable oxygenate program is unlikely to have a significant impact on total corn output in the near term. The expected 490 million gallons of new ethanol demand resulting from today's rule would require an increase in corn production of only approximately 2 percent. Thus, the environmental impacts associated with increased corn production are also expected to be small. In addition, future farming efficiency improvements are expected to reduce the environmental impact of corn production. Furthermore, the commercialization of ethanol production techniques which rely on agricultural wastes or cellulosic feedstocks would eliminate the need to increase corn production to support this program. As mentioned previously, EPA expects the renewables requirement to help stimulate development and commercialization of such technologies.

EPA also believes that any adverse soil and water impacts from today's rule will be adequately addressed through means other than the renewable oxygenate program. Concerns related to the water impacts of ethanol production will be controlled under the provisions of the Clean Water Act. USDA has several programs in place to address soil erosion, and the Coastal Zone Act of 1990, which requires a nutrient management plan for covered areas, has helped increase farm efficiency and reduce nutrient and agrochemical runoff.

B. Energy Impacts

The energy benefits of the renewable oxygenate program depend on the oxygenates used and the production processes used to produce them, which can vary depending on the timeframe of interest. As described above, in the early years of the program the renewable oxygenate requirement is expected to be met primarily with ethanol blended into winter RFG. For at least the first two years, this ethanol would be produced in existing plants or new plants equipped with current technology. Some diversion of ethanol currently being blended into conventional gasoline may also occur. Small additional quantities of ETBE may be used in summer RFG and ethanol use in summer RFG may decrease, but these shifts and their energy impacts will be very small relative to the effects of the increase in wintertime ethanol use. According to a study prepared by the Department of Energy,[24] if the 30 percent renewables requirement is met by blending ethanol produced from new ethanol plants and ethanol plant expansions (as opposed to ethanol produced in existing facilities and displaced from its current markets) into winter RFG, the overall fossil energy consumed in RFG production and use would be 0.7 percent lower than would be the case if MTBE produced from natural gas were the only oxygenate used in RFG. This estimate by DOE was reduced to as low as 0.5 percent when more conservative energy input assumptions were incorporated into their calculational methodology, and was increased to as high as 0.9% when energy input assumptions from USDA were incorporated. The even greater reduction in natural gas use would be partially offset by a 2.0 percent increase in crude oil use. It should be noted that even with this increase in crude oil use, the total amount of crude oil used to produce RFG under today's rule would still be 8.6 percent lower than if conventional gasoline were produced instead.

DOE projected that as ETBE capacity becomes available, its use in summer RFG would reduce fossil energy use by 1.7 percent relative to MTBE used in summer RFG. The DOE study indicates that if ETBE is blended into VOC-controlled RFG to meet the 30 percent requirement in the summer, and ethanol is still used to meet the requirement during the winter, the fossil energy benefits of the program being promulgated today program would be approximately 0.6 percent (0.4 to 0.8 using the range of input assumptions evaluated in their final report) lower than would be the case if MTBE produced from natural gas were the only oxygenate used in RFG.

The energy benefits of this program are expected to become more pronounced in later years. Improvements in the energy efficiency of ethanol production will further reduce the fossil energy required to produce ethanol. Further gains can be achieved by reducing energy consumption in corn farming through changes in farming practices, using more energy-efficient equipment, increasing per-acre crop yields, and decreasing fertilizer use. Comments submitted by USDA and others, as well as previous studies by DOE and EPA cited in the proposal, indicate that as new feedstocks for ethanol such as cellulose are commercialized, and as renewable methanol production becomes viable, the fossil energy benefits of this program would increase substantially relative to nonrenewable MTBE use. Using current estimates of the energy inputs relative to the energy outputs for ethanol from cellulose (approximately 1:5), the fossil energy benefits of the program being promulgated today program would increase to approximately 1.3 percent relative to the case if MTBE produced from natural gas were the only oxygenate used in RFG. By providing a secure market for renewable oxygenates, today's program will help provide the certainty needed to encourage private

[24] "Analysis Memorandum: Energy Requirements and CO2-Equivalent Emissions of RFG," prepared by Margaret Singh, Argonne National Laboratory, for Barry McNutt, U.S. Department of Energy, June 6, 1994.

investments in modern, high-efficiency renewable oxygenate production technology.

C. Economic Impacts

1. Oxygenate and Blending Costs of the Program

The renewable oxygenate program is projected to add $4 million to $60 million in cost to the RFG program annually prior to the year 2000 and $16 million to $60 million in cost to the RFG program annually in 2000 and beyond. These costs involve three major components: the cost of renewable oxygenates relative to nonrenewable oxygenates, transportation and blending costs, and toxics compliance costs. The cost estimates include the impact of this rule on fuel economy. These costs also assume that ethanol is blended at a concentration of 6.04 volume percent (2.1 weight percent oxygen); to the extent that ethanol is blended at higher concentrations, costs (particularly the toxics compliance costs) would be reduced. In addition, the renewable oxygenate program is projected to add one-time costs of $17.6 million for additional tankage, storage, and blending capacity. The derivation of the various components of the cost for the renewable oxygenate program are described below and in more detail in section IV of the Regulatory Impact Analysis for this rule.

Before estimating the costs for the renewable oxygenate program, however, it is necessary to estimate how much additional ethanol will be used in RFG compared to the amount of ethanol that would have been used in the absence of today's rule. Only those costs resulting from the new ethanol demand required by the renewable oxygenate program alone are included in the cost estimates determined here. Deriving estimates for that amount of ethanol that would have been used under the RFG program in the absence of the renewables requirement is extremely difficult. However, the amount of new ethanol capacity planned or under construction prior to the December proposal, combined with the ethanol currently blended in the winter months in RFG areas would have enabled ethanol to be used in up to 15 percent of the RFG oxygenate market without displacing ethanol from existing markets. Based on this information, EPA estimates that today's rule is likely to increase ethanol's share of the total oxygenate market by approximately 15 percentage points, which amounts to 335 million gallons of ethanol.

With regard to the first component of the cost analysis, renewable oxygenate costs, ethanol used in winter RFG is projected to be the low-cost oxygenate on a per unit oxygen basis (based on EPA's cost analysis for the RFG final rule and excluding any additional transportation and blending costs as discussed below). Hence EPA expects that if winter ethanol is used to meet the the renewable oxygenate requirement, today's rule will not impose additional direct costs for oxygenates on the RFG program. In fact, assuming 335 million gallons of new ethanol demand, today's rule will reduce direct oxygenate costs by $22–72 million annually.

To the extent that ETBE is used to meet part of the renewable oxygenate requirement, however, today's rule could increase the cost of the program. EPA projects that ETBE-blended RFG would cost 0 to 0.8 cents per gallon more than ethanol-blended or MTBE-blended RFG. This estimate, which is highly sensitive to MTBE and ethanol costs, includes ETBE's value in reducing RVP and increasing octane but does not fully reflect its value in diluting the levels of aromatics and sulfur in gasoline. It also assumes that ETBE producers can take advantage of the reduced gasoline excise tax for fuels containing ethanol. Without this tax reduction, the cost of ETBE-blended RFG would be 3.1 to 3.9 cents per gallon higher than MTBE-blended RFG.

With regard to the second component of the cost analysis, ethanol is produced primarily in the Midwest, but RFG will be required in California, the Northeast, and Texas in addition to several Midwestern markets. As a result, additional transportation costs may be incurred. EPA estimates the cost of transporting ethanol to range from 3 to 11 cents per gallon of ethanol, depending on the markets to which it is being shipped. As discussed in detail in the RIA, EPA estimates the average cost of transporting a gallon of ethanol to RFG markets to be 6–8 cents per gallon. Based on the estimate that the renewable oxygenate program will increase ethanol demand by 335 million gallons per year, the total transportation-related cost due to today's rule would range from $20 million to $27 million annually.

In many parts of the nation, facilities to store and blend ethanol have already been constructed. However, adequate facilities are not currently in place in many RFG markets. Based on information obtained from a draft DOE report,[25] EPA estimates the cost of building sufficient storage and blending capacity to meet the renewable oxygenate requirement to be approximately $17.6 million. This represents a one-time cost for additional tankage, storage, and blending capacity, however, and not a continuous cost. There may be some additional cost for blending beyond the costs of the facilities and equipment, however, that is believed to be small.

With regard to the third component of the cost analysis, under both the Simple and Complex reformulated gasoline emission models, ethanol and ETBE provide smaller toxics emission reduction benefits than do MTBE and TAME, the primary nonrenewable oxygenates expected to participate in the RFG program. To offset the increase in toxics emissions, refiners will have to alter other gasoline properties such as aromatics, benzene, or sulfur. Assuming that refiners lower benzene levels to offset any worsening in toxics performance, EPA estimates that the additional cost could range as high as 0.89 cents per gallon of RFG blended with ethanol in 1995–1999 and from 0.32 to 0.88 cents per gallon of RFG blended with ethanol in 2000 and beyond. The higher minimum costs in 2000 and beyond stem from the more stringent toxics standards and the larger contribution of exhaust toxics to total toxics; see the RIA for further details. These increased costs would be incurred only for the volume of RFG blended with ethanol in excess of the volume that would have been blended with these two oxygenates in the absence of today's rule. Assuming that ethanol volume increases by 335 million gallons (as discussed previously and in the RIA) and that ethanol is blended at 6.04 volume percent (or 2.1 weight percent oxygen), the total volume of RFG involved would be approximately 5.55 billion gallons. This translates into an annual cost for the program of up to $49 million in 1996–1999 and $18 million to $49 million in 2000 and beyond.

According to EPA's fuel economy analysis (as discussed in the RIA for the RFG final rule), ethanol-blended RFGs provide slightly poorer fuel economy than otherwise-identical RFGs which use MTBE or ETBE as the oxygenate. The fuel economy penalty amounts to approximately 0.2 percent for the additional 5.55 billion gallons of RFG that would be blended with ethanol as a result of the renewable oxygenate program. Based on current wholesale gasoline prices, this reduction in fuel

[25] "Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Progress Report Three: Vehicle and Fuel Distribution Requirements (DRAFT)," United States Department of Energy, Office of Policy, Planning, and Analysis, July 1989.

economy would add approximately $5.55 million in annual costs to the RFG program.

2. Impact on Renewable Fuels Industry

As discussed in section III of this notice, the renewables program will require blending approximately 490 million additional gallons of ethanol (or its equivalent) in RFG over and above the amount of ethanol blended into gasoline in RFG areas in 1993. This increase represents a growth of approximately 40 to 50 percent in renewable fuel demand from current levels. EPA is phasing in the renewable oxygenate requirement in order to avoid disrupting existing ethanol markets and the RFG program. If the renewable oxygenate program causes ethanol to shift out of its current markets into RFG markets, the benefits to the renewable fuels industry would be reduced and the long-term growth prospects for the industry would be jeopardized. Phasing the program in over two years permits a more orderly expansion of renewable oxygenate production capacity and helps assure that the additional demand created by today's rule will occur without causing undesirable logistical problems, which could result in supply problems and price spikes and might not help stimulate the use of renewable fuels in the United States.

In addition, the certainty provided by today's rule is expected to stimulate considerable private investment in renewable fuel production technology and capacity. EPA expects this investment to accelerate the development and implementation of advanced, high-efficiency production processes, which in turn are expected to provide global warming benefits and larger fossil fuel energy savings than can be provided by existing ethanol production facilities.

3. Impact on Farm Economy

According to comments submitted by USDA, the renewable oxygenate program is expected to increase farm incomes by increasing demand for farm products and creating a market for agricultural waste products. Based on USDA estimates, the renewable oxygenate program will increase corn prices by approximately 4.0–6.7 cents per bushel when fully implemented. Based on average annual corn production of 8.7 billion bushels, such a price increase would increase farm income by approximately $348–583 million.[26] However, USDA projects a decrease in farm deficiency payments as a result of the increase in corn prices of $220–369 million, so the net increase in farm income would be $128–214 million per year.[27] The reader is referred to the RIA for a more detailed discussion of this estimate.

To the extent that this increase in farm incomes results from higher prices for corn and other crops, some of the farm income benefits may be lost as feed costs for livestock producers increase. However, it is unlikely that price increases will account for the entire increase in farm incomes. Utilization of agricultural waste products and increased crop production are also expected to increase farm incomes without increasing the price per bushel for corn and other ethanol feedstocks. Hence the impact of the renewable oxygenate program is expected to have a net beneficial effect on the farm economy.

4. Impact on Natural Gas, Methanol, and MTBE Sectors

EPA recognizes that the renewable oxygenate program may affect the growth prospects for the natural gas, methanol, and MTBE sectors. To the extent that today's rule leads to larger market shares for ethanol and other renewable oxygenates than otherwise would occur, the market share for nonrenewable oxygenates would be smaller than otherwise would occur.

However, EPA does not believe that today's rule will have a significant adverse impact on the natural gas, methanol, and MTBE industries for several reasons. First, EPA always has expected ethanol and its derivatives to play a role in the RFG program even in the absence of today's rule. Second, the advent of the Phase II RFG standards in 2000 will create powerful incentives to reduce the RVP of summer reformulated gasoline to very low levels. As a result, EPA had expected that ETBE and ETAE would be used beginning in 2000 even without the promulgation of today's rule. EPA considers it unlikely that MTBE, methanol, and natural gas producers would install expensive capital equipment to satisfy demand only for Phase I of the program; instead, EPA has expected these industries to build capacity to satisfy the long-term demand for their product. Since such long-term demand would be limited by the growth in ETBE and ETAE demand for Phase II RFG, it is not clear to EPA that today's rule will reduce the growth of the methanol, MTBE, and natural gas industries below what it otherwise would have been.

Third, even with today's rule, methanol and MTBE production is projected to grow quite rapidly. If MTBE captures 70 percent of the RFG oxygenate market, annual MTBE demand will grow from 2.3 billion gallons in 1993 to 4.1 billion gallons in 1995 and to 4.8 billion gallons by 1997 (when the Phase II California RFG program takes full effect), an increase of approximately 110 percent. As a result, annual methanol production is projected to grow by 600 million gallons in 1995 and 1996 and an additional 200 million gallons by 1997. The demand for natural gas will grow even more dramatically in absolute terms, since natural gas is an economically attractive source of the isobutylene used to produce ETBE and is also used as an energy source in ethanol production, according to USDA.

5. Impact on Highway Trust Fund and General Fund

Renewable fuels blended directly into gasoline qualify either for income tax credit or reduced excise tax rates. The reduced excise tax rate is the form of the tax subsidy used most frequently and effectively reduces the flow of revenue into the Federal Highway Trust Fund. The income tax credits reduce the General Fund. At present, renewable ethanol and methanol derived from sources other than oil, natural gas, coal, and peat qualify for the reduced excise tax rates if they are blended into finished gasoline. Renewable ethers may also qualify for the reduced excise tax rates, although the mechanism by which the tax reduction is received makes it difficult and often uneconomical to obtain for potential blenders.

To the extent that today's rule increases ethanol use in non-VOC-controlled RFG, it will reduce highway trust fund revenues. As discussed above, the amount of new ethanol capacity planned or under construction prior to the December proposal, combined with the ethanol currently blended in the winter months in RFG areas, would have enabled ethanol to be used in up to 15 percent of the RFG oxygenate market without displacing ethanol from existing markets. Based on this information, EPA estimates that today's rule is likely to increase ethanol's share of the total oxygenate market by approximately 15 percentage points, which amounts to 335 million gallons of ethanol. With a $0.54 per gallon tax subsidy for ethanol, EPA has concluded that today's rule will result in a loss of highway trust fund revenues

[26] According to information provided by John W. McClelland of USDA, "Memorandum for Richard Wilson, Director, Office of Mobile Sources, U.S. Environmental Protection Agency," June 20, 1994.

[27] According to information provided by John W. McClelland of USDA, "Memorandum for Richard Wilson, Director, Office of Mobile Sources, U.S. Environmental Protection Agency," June 20, 1994.

of approximately $181 million annually once the program is fully implemented. In addition, up to 176 million gallons of the currently-planned additions to ethanol capacity will be eligible for an additional tax credit of $0.10/gallon under the small ethanol producer credit, which could reduce General Fund revenues by as much as $17.6 million. Finally, if ethanol is blended at 10 volume percent to meet the requirements of the renewable oxygenate program (which is especially possible in the early years of the program, as discussed elsewhere in this Preamble), then an additional $0.06 per gallon of ethanol would be diverted from the highway trust fund to to the General Fund. Hence the total loss in annual tax revenues resulting from the renewable oxygenate program would be as large as $199 million, while the loss in annual highway trust fund revenues is expected to range from $181 million to $201 million. These values could change as the level of ETBE use changes; depending on the extent to which the renewable oxygenate requirement is met via ETBE use, today's rule may have less of an impact on highway trust fund revenues. Beginning in 2000, EPA expects the Phase II RFG requirements to stimulate expanded use of ETBE in VOC-controlled gasoline to take advantage of its RVP-lowering properties. EPA believes this would have happened to some extent regardless of the renewable oxygenate requirement. Hence, EPA anticipates that beginning in 2000, the reduction in highway trust fund revenues resulting from the renewable oxygenate requirement itself could decrease significantly below the estimates cited above. A more detailed discussion of the highway trust fund impact of today's rule can be found in the RIA.

6. Impact on Farm Support Payments

EPA received comments from farm interests and USDA claiming that the renewable oxygenate program would reduce government expenditures on farm income and farm price support payments. To the extent that this program increases crop prices, it should reduce farm program payments. As discussed in section VI.C.3, USDA projects that farm deficiency payments will decrease by $220–369 million per year.

VII. Public Participation

In its NPRM for this rule, EPA requested comment on all aspects of the proposal. In addition, EPA specifically invited public comment on the following issues: (1) EPA's statutory authority to promulgate this rule; (2) the extent to which renewable oxygenates would be used in reformulated gasoline absent the proposal; (3) the economic, energy, and crude oil import benefits to the nation resulting from the proposal; (4) any other approaches which could be used to achieve the same objectives; (5) the likelihood that the renewable oxygenate requirement would be met with domestically produced oxygenates absent a requirement to this effect, whether such a requirement would be desirable and legally permissible, and any other suggested approaches to ensure the domestic employment benefits of this program; (6) the climate change aspects of the proposal; (7) the definition of renewable oxygenates; (8) the need for performance-based standards for renewable oxygenates based on fossil energy impact or greenhouse gas emissions; (9) health effects data regarding renewable oxygenates whose use may be encouraged as a result of the program; (10) the appropriate level for the renewable oxygenate requirement, the feasibility of the requirement, lead-time requirements, the need for a phase-in period, and any other supply-related issues; (11) the need and justification for a year-round program in lieu of a summer-only program; (12) the allowance for year-round averaging of renewable oxygenate content; (13) the applicability of the program only to producers of reformulated gasoline rather than including downstream blenders; (14) the enforcement-related provisions; (15) the impact of the program on the already-promulgated reformulated gasoline program, and (16) a petition process to include additional renewable oxygenates.

During the comment period and at the January 1994 public hearing, EPA received comments and testimony on various aspects of the proposal from numerous parties such as environmental organizations, states, environmental regulatory associations, corn growers, and farmers, as well as the petroleum, ethanol, and oxygenated fuels industries. The Agency has diligently reviewed and considered all written and oral comments on the renewable oxygenate proposal.

For those readers interested in reviewing the comments related to the renewable oxygenate proposal for reformulated gasoline, all comments received by the Agency are located in the EPA Air Docket, Docket A–93–49 (See "ADDRESSES"). All significant comments were considered in revising the provisions in the proposal and/or are responded to in the Regulatory Impact Analysis and Response to Comments document contained in Docket A–93–49.

VIII. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of regulations and to identify significant adverse impacts of federal regulations on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses[28]. For purposes of the renewable oxygenate requirement for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The renewable oxygenate program will secure a market for oxygenate producers while simultaneously allowing refiners flexibility for small refiners to comply with the program's requirements. In addition, EPA decided against applying the renewable oxygenate requirement to downstream oxygenate blenders (except as discussed below), many of which are small entities. As discussed in the proposal, this would have required each blender to maintain at least two sources of oxygenate, one renewable and one not. Such an approach would have proven either uneconomical or to involve significant transaction costs related to averaging and trading.

However, today's program will require additional reporting requirements of blenders (beyond the reformulated gasoline requirements). The renewable oxygenate program requires that blenders maintain records on two additional RBOB categories: any renewable oxygenate and renewable ethers. The additional reporting requirements, however, are economically insignificant and will not unduly burden small entities such as blenders.

[28] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

IX. Statutory Authority

EPA believes that the final rule adopted today is a reasonable exercise of the discretionary authority granted the Agency under sections 211(k) and 301 of the Act. EPA interprets the first sentence of section 211(k)(1) as broad authority to adopt reasonable requirements for reformulated gasoline, unless otherwise prohibited by the Clean Air Act or other statutory provision. EPA interprets the second sentence of section 211(k)(1) as authorizing EPA to adopt regulations for the reformulated gasoline program that result in the greatest emission reductions achievable, and at the same time tend to optimize the resulting impacts on cost, energy requirements, and other health and environmental impacts. In effect, EPA has full authority to adopt emission reduction standards and other requirements that achieve this result. For further discussion of the statutory authority for the renewable oxygenate program the reader is referred to section III.A.

X. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Administrator has determined that this rule is a "significant regulatory action" based on the above criteria. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record: EPA Air Docket A–93–49.

A Regulatory Impact Analysis (RIA) for the reformulated gasoline program has been prepared and placed in Public Docket No. A–93–49 to accompany this EPA notice of final rulemaking. A draft version of the Regulatory Impact Analysis was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and EPA response to those comments have also been placed in the public docket for this rulemaking. A final version of the analysis is available in the docket cited above.

XI. Compliance With the Paperwork Reduction Act

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**. An Information Collection Request document has been prepared by EPA (ICR No. 1591.05) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW. (Mail Code 2136); Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting burden averaging 0.64 hours per response and an estimated annual recordkeeping burden averaging 3.44 hours per respondent. If the burden associated with quality assurance testing is included these estimates increase to 22.44 and 5.44, respectively. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." EPA will respond to any OMB or public comments on the information collection requirements prior to OMB issuing approval.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 30, 1994

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.2 is amended by adding paragraph (ss) to read as follows:

§ 80.2 Definitions.

* * * * *

(ss) *Extended non-commingling season* means the period during which oxygenates which demonstrate commingling-related increases in Reid Vapor Pressure (RVP) will not be permitted to receive credit toward the renewable oxygenate requirements of § 80.83. Any extended non-commingling season is limited to that period of time determined by the Administrator pursuant to § 80.83(i).

3. Section 80.65 is amended by revising paragraph (d)(2)(vi) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(vi) In the case of RBOB, as RBOB that may be blended with:

(A) Any oxygenate;

(B) Ether only;

(C) Any renewable oxygenate;

(D) Renewable ether only;

(E) Non-VOC controlled renewable ether only.

* * * * *

4. Section 80.81 is amended by revising paragraphs (c)(2), (c)(5), (c)(6), and (c)(10) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(c) * * *

(2) The designation of gasoline requirements contained in § 80.65(d), except in the case of RBOB that is designated as "any renewable oxygenate," "non-VOC controlled renewable ether only", or "renewable ether only";

* * * * *

(5) The annual compliance audit requirements contained in § 80.65(h).

except where such audits are required with regard to the renewable oxygenate requirements contained in § 80.83;

(6) The downstream oxygenate blending requirements contained in § 80.69, except where such requirements apply to the renewable oxygenate requirements contained in § 80.83;

* * * * *

(10) The compliance attest engagement requirements contained in subpart F of this part, except where such requirements apply to the renewable oxygenate requirements contained in § 80.83.

* * * * *

5. Section 80.83 is added to read as follows:

§ 80.83 Renewable oxygenate requirements.

(a) *Definition of renewable oxygenate.* For purposes of subparts D and F of this part, renewable oxygenate is defined as provided in this paragraph (a).

(1) In the case of oxygenate added to reformulated gasoline or RBOB that is not designated as VOC-controlled or that is not subject to the additional requirements associated with an extended non-commingling season pursuant to § 80.83(i), renewable oxygenate shall be:

(i) An oxygenate that is derived from non-fossil fuel feedstocks; or

(ii) An ether that is produced using an oxygenate that is derived from non-fossil fuel feedstocks.

(2) In the case of oxygenate added to reformulated gasoline or RBOB that is designated as VOC-controlled or that is subject to the additional requirements associated with an extended non-commingling season pursuant to § 80.83(i), renewable oxygenate shall be an ether that meets the requirements of paragraph (a)(1)(ii) or (a)(3) of this section.

(3) An oxygenate other than those ethers specified in paragraphs (a)(1) or (a)(2) of this section may be considered a renewable oxygenate if the Administrator approves a petition to that effect. The Administrator may approve such a petition if it is demonstrated to the satisfaction of the Administrator that the oxygenate does not cause volatility increases in gasoline that are non-linear in nature (i.e., a non-linear vapor pressure blending curve). The Administrator may approve a petition subject to any appropriate conditions or limitations.

(4)(i) Oxygenate shall be renewable only if the refiner, importer, or oxygenate blender who uses the oxygenate is able to establish in the form of documentation that the oxygenate was produced from a non-fossil fuel feedstock.

(ii)(A) Any person who produces renewable oxygenate, as defined in paragraph (a)(1) of this section, or who stores, transports, transfers, or sells such renewable oxygenate, and where such renewable oxygenate is intended to be used in the production of gasoline, shall maintain documents that state the renewable source of the oxygenate, and shall supply to any transferee of the oxygenate documents which state the oxygenate is from a renewable source.

(B) Any person who imports oxygenate that is represented by the importer to be renewable oxygenate, as defined in paragraph (a) of this section, shall maintain documents, obtained from the person who produced the oxygenate, that include a certification signed by the owner or chief executive officer of the company that produced the oxygenate that states:

(1) The nature of the feedstock for the oxygenate; and

(2) A description of the manner in which the oxygenate meets the renewable definition under paragraph (a) of this section.

(iii) No person may represent any oxygenate as renewable unless the oxygenate meets the renewable definition under paragraph (a) of this section.

(5) For purposes of this section, an oxygenate shall be considered to be derived from non-fossil fuel feedstocks only if the oxygenate is:

(i) Derived from a source other than petroleum, coal, natural gas, or peat; or

(ii) Derived from a product:

(A) That was produced using petroleum, coal, natural gas, or peat through a substantial transformation of the fossil fuel;

(B) When the product was initially produced, it was not commonly used to generate energy (e.g. automobile tires); and

(C) The product was sold or transferred for a use other than energy generation, and was later treated as a waste product.

(b) *Renewable oxygenate standard.* (1) The reformulated gasoline and reformulated gasoline produced using RBOB that is produced by any refiner at each refinery, or is imported by any importer, shall contain a volume of renewable oxygenate such that the reformulated gasoline and reformulated gasoline produced using RBOB, on average, has an oxygen content from such renewable oxygenate that is equal to or greater than 0.30 wt% for the period of December 1, 1994 through December 31, 1995, and 0.60 wt% beginning on January 1, 1996.

(2) The averaging period for the renewable oxygenate standard specified in paragraph (b)(1) of this section shall be:

(i) Each calendar year; except that

(ii)Any reformulated gasoline and RBOB that is produced or imported prior to January 1, 1995 shall be averaged with reformulated gasoline and RBOB produced or imported during 1995.

(3) (i) The oxygenate used to meet the standard under paragraph (b)(1) of this section may also be used to meet any oxygen standard under § 80.41; except that

(ii) The renewable oxygenate added by a downstream oxygenate blender shall not be used by any refiner or importer to meet the oxygen standard under § 80.41, except through the transfer of oxygen credits.

(c) *Downstream oxygenate blending using renewable oxygenate.* (1) In the case of any refiner that produces RBOB, or any importer that imports RBOB, the oxygenate that is blended with the RBOB may be included with the refiner's or importer's compliance calculations under paragraph (d) of this section only if:

(i) The oxygenate meets the applicable renewable oxygenate definition under paragraph (a) of this section; and

(ii) The refiner or importer meets the downstream oxygenate blending oversight requirements specified in §§ 80.69(a)(6) and (7); or

(iii) (A) In the case of RBOB designated for "any renewable oxygenate" the refiner or importer assumes that ethanol will be blended with the RBOB;

(B) In the case of RBOB designated for "renewable ether only" or "non-VOC controlled renewable ether only ", the refiner or importer assumes that ETBE will be blended with the RBOB; and

(C) In the case of "any renewable oxygenate," "non-VOC controlled renewable ether only" and "renewable ether only RBOB," the refiner or importer assumes that the volume of oxygenate added will be such that the resulting reformulated gasoline will have an oxygen content of 2.0 wt%.

(2) (i) No person may combine any oxygenate with RBOB designated as "any renewable oxygenate" unless the oxygenate meets the criteria specified in paragraph (a) of this section.

(ii) No person may combine any oxygenate with RBOB designated as "renewable ether only" or "non-VOC controlled renewable ether only" unless the oxygenate meets the criteria specified in paragraph (a) of this section.

(d) *Compliance calculation.* (1) Any refiner for each of its refineries, and any importer shall, for each averaging period, determine compliance with the renewable oxygenate standard by calculating:

(i) Prior to January 1, 1996, renewable oxygen compliance total using the following formula:

$$CT_{ro} = \left(\sum_{i=1}^{n} V_i\right) * 0.30$$

(ii) Beginning on January 1, 1996, the renewable oxygen compliance total using the following formula:

$$CT_{ro} = \left(\sum_{i=1}^{n} V_i\right) * 0.60$$

where

CT_{ro}=the compliance total for renewable oxygen

V_i=the volume of reformulated gasoline or RBOB batch i

n=the number of batches of reformulated gasoline and RBOB produced or imported during the averaging period

(iii) The renewable oxygen actual total using the following formula:

$$AT_{ro} = \sum_{i=1}^{n} (V_i * RO_i)$$

where

AT_{ro}=the actual total for renewable oxygen

V_i=the volume of gasoline or RBOB batch i

RO_i=the oxygen content, in wt%, in the form of renewable oxygenate of gasoline or RBOB batch i

n=the number of batches of gasoline or RBOB produced or imported during the averaging period

(iv) Compare the renewable oxygen actual total with the renewable oxygen compliance total.

(2) (i) The actual total must be equal to or greater than the compliance totals to achieve compliance, subject to the credit transfer provisions of paragraph (e) of this section.

(ii) If the renewable oxygen actual total is less than the renewable oxygen compliance total, renewable oxygen credits must be obtained from another refinery or importer in order to achieve compliance.

(iii) The total number of renewable oxygen credits required to achieve compliance is calculated by subtracting the renewable oxygen actual total from the renewable oxygen compliance total.

(iv) If the renewable oxygen actual total is greater than the renewable oxygen compliance total, renewable oxygen credits are generated.

(v) The total number of renewable oxygen credits which may be traded to a refiner for a refinery, or to another importer, is calculated by subtracting the renewable oxygen compliance total from the renewable oxygen actual total.

(e) *Credit transfers.* Compliance with the renewable oxygenate standard specified in paragraph (b)(1) of this section may be achieved through the transfer of renewable oxygen credits, provided that the credits meet the criteria specified in §§ 80.67(h)(1) (i) through (iv) and §§ 80.67(h) (2) and (3).

(f) *Record keeping.* Any refiner or importer, or any oxygenate blender who blends oxygenate with any RBOB designated as *"any renewable oxygenate,"* "non VOC controlled renewable ether only" or "renewable ether only" shall for a period of five years maintain the records specified in this paragraph (f) in a manner consistent with the requirements under § 80.74, and deliver such records to the Administrator upon request. The records shall contain the following information:

(1) (i) Documents demonstrating the renewable nature and source of the oxygenate used, consistent with the requirements of paragraph (a)(3) of this section;

(ii) The volume, type, and purity of any renewable oxygenate used; and

(iii) Product transfer documentation for all renewable oxygenate, reformulated gasoline, or RBOB for which the party is the transferor or transferee.

(2) The requirements of this paragraph (f) shall apply in addition to the recordkeeping requirements specified in § 80.74(e).

(g) *Reporting requirements.* (1) Any refiner for each refinery, or any importer, shall for each batch of reformulated gasoline and RBOB include in the quarterly reports for reformulated gasoline required by § 80.75(a) the total weight percent oxygen and the weight percent oxygen attributable to renewable oxygenate contained in the gasoline, or contained in the RBOB subsequent to oxygenate blending if allowed under paragraph (c) of this section.

(2) Any refiner for each refinery, or any importer, shall submit to the Administrator, with the fourth quarterly report required by § 80.75(a), a report for all reformulated gasoline and RBOB that was produced or imported during the previous calendar year averaging period, that includes the following information:

(i) The total volume of reformulated gasoline and RBOB;

(ii) The compliance total for renewable oxygen;

(iii) The actual total for renewable oxygen;

(iv) The number of renewable oxygen credits generated as a result of actual total renewable oxygen being greater than compliance total renewable oxygen;

(v) The number of renewable oxygen credits required as a result of actual total renewable oxygen being less than compliance total renewable oxygen;

(vi) The number of renewable oxygen credits transferred to another refinery or importer;

(vii) The number of renewable oxygen credits obtained from another refinery or importer; and

(viii) For any renewable oxygen credits that are transferred from or to another refinery or importer, for any such transfer:

(A) The names, EPA-assigned registration numbers and facility identification numbers of the transferor and transferee of the credits;

(B) The number of renewable oxygen credits that were transferred; and

(C) The date of the transaction.

(h) *Renewable oxygenate requirements for reformulated gasoline used in the State of California.* (1) Any refiner or importer of California gasoline, as defined in § 80.81, shall meet the renewable oxygenate standard specified in paragraph (a) of this section for all reformulated gasoline or RBOB used in any reformulated gasoline covered area as specified in § 80.70.

(2) Any California gasoline shall be presumed to be used in a reformulated gasoline covered area:

(i) (A) If the gasoline is produced at a refinery that is located within a reformulated gasoline covered area; or

(B) If the gasoline is transported to a facility that is located within a reformulated gasoline covered area, or to a facility from which gasoline is transported by truck into a reformulated gasoline covered area; unless

(ii) The refiner or importer is able to establish with documentation that the gasoline was used outside any reformulated gasoline covered area.

(3) Any California gasoline shall be considered to be designated as VOC-controlled (for purposes of paragraph (a)(1) of this section) if the Reid vapor pressure of the gasoline, or RBOB subsequent to oxygenate blending, is intended to meet a standard of:

(i) 7.8 psi or less in the case of gasoline intended for use before March 1, 1996; or

(ii) 7.0 psi or less in the case of gasoline intended for use on or after March 1, 1996.

(i) *Special provisions for shoulder season.* (1) The Governor of any state may petition for an extension of the non-commingling season for any or all reformulated gasoline covered areas within the state pursuant to § 80.70.

(i) Such petition must satisfy the following criteria:

(A) Evidence showing an increase in the market share and/or use of oxygenates which produce commingling-related RVP increases in the area(s) that are covered by the petition;

(B) Evidence demonstrating a pattern of exceedances for the period for which the extension is sought, including ozone monitoring data for the preceding three(3) years of the reformulated gasoline program;

(C) An analysis showing that the pattern of ozone exceedances is likely to continue even with implementation of other ozone air quality control measures and/or programs currently planned by the State; and

(D) Evidence that the responsible State agency or authority has given the public an opportunity for a public hearing and the submission of written comments with respect to the petition.

(ii) Effective data and publication of decision.

(A) If the Administrator determines that the petition meets the requirements of paragraph (i)(1)(i) of this section, to the satisfaction of the Administrator, then EPA shall publish a notice in the **Federal Register** announcing its intention to establish the non-commingling season as requested by the Governor, and specifying a tentative effective date.

(1) The Administrator shall provide the public with an opportunity for a hearing and the submission of written comments.

(2) The tentative effective date will correspond with the first day of the next complete non-commingling season beginning not less than one year after receipt of the petition.

(B) If the Administrator receives adverse comments or information demonstrating to the satisfaction of the Administrator that the criteria of paragraph (i)(1)(i) of this section have not been met, that the tentative effective date is not reasonable, or that other good reasons exist to deny the petition, then the Administrator may reject the Governor's request for an extended non-commingling season, in whole or in part, or may delay the effective date by up to two (2) additional years. Absent receipt of such adverse comments or information, EPA shall publish a notice in the **Federal Register** announcing its approval of the petition and specifying an effective date for the extended non-commingling season.

(2) In the case of any refiner that produces RBOB, or any importer that imports RBOB, the oxygenate that is blended with the RBOB may be included with the refiner's or importer's compliance calculations under paragraph (d) of this section only if:

(i) The oxygenate meets the applicable renewable oxygenate definition under paragraph (a) of this section; and

(ii) In the case of RBOB designated for "non VOC controlled ether only" the refiner or importer assumes that ETBE or other oxygenate that does not exhibit volatility-related commingling effects when mixed with other gasolines and approved by the EPA Administrator under subparagraph (a)(3) of this section will be blended with the RBOB and so labels the transfer documentation.

6. Section 80.128 is amended by revising paragraphs (a) and (e)(2); removing "and" at the end of paragraph (e)(4); removing the period at the end of paragraph (e)(5) and adding "; and" in its place; and adding paragraph (e)(6) to read as follows:

§ 80.128 Agreed upon procedures for refiners and importers.

* * * * *

(a) Read the refiner's or importer's reports filed with EPA for the previous year as required by §§ 80.75, 80.83(g), and 80.105.

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.69(a)(8) in the case of RBOB designated as "any oxygenate," or "ether only," or using the assumptions in §§ 80.83(c)(1)(ii) (A) and (B) in the case of RBOB designated as "any renewable oxygenate," "non VOC controlled renewable ether only," or "renewable ether only";

* * * * *

(6) In the case of RBOB designated as "any renewable oxygenate," "non VOC controlled renewable ether" or "renewable ether only", review the documentation from the producer of the oxygenate to determine if the oxygenate meets the requirements of § 80.83(a).

* * * * *

7. Section 80.129 is amended by revising paragraphs (a) and (d)(3) (iii) and (iv), and by adding paragraph (d)(3)(v) to read as follows:

§ 80.129 Agreed upon procedures for downstream oxygenate blenders.

* * * * *

(a) Read the oxygenate blender's reports filed with the EPA for the previous year as required by §§ 80.75 and 80.83(g).

* * * * *

(d) * * * *

(3) * * * *

(iii) In the case of RBOB designated as "any renewable oxygenate," "non VOC controlled renewable ether only," or "renewable ether only," review the documentation from the producer of the oxygenate to determine if the oxygenate meets the requirements of § 80.83(a);

(iv) Recalculate the actual oxygen content based on the volumes blended and agree to the report to EPA on oxygen; and

(v) Review the time and place designations in the product transfer documents prepared for the batch by the blender, for consistency with the time and place designations in the product transfer documents for the RBOB (e.g., VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, OPRG versus non-OPRG, and simple or complex model).

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[FR Doc. 94–17649 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50589B; FRL–4752–3]

Ethane, 1,1-dichloro-1-fluoro-; Modification of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for ethane, 1,1-dichloro-1-fluoro- based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR.

EFFECTIVE DATES: The effective date of this rule is October 3, 1994. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 16, 1994.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1991 (56 FR 15784), EPA issued a SNUR establishing significant new uses for ethane, 1,1-dichloro-1-fluoro- (P-88-1303, P-88-2177, and P-90-212). Based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR, EPA is modifying this SNUR.

I. Background

The Agency proposed the modification of the SNUR for ethane, 1,1-dichloro-1-fluoro- in the **Federal Register** of September 15, 1993 (58 FR 48347). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

II. Objectives and Rationale for Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified recordkeeping requirements necessary to enforce the rule. The basis for such findings is discussed in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of the petition to modify the SNUR and EPA's response to a similar situation, EPA has determined that the recordkeeping requirement of § 721.125(c) is unnecessary to enforce this rule. The proposed modification of SNUR provisions for this substance designated herein is consistent with that determination.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS-50589. This record includes information considered by the Agency in developing this rule.

IV. Regulatory Assessment Requirements

EPA is modifying the requirements of this rule by eliminating one of the recordkeeping requirements. Any costs or burdens associated with this rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.3200 by revising paragraph (b)(1) to read as follows:

§ 721.3200 Ethane, 1,1-dichloro-1-fluoro-.

* * * * *

(b) * * *

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

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[FR Doc. 94-18760 Filed 8-1-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50603C; FRL-4752-2]

RIN 2070-AB27

Polymer of Substituted Aryl Olefin; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as a polymer of substituted aryl olefin which is the subject of premanufacture notice (PMN) P-85-612, and which is subject to a TSCA section 5(e) consent order issued by EPA. This rule would require persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

EFFECTIVE DATES: The effective date of this rule is October 3, 1994. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 16, 1994.

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

SUPPLEMENTARY INFORMATION: This SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a polymer of substituted aryl olefin (P-85-612) for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export

notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for polymer of substituted aryl olefin, which was the subject of PMN P–85–612 and a TSCA section 5(e) consent order issued by EPA, in the **Federal Register** of July 20, 1992 (57 FR 31963). EPA received adverse comments following publication. Therefore, as required by § 721.160, the direct final SNUR for P–85–612 was withdrawn on August 31, 1993 (58 FR 45842). A proposed rule on the substance was issued on August 31, 1993 (58 FR 45871), that responded to the adverse comments.

The background and reasons for the SNUR are set forth in the preamble to the proposed rule. The Agency received no public comment concerning the proposed SNUR. As a result EPA is issuing the final SNUR as proposed.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the **Federal Register** notice that first identifies the new use rather than as of the effective date of the rule. Because this SNUR was first published on July 20, 1992, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after July 20, 1992, will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this rule. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50603).

VI. Rulemaking Record

EPA has established a record for this rulemaking (OPPTS–50603C). The record includes basic information considered by the Agency in developing this rule. EPA will supplement the record with additional information as it is received. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of the record, without any confidential business information (CBI), is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.6820 to subpart E to read as follows:

§ 721.6820 Polymer of substituted aryl olefin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of substituted aryl olefin (PMN P–85–612) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply once the substance has been encapsulated into a plastic matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(2), (g)(4), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (c)(2), and any disposal associated with any use, or with manufacturing or processing associated with any use other than by means of recycling.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 94–18761 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50591E; FRL–4752–4]

Methane, bromodifluoro-; Modification of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for methane, bromodifluoro- based on a modification to the TSCA section 5(e) consent order regulating that substance.

EFFECTIVE DATES: The effective date of this rule is October 3, 1994. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 16, 1994.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19228), EPA issued a SNUR establishing significant new uses for methane, bromodifluoro- (P–89–1093). Because of the modification to the consent order for this substance, EPA is modifying this SNUR.

I. Background

The Agency proposed the modification of the SNUR for this substance in the **Federal Register** of September 15, 1993 (58 FR 48348). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR as proposed.

II. Objectives and Rationale for Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of data received for the substance and data received for an analogous substance, which indicate that a 90–day study with functional observational battery, motor activity, and neuropathology is no longer necessary, the submitter petitioned, and EPA determined that the test trigger requirement and use restriction was no longer appropriate and hence, was unnecessary to protect human health. The section 5(e) order modification eliminated the testing requirement and allowed additional uses. The modification of SNUR provisions for this substance designated herein is consistent with the modification of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS–50591. This record includes information considered by the Agency in developing this rule and includes the modification to the consent order that forms the basis for this proposal.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the

rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.4820 by revising paragraph (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 721.4820 Methane, bromodifluoro-.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), and (g)(5). In addition, the following statements shall appear on the label and MSDS: This substance may cause cardiotoxicity. Evacuate area before the concentration of this substance in the area reaches 1 percent. Residential use is prohibited due to cardiotoxic dangers. General consumer use is prohibited, with the exception of outdoor automotive use and outdoor marine use. Following discharge and evacuation, use protective gear (self-contained breathing apparatus) before reentering an area in which the airborne concentration of the PMN substance exceeds 1 percent.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Use in portable fire extinguishers intended for consumer use except for outdoor automotive use and outdoor marine use; use in fire extinguisher units with an Underwriters Laboratory (UL) rating of less than 5BC; use in other than rechargeable fire extinguisher units; use in occupied areas from which personnel cannot be evacuated before the concentration of the PMN substance exceeds 1 percent or egress cannot occur within 30 seconds; or use without protective gear (self-contained breathing apparatus) being made available in the event that, following discharge of the PMN substance and evacuation of the area, personnel must reenter an area in which the airborne concentration of the PMN substance exceeds 1 percent.)

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[FR Doc. 94–18763 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OFH–017–FC]

Medicare and Medicaid Programs; Approved Information Collection Requirements

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

ACTION: Final rule with comment period.

SUMMARY: This final rule updates our display of approved control numbers for the collection of information that have been assigned to HCFA by the Office of Management and Budget (OMB). OMB regulations require each agency to include the approval numbers in the agency's rules.

DATES: *Effective date:* This regulation is effective August 2, 1994.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 3, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OFH–017–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OFH–017–FC. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Zaneta Davis, 410–966–2094.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (PRA '80), Public Law 90–620, Title 44 U.S.C. Chapter 35, requires Federal agencies to minimize burden and costs associated with information collection. The Director of OMB promulgated regulations to implement the provisions of PRA '80 at 5 CFR Part 1320. The OMB regulations include a requirement that Federal agencies obtain OMB approval of collection of information requirements that are contained in any regulations published by the agencies in the **Federal Register**. After approval of the requirement by OMB, Federal agencies are further required to publish the control number assigned by OMB as part of the agency's regulations text.

To comply with the OMB requirement and as a means of notifying the public

that HCFA's information collection requirements have been approved, we have established a general regulation under 42 CFR 400.310 to display the valid OMB control numbers and the applicable regulation sections. We routinely update our regulation to add the most recent assignment of OMB control numbers or to delete entries that are no longer in effect.

II. Provisions of the Rule

Our display of valid OMB numbers was last updated on December 2, 1992 (57 FR 56997). We are revising our table at § 400.310 to add the following approved sections.

42 CFR Sections

405.512.
417.436.
424.3, 424.32, and 424.34.
431.107.
433.68, and 433.74.
434.27 and 434.28.
441.351, 441.352, 441.353, 441.356, and 441.365.
442.505.
447.253, 447.272, and 447.299.
483.10, 483.410, 483.420, 483.440, 483.460, and 483.470.
484.10, 484.12, 484.14, 484.36, and 484.52. (See note below)
493.614, 493.633, and 493.634.
494.52, 494.54, 494.56. 494.58, and 494.64.

In addition, we are deleting from the table §§ 405.1221 and 405.1229, which were approved under OMB control number 0938–0365.

(**Note:** On August 14, 1989 (54 FR 33367), § 405.1221 was redesignated as § 484.12, and § 405.1229 was redesignated as § 484.52. The approved information collections for the redesignated sections are already included in the table.)

For the convenience to the reader the entire updated table is being presented in this final rule.

III. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As noted above, this regulation is technical in nature and merely updates the display of currently valid control numbers assigned by the Office of Management and Budget to collections of information contained in HCFA regulations. Therefore, we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Accordingly, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register**, and invite prior public comment on the proposed rule. The proposed rule includes a reference to the legal authority under which the rule is proposed, and the terms of substance of the proposed rule or a description of the subjects and issues involved. In addition, section 1871 of the Social Security Act (the Act) generally requires a 60-day public comment period. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

We routinely publish a notice in the **Federal Register** when an information collection requirement clearance request that is identified in a rule or notice is submitted to OMB and the public is offered an opportunity to comment. This regulation is technical in nature and merely updates the display of OMB-assigned control numbers of approved collection of information requirements contained in HCFA regulations text. Therefore, it would be redundant and provide an unnecessary delay to solicit comments on this display of the approved OMB control numbers.

For the above reasons, we find good cause to waive both proposed notice and comment rulemaking procedure and a delay in the effective date as impracticable, unnecessary, and contrary to the public interest. Under these circumstances publication of the correct up-to-date rules without further delay best serves those governed by these regulations.

List of Subjects in 42 CFR Part 400

Grant program—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR, Part 400 is amended as set forth below.

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised to read as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
405.481	0938–0285
405.512	0938–0008
405.552	0938–0285
405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1724, 405.1725, 405.1726, 405.1733, 405.1736, 405.1737, 405.2112, 405.2123, 405.2134, 405.2136, 405.2137, 405.2138, 405.2139, 405.2140, 405.2171	0938–0386
410.105	0938–0267
411.25, 411.32	0938–0564
411.54	0938–0558
411.65	0938–0564
411.404, 411.406	0938–0465
411.408	0938–0566
412.230, 412.232, 412.234, 412.236, 412.254, 412.260, 412.266, 412.278	0938–0573

Sections in 42 CFR that contain collections of information	Current OMB control numbers
416.47	0938–0266
417.107	0938–0472
417.436	0938–0610
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74	0938–0302
418.83	0938–0475
418.96, 418.100	0938–0302
421.117	0938–0542
424.3	0938–0008
424.5, 424.7, 424.20	0938–0454
424.22	0938–0489
424.32, 424.34	0938–0008
431.17	0938–0467
431.50, 431.52, 431.55	0938–0247
431.107	0938–0610
431.306	0938–0467
431.625, 431.800	0938–0247
432.50	0938–0459
433.36, 433.37	0938–0247
433.68, 433.74	0938–0618
433.135	0938–0247
433.139	0938–0459, 0938–0554, and 0938–0555
434.27	0938–0572
434.28	0938–0610
435.1, 435.910, 435.919, 435.920, 435.940, 435.945, 435.948, 435.952, 435.953, 435.955, 435.960, 435.965, 435.1003	0938–0247
441.11, 441.15, 441.20	0938–0247
441.56, 441.58, 441.60, 441.61	0938–0354
441.303	0938–0272
441.351, 441.352, 441.353, 441.356, 441.365	0938–0613
442.505	0938–0366
447.31	0938–0287
447.45, 447.50, 447.51, 447.52	0938–0247
447.53	0938–0429
447.55	0938–0247
447.253	0938–0523 and 0938–0556
447.255	0938–0193
447.272, 447.299	0938–0618
447.302, 447.331, 447.332, 447.333	0938–0247
456.80	0938–0247
462.102, 462.103	0938–0526
473.18, 473.34, 473.36, 473.42	0938–0443
476.104, 476.105, 476.116, 476.134	0938–0426
482.12, 482.22, 482.27, 482.30, 482.41, 482.53, 482.56, 482.57, 482.60, 482.62	0938–0328
483.10	0938–0610
483.410, 483.420, 483.440, 483.460, 483.470	0938–0366
484.1, 484.2	0938–0365
484.10	0938–0365 and 0938–0610
484.12, 484.14, 484.16–484.34, 484.36, 484.48, 484.52	0938–0365
489.20	0938–0564
491.9, 491.10	0938–0334
493.35–493.63	0938–0612
493.614, 493.633, 494.634	0938–0607
493.801–493.1285	0938–0612
493.1425	0938–0612
493.1701–493.1721	0938–0612
493.1775–493.1780	0938–0612
493.2001	0938–0612
494.52, 494.54, 494.56, 494.58, 494.64	0938–0608

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 7, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: July 25, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–18773 Filed 8–1–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–358; FCC 94–164]

Cellular Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Federal Communications Commission has revised certain rules governing the conduct of comparative renewal proceedings in the cellular radio service. The revisions are needed to establish and explain several procedural aspects of comparative renewal proceedings in the cellular radio service. The intent of these revisions is to promote efficiency and fairness in the licensing of the cellular radio service.

EFFECTIVE DATES: October 3, 1994. In addition, the effective date for the revised version of § 22.942 of the Rules which was adopted in a Memorandum Opinion and Order on Reconsideration (Reconsideration Order) in this proceeding, 58 FR 21928 (April 26, 1993), was stayed until the Reconsideration Order was final and no longer subject to judicial review. Section 22.942 of the Rules, which was adopted in the referenced Reconsideration Order, will become effective September 1, 1994.

FOR FURTHER INFORMATION CONTACT:

R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: The following is a summary of the Commission's Memorandum Opinion and Order on Further Reconsideration, adopted June 13, 1994, and released July 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, Inc.; (202) 857–3800; 2100 M Street, NW., Suite 140; Washington, DC 20037.

Summary of the Memorandum Opinion and Order on Further Reconsideration

1. This Order amends and clarifies certain rules governing the conduct of comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications Service. Such proceedings are initiated when a cellular radio licensee seeks renewal of its license at the end of its 10-year license period and challengers file competing applications. The Report and Order, 57 FR 3027 (January 27, 1992), which first established standards for conducting cellular radio comparative renewal proceedings, also created standards for awarding a renewal expectancy, which is a major comparative preference awarded to a licensee for its substantial performance during its license term. A renewal expectancy would be more significant than any other preference awarded in a comparative renewal proceeding. The Memorandum Opinion and Order on Reconsideration (Reconsideration Order) in this proceeding, 58 FR 21928 (April 26, 1993), created a two-step procedure for cellular license renewal hearings and also modified the renewal expectancy standards.

2. Pursuant to the two-step procedure, the Presiding Judge will conduct a threshold (step one) hearing to determine whether the renewal applicant deserves a renewal expectancy for providing "substantial" service during its license term. If the renewal applicant is awarded a renewal expectancy, the renewal application would be granted. If the renewal applicant does not receive a renewal expectancy in the threshold hearing, the Presiding Judge would then conduct a full (step two) hearing comparing the applicants pursuant to the evaluation criteria described in the Rules. Further, a challenging applicant which proposes to provide service which far exceeds that presently being provided by the incumbent licensee may request a waiver of step one of the two-step procedure. The two-step procedure is described in revised Section 22.942 of the Rules, which was stayed until the Reconsideration Order became final and was no longer subject to judicial review. The revised version of Section 22.942 adopted in the referenced Reconsideration Order will become effective thirty days after the publication of this summary in the **Federal Register**.

3. The *Further Reconsideration Order* revises § 22.942 of the Commission's Rules in several respects. First, it amends § 22.942(d) to explicitly state that if a waiver of the step one hearing is granted, a renewal expectancy issue will be designated as part of the step two hearing and will be the most important comparative factor in deciding the case. Second, it revises § 22.942(a) of the Rules to provide that renewal applicants will have sixty (60) days after the issuance of the Public Notice announcing the filing of competing applications to file their renewal expectancy showing, rather than the thirty (30) days now specified in the Rules. Third, it amends § 22.942(f) of the Rules to state specifically that the expedited hearing procedures of §§ 22.916(b) (5)–(8) of the Rules apply to step one hearings as well as to step two hearings. Fourth, it revises Section 22.942(d) to require challenging applicants to file requests for waiver of step one hearings at the time they file their applications and to allow other parties to respond to those requests at the same time that petitions to deny any of the applications are filed, *i.e.*, thirty days after the renewal applicant files its renewal expectancy showing.

4. In addition, the *Further Reconsideration Order* explained that unserved area applications or authorizations would play no role in the cellular renewal process, including the comparison of the proposed service areas of competing applicants. Further, since the Reconsideration Order ruled that relevant non-FCC misconduct will no longer be considered as part of a licensee's renewal expectancy showing, the Commission eliminated the language of Section 22.941(b)(4) of the Rules which required the disclosure of non-FCC misconduct as part of a licensee's renewal expectancy showing. Lastly, the Commission vacated the character reporting requirements set forth in footnote six of the Reconsideration Order, observing that the issue of what character reporting requirements should be imposed on cellular renewal applicants and other Part 22 applicants can best be resolved in a broad rulemaking proceeding and not on reconsideration of the cellular renewal rules.

Ordering Clauses

Accordingly, *It Is Ordered* that the rule changes made herein *Will Become Effective sixty* (60) days after publication in the **Federal Register**, and

that the stay imposed by the Reconsideration Order on the effectiveness of § 22.942 of the Rules is vacated.

List of Subjects in 47 CFR Part 22

Communications common carriers, Domestic cellular radio telecommunications service, Radio, Reporting and recordkeeping requirements, Rural areas.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. Sections 154, 303.

2. Section 22.941 is amended by revising paragraph (b)(4) to read as follows:

§ 22.941 Criteria for comparative cellular renewal proceedings.

* * * * *

(b) * * *

(4) Copies of all Commission orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described in paragraphs (b)(1) through (3) of this section.

* * * * *

3. Section 22.942 is revised to read as follows:

§ 22.942 Procedures for comparative renewal proceedings.

The following procedures shall apply to comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications Service:

(a) Within sixty (60) days of the issuance of the Public Notice announcing the filing of a renewal application and applications competing with that renewal application, the renewal applicant must file an original and four copies of its renewal expectancy showing with the Commission.

(b) Interested parties have thirty (30) days from the date that the renewal applicant submits its renewal expectancy showing to file petitions to deny any of the mutually exclusive applications. Applicants have fifteen (15) days to file replies; no further pleadings will be accepted.

(c) In most instances, the renewal application and any competing application(s) will be designated for a two-step hearing procedure. An Administrative Law Judge will conduct a threshold (step one) hearing, in which both the licensee and the competing applicants will be parties, to determine whether the renewal applicant deserves a renewal expectancy. If the order designating the applications for hearing specifies any basic qualifying issues against the licensee, those issues will be tried in this threshold (step one) hearing. If the Presiding Judge determines that the renewal applicant is basically qualified and due a renewal expectancy, the competing applicants will be found ineligible for further consideration and their applications will be denied. If the Presiding Judge determines that the renewal applicant does not merit a renewal expectancy but is otherwise qualified, then all the applications filed for that market will be considered in a comparative hearing (step two) which follows the expedited procedures described in §§ 22.916 (b)(5) through (b)(8).

(d) If a competing applicant demonstrates that its proposal so far exceeds the services presently being provided that there would be no purpose in making a threshold determination as to whether the renewal applicant deserved a renewal expectancy vis-a-vis such a competing applicant, such a competing applicant may request a waiver of the threshold hearing (step one) of the two-step hearing procedure. Such a waiver request must be filed at the time the requestor's application is filed. Petitions opposing such waiver requests must be filed within thirty (30) days after the renewal applicant has filed its renewal expectancy showing. Replies to such petitions must be filed within 15 days of the petitions; no further pleadings will be accepted. If a request to waive the step one hearing is granted, the renewal expectancy issue will be designated as part of the step two hearing and will remain the most important comparative factor in deciding the case, as provided in § 22.941(a).

(e) If the Presiding Judge issues a ruling in the step one hearing which denies the licensee a renewal expectancy, all the applicants involved in the proceeding will be allowed 90 days after the release of the Judge's ruling in step one to file their direct cases. Rebuttal cases must be filed within 30 days after the filing of the direct cases.

(f) The Presiding Judge shall use the expedited hearing procedures delineated in §§ 22.916 (b)(5) through (b)(8) in both step one and step two hearings conducted in comparative cellular radio renewal proceedings.

[FR Doc. 94–18729 Filed 8–1–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR PART 64

[CC Docket No. 91–281; DA 94–786]

Calling Number Identification—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of time.

SUMMARY: The Commission grants a request for extension of time of the period for filing responses to opposition petitions for reconsideration concerning federal policies for interstate transmission of calling party number identification. This action was taken as a result of a motion filed by the People of the State of California and the Public Utilities Commission for the State of California. The action is taken to allow time for complete responsive comments.

DATES: The date for filing responses in this proceeding is extended to August 17, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Domestic Services Branch, Common Carrier Bureau, (202) 634–1802.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Extension of Time To File Comments

Adopted: July 15, 1994.

Released: July 15, 1994.

By the Chief, Domestic Facilities Division:

1. On March 8, 1994, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking, FCC 94–59, released March 28, 1994, adopting rules to establish a federal policy regarding calling number identification. Public notice of this action appeared in the **Federal Register** on April 18, 1994, 59 FR 18318. Petitions for reconsideration of the Report and Order were filed May 18, 1994, and notice of the filing of these petitions appeared in the **Federal Register** on June 23, 1994, 59 FR 32430.

2. On July 11, 1994, the People of the State of California and the Public Utilities Commission for the State of California ("petitioner") filed a motion requesting that the time for filing replies in the above-captioned proceedings be

extended from July 18, 1994, to August 17, 1994. In support of its request, the State of California and the California Public Utilities Commission states that due to the voluminous record on reconsideration and the complexity of the issues involved in the proceeding, a grant of the requested extension is likely to improve the quality of the replies filed and assist the Commission in its consideration of pending petitions for reconsideration.

3. As set forth in Section 1.46 of the Commission's Rules, 47 C.F.R. Section 1.46, it is our policy that extensions of time not be routinely granted. We find, however, that the State of California and the California Public Utilities Commission have shown good cause for the requested extension. In reviewing the record to date in this proceeding, we agree with the State of California and the California Public Utilities Commission that the public interest will be best served by granting a 30 day extension of time to file replies to oppositions to petitions for reconsideration in this proceeding. Accordingly, we will grant the requested relief.

4. Accordingly, *It Is Ordered* that the Request for Extension of Time filed by Petitioners *Is Granted*.

5. *It Is Therefore Ordered* that the date for filing replies to oppositions to petitions for reconsideration in this proceeding IS EXTENDED to August 17, 1994.

6. This action is taken pursuant to authority found in Sections 4 (i) and (r) of the Communications Act of 1934, as amended. 47 U.S.C. Sections 4(i) and 303(r) and Sections 0.204(b), 0.283 and 1.46 of the Commission's Rules, 47 C.F.R. Sections 0.204(b), 0.283 and 1.46.

7. For further information concerning this proceeding, contact Suzanne Hutchings, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1802.

Federal Communications Commission.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 94–18743 Filed 8–1–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–72; RM–8154]

Radio Broadcasting Services; Ridgecrest and Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285B1 for Channel 285A at Ridgecrest, California, and modifies the authorization of Station KLOA–FM to specify operation on the higher powered channel, as requested by Roy William Mayhugh, tr/as KLOA Radio. Additionally, in order to accommodate the modification at Ridgecrest, Channel 283A is substituted for Channel 285A at Lenwood, California, and the authorization issued to Eneida Orchard for Station KIQQ–FM is modified accordingly. *See* 58 FR 17816, April 6, 1993. Coordinates for Channel 285B1 at Ridgecrest are 35–36–27 and 117–37–29. Coordinates for Channel 283A at Lenwood are 34–51–20 and 117–02–57. As Lenwood is located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government in this proposal was obtained. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 12, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–72, adopted July 21, 1994, and released July 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California is amended by removing Channel 285A and adding Channel 285B1 at Ridgecrest, and by removing Channel 285A and adding Channel 283A at Lenwood.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–18727 Filed 8–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 641

[Docket No. 940536–4202; I.D. 041994B]

RIN 0648–AG28

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule and notice of OMB control number.

SUMMARY: NMFS issues this final rule to implement Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 9 extends the current reef fish permit moratorium from its scheduled expiration on May 8, 1995, through as late as December 31, 1995. For the red snapper segment of the reef fish fishery, Amendment 9 authorizes the collection of commercial landings data for the years 1990 through 1992 and the collection of information to identify certain participants. It also extends the red snapper endorsement system and its associated trip and landing limits from their scheduled expiration on December 31, 1994, through as late as December 31, 1995. The intended effects of this rule are to collect information needed to evaluate red snapper effort management alternatives, to identify individuals who may qualify for initial participation in a red snapper effort management regime, and to continue interim management measures until the Gulf of Mexico Fishery Management Council (Council) has an opportunity to implement longer-term measures. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of two new collection-of-information requirements contained in this rule and publishes the OMB control number for those collections.

EFFECTIVE DATE: July 27, 1994, except that the amendment to § 204.1(b) and §§ 641.7(ee) and 641.10 are effective July 27, 1994, through October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP, which was prepared by the Council, and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The rationale for the measures in Amendment 9 and for the additional changes to the regulations proposed by NMFS was included in the proposed rule (59 FR 27258, May 26, 1994) and is not repeated here.

Comments and Responses

Comments on Amendment 9 and the proposed rule were received from three individuals. Two of the commenters objected to Amendment 9 and the proposed rule and the third supported them. Specific comments and responses follow.

Comment: One person stated that the red snapper endorsement and trip limit provisions and the reef fish permit moratorium are not cost effective and should not be extended. The commenter's objections are based on the contention that a red snapper individual transferable quota (ITQ) system will not be implemented. The commenter also stated that the trip limit provisions and moratorium are based on erroneous and unverifiable data indicating overfishing of red snapper.

Response: The reef fish permit moratorium was implemented on May 8, 1992, for three years, to prevent continued speculative entry into the fishery while the Council considers other reef fish effort management alternatives, including an ITQ system. The red snapper endorsement and trip limit provisions, first established by emergency action, were continued through 1994 under Amendment 6 to prevent the occurrence of an extremely short season and a "derby" fishery as occurred in 1992.

The Council has not yet determined if an ITQ system should be implemented. The proposed voluntary landings data collection was suggested by vessel owners, operators whose earned income qualified for the vessel permit, and historical captains who were interested in learning of their possible preliminary shares for planning purposes. This information will help fishermen determine their most likely level of participation in an ITQ system, if adopted for the fishery. The Council, upon receipt of the data collected and analyzed under Amendment 9 and after receipt of public comments from affected parties, will decide whether to proceed with an ITQ or other effort management system and the current target date for implementation of January 1, 1996.

The conditions in the fishery that led to implementation of the permit moratorium and the red snapper endorsement system will remain until a more comprehensive program is in place to limit fishing effort in the red snapper fishery. The Council anticipates that the reef fish fishery, particularly for red snapper, would be unnecessarily disrupted if the moratorium and red snapper endorsement provisions expire before implementation of an effort management system. The Council also recognized that such provisions should not be continued indefinitely. Accordingly, the Council determined that the permit moratorium and red snapper endorsement system should be extended through December 31, 1995, or until such an effort management system can be implemented, if before that date.

Concerning the validity of the scientific data that indicates that red snapper are overfished, all such data undergo extensive scientific review and verification prior to NMFS's assessment of the status of the resource. The best available information continues to indicate that red snapper are overfished.

Comment: The first commenter also objected to the proposed data collection as duplicative and wasteful. The commenter believes that: (1) NMFS already has obtained landings data as part of the red snapper endorsement process, and (2) the requested submittal would allow fraudulent landings records to be used to increase a person's share if an ITQ system is implemented.

Response: Applicants for a red snapper endorsement on their reef fish vessel permits submitted data only to document the specified landing threshold of 5,000 pounds in any 2 of 3 qualifying years. In contrast, the data collection proposed under Amendment 9 covers all red snapper landings information for the period when data are readily available (1990–1992). This collection will provide the Council with a complete data base upon which to establish any effort management system; because this collection covers the full three years for which good data exists, it will avoid the need for additional collections.

Concerning fraudulent reporting, the data collection provisions are designed to minimize that possibility. Dealer records and trip receipts must definitively show the species known as red snapper and the vessel's name, official number, or other reference that provides a way of clearly identifying the vessel. Dealer records must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records, under penalty of law. Accordingly, NMFS disagrees with the comment and supports collection of data under these safeguards.

Comment: The first commenter also objected to the proposed submittal of data by persons who believe they are historical captains. The commenter characterized those persons as employees who do not share in the losses sustained by the vessel owner and therefore should not be entitled to participate in an ITQ system.

Response: After review of testimony and recommendations of the Council's Ad Hoc Allocation Advisory Panel, the Council determined that historical captains should be considered for fishing privileges under a red snapper effort management system, as well as vessel owners and operators whose earned income qualified for the vessel permit. NMFS believes that collection of these data will provide the Council with the information needed to determine if those persons warrant inclusion in an effort management system as being developed under Amendment 8. However, comments on allocation to historical captains are outside of the scope of Amendment 9 and therefore are not addressed here.

Comment: The second commenter objected to the share agreement time period specified in § 641.10(a)(2)(i). That section specifies that a share agreement must have been in effect from at least November 6, 1989, through 1993. The commenter claimed that the Council intended that a historical captain fish solely under a share agreement only through 1992, and that the final rule should be revised accordingly.

Response: NMFS has reviewed the administrative record in regard to the referenced share agreement criterion, and concluded that the Council intended that historical captains must document a share agreement in effect up to the present time. At its March 1994 meeting, the Council specifically rejected an alternative that would have required share agreements only in 1990, 1991, and 1992. Since the final rule will be implemented in mid-1994, 1993 is the most recent calendar year with readily available records for a full year. NMFS therefore disagrees with the commenter and supports the time period for share agreements, as specified in Amendment 9 and the rule.

Comment: The second commenter also suggested that § 641.10(a)(2) include in the criteria to qualify as a historical captain the requirement that a person must have landed red snapper at least once prior to November 7, 1989.

Response: Section 641.10(d)(iv) requires an applicant for historical captain status to submit documentation of a landing of red snapper prior to November 7, 1989. NMFS agrees that, for consistency, the requirement for such a landing should also be included in the criteria for historical captain status, and it is added in this final rule at § 641.10(a)(2)(iv).

Comment: The second commenter also objected to the use of the word "lease" in one of the criteria for historical captain status, primarily because of the present use of that term in the fishing industry.

Response: NMFS agrees with the commenter and has removed the phrase containing the word "lease" from § 641.10(a)(2)(i).

Comment: The second commenter also objected to the statement in § 641.10(a)(2)(i) that the share agreement must have provided for the operator to be responsible for hiring the crew, "who were paid from his or her share." The commenter suggested replacement text to reflect the standard practice in the fishery for the "buyer" to write the checks to the crew—after the captain determines shares and payment to the crew.

Response: Neither the Council nor NMFS intended to establish as a criterion for status as a historical captain that such person must have written paychecks to his or her crew. The intent was that the share agreement provide for proceeds to be divided between the owner and the historical captain. Crew shares or payments would not be contained in such share agreement. Rather, the historical captain would determine payments to the crew, such payments coming from the share under the control of the historical captain—without regard to who wrote the checks. For clarity, the above quoted language is revised to read, "who were paid from the share under his or her control."

Comment: A third commenter provided various comments in support of Amendment 9, noting the need to continue the effectiveness of the reef fish permit moratorium and to then establish an ITQ system.

Response: NMFS agrees with this comment in support of Amendment 9. However, remarks on an allocation system such as an ITQ system or other effort management option are outside the scope of Amendment 9 and are not included here.

Approval of Amendment 9

On July 20, 1994, the Director, Southeast Region, NMFS (Regional Director), approved Amendment 9.

Changes From the Proposed Rule

In § 641.2, the address in the definition of "Regional Director" is corrected.

As noted above under Comments and Responses, § 641.10(a)(2)(i) is revised and § 641.10(a)(2)(iv) is added. An additional change is made to § 641.10(a)(2)(i) to clarify that a historical captain may have fished under more than one share agreement during the required period.

A new § 641.10(b)(3) is added to clarify the procedures whereby owners/operators will receive printouts of existing NMFS data on landings of red snapper during 1990 through 1992. The provisions for owners/operators to submit records of landings they believe were omitted from NMFS data are moved to § 641.10(c)(1).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the preamble to the proposed rule (59 FR 27258, May 26, 1994). As a result, a regulatory flexibility analysis was not prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act—specifically, information on landings of red snapper and documentation of status as a historical captain in the red snapper fishery. These collections of information have been approved by OMB under OMB control number 0648–0281. The public reporting burdens for these collections of information are estimated to average 2 and 5 hours per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

The data to be collected under this final rule are needed by fishermen and the Council to evaluate the effects of potential effort management systems for the red snapper segment of the reef fish fishery. That segment is managed under measures that expire December 31, 1995. To provide ample time to collect the data, present it to the fishermen and the Council, evaluate its effects, and develop, approve, and implement additional management measures prior to December 31, 1995, it is necessary that the data collection under this rule commence as soon as possible. To that end, information regarding the proposed data collection has been broadly disseminated to the fishing community prior to this final rule. The other measures in this final rule are extensions of effectiveness or clarifications of measures that are currently in effect and, thus, do not affect current fishing practices. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds for good cause under section 553(d)(3) of the Administrative Procedure Act that the effectiveness of this final rule should not be delayed.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1994.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 641 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. Effective from July 27, 1994, through October 31, 1994, in § 204.1(b), the table is amended by adding in the left column, in numerical order, "§ 641.10 (c) and (d)", and in the right column, in corresponding position, the control number "–0281".

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

3. The authority citation for part 641 continues to read as follows:

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

4. In § 641.2, the definition of "Regional Director" is revised to read as follows:

§ 641.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813–893–3141; or a designee.

* * * * *

5. In § 641.4, paragraph (m) introductory text, paragraph (m)(4), paragraph (o) introductory text, and paragraphs (p)(4) and (p)(5) are revised, and introductory text for paragraph (n) is added to read as follows:

§ 641.4 Permits and fees.

* * * * *

(m) *Moratorium on permits.* This paragraph (m) is effective through December 31, 1995.

* * * * *

(4) A permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

(n) *Red snapper endorsement.* This paragraph (n) is effective through December 31, 1995.

* * * * *

(o) *Condition of a permit.* Effective through December 31, 1995, as a condition of a reef fish permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted vessel—

* * * * *

(p) * * *

(4) A fish trap endorsement is not transferable upon change of ownership of a vessel with a fish trap endorsement, except when such change of ownership is from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. In the event of such transfer of a fish trap endorsement, the new owner of the vessel may renew the endorsement without regard to the requirement of paragraph (p)(1) of this section regarding a record of landing of reef fish from fish traps.

(5) A fish trap endorsement that is not renewed or that is revoked will not be reissued. A fish trap endorsement is considered to be not renewed when an application for renewal is not received by the Regional Director within one year of the expiration date of the permit.

6. In § 641.7, effective from July 27, 1994, through October 31, 1994, a new paragraph (ee) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(ee) Falsify information submitted in accordance with § 641.10.

7. In subpart A, effective from July 27, 1994, through October 31, 1994, a new § 641.10 is added to read as follows:

§ 641.10 Red snapper data collection.

(a) *General.* (1) To evaluate red snapper effort management alternatives, including individual transferable quota (ITQ) systems and license limitations, it is necessary to obtain commercial red snapper landings data for the years 1990 through 1992. To identify individuals who may qualify for initial participation in a red snapper effort management regime, it is necessary to identify certain participants in the red snapper fishery, specifically, operators of vessels who were the earned income qualifiers for the vessels' reef fish permits and those who are "historical captains." In the latter case, determination of a historical captain's share agreement with the vessel's owner is also required.

(2) For the purpose of the red snapper effort limitation alternatives, a historical captain means an operator who—

(i) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, such agreements provided for the operator to be responsible for hiring the crew, who were paid from the share under his or her control;

(ii) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992;

(iii) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and

(iv) Landed red snapper prior to November 7, 1989.

(3) The data collection described in this section will be the only collection for the effort management alternatives currently being considered by the Council. Accordingly, failure to submit requested data may result in failure to be included among the initial participants in the red snapper fishery under an effort management system and/or failure to obtain the full initial share of red snapper to which a person may be entitled under an ITQ regime.

(b) *Existing data.* (1) NMFS has records of all red snapper landings reported by vessel logbook forms submitted pursuant to § 641.5 (a) or (b) and has access to records of red snapper landings reported under Florida's trip ticket system. NMFS also has records of the earned income qualifier for each vessel permit issued for reef fish. Data duplicating these records are not needed.

(2) Landings of red snapper reported by vessel logbook forms and received by the Science and Research Director prior to September 16, 1992, are conclusive as to red snapper landed during the months that such logbook forms were required of, or voluntarily submitted by, a vessel—landings data from other sources will not be considered for such months. In the absence of landings data from such logbook forms, landings of red snapper reported under Florida's trip ticket system and received by the State prior to September 16, 1992, are conclusive as to landings in Florida—landings data from other sources will not be considered for landings in Florida.

(3) On or about August 1, 1994, vessel owners, and operators whose earned income was used to qualify for a vessel permit, will be mailed printouts of their logbook/trip ticket records of landings of red snapper during 1990 through 1992 and forms for the reporting of additional landings. An owner, or such operator, who had such landings and who does not receive a printout by August 8, 1994, must contact the Regulations and Permits Branch, Southeast Region, NMFS, telephone (813) 893–3722, for such printout and forms.

(c) *Additional landings data.* (1) An owner or operator who wishes to be considered for initial participation in the red snapper fishery under an effort management system may submit documentation of red snapper landings not covered by vessel logbook forms or the Florida trip ticket system or documentation of landings that he or she believes were erroneously omitted from the logbook/trip ticket records.

(i) Such documentation may consist of copies of trip receipts that show dates and amounts of landings of red snapper. Trip receipts must definitively show the species known as red snapper and the vessel's name, official number, or other reference that provides a way of clearly identifying the vessel.

(ii) Such documentation may also consist of dealer records that show dates and amounts of landings of red snapper. As with trip receipts, dealer records must definitively show the species known as red snapper and the vessel's name, official number, or other reference that provides a way of clearly identifying the vessel. Dealer records must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is an official written statement wherein the individual signing the affidavit affirms that the information

presented is accurate and can be substantiated, under penalty of law.

(iii) Documentation by a combination of trip receipts and dealer records is acceptable, but duplicate records for the same landings are not acceptable.

(2) Red snapper landings data will not be accepted—

(i) For a period during which the harvesting vessel did not have a permit, provided a permit was required during such period. Permits were not required from January 1 through April 22, 1990, and from January 1 through 31, 1992.

(ii) For a period during which the commercial red snapper fishery in the EEZ was closed. The commercial red snapper fishery was closed in the EEZ from August 24 through December 31, 1991, from February 22 through April 2, 1992, and from May 15 through December 31, 1992.

(3) Additional landings data submitted under this paragraph (c) must be attached to a Red Snapper Landings Data form, which is available from the Regional Director, and must be postmarked not later than September 30, 1994.

(d) *Historical captains.* (1) An operator who wishes to be considered for status as a historical captain in the red snapper fishery under an effort management system may submit documentation of such status by providing the following:

(i) A Historical Captain Status form, available from the Regional Director, which requests information necessary to determine such status and information to establish the share agreement of a historical captain with the vessel's owner;

(ii) A Red Snapper Landings Data form and accompanying additional landings data pursuant to paragraph (c) of this section, if such form and data have not been submitted by a vessel owner;

(iii) Copies of forms and schedules from the applicant's income tax returns for the years 1989 through 1993 that show total earned income and that part of earned income derived from commercial fishing, that is, sale of the catch (generally, pages 1 and 2 of Form 1040, W-2's, and Schedule C); and

(iv) Documentation of a landing of red snapper prior to November 7, 1989.

(2) Forms and information submitted under paragraph (d)(1) of this section must be postmarked not later than September 30, 1994.

(e) *Verification.* Documentation of red snapper landings, documentation of status as a historical captain, and other information submitted under this section are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation or information may disqualify a person from initial participation under a red snapper effort management system.

8. In § 641.23, paragraphs (b)(1) introductory text and (d)(2) introductory text are revised to read as follows:

§ 641.23 Area limitations.

* * * * *

(b) * * *

(1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purpose of this paragraph (b), "for reef fish" means possessing or landing reef fish—

* * * * *

(d) * * *

(2) In the SMZ specified in paragraph (d)(1) of this section, fishing for reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. For the purpose of this paragraph (d), "for reef fish" means possessing reef fish aboard or landing reef fish from—

* * * * *

[FR Doc. 94-18683 Filed 7-27-94; 3:53 pm]
BILLING CODE 3510-22-P

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50 CFR Part 675

[Docket No. 931100-4043; I.D. 072794C]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District (CAD) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Atka mackerel total allowable catch (TAC) in the CAD.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the CAD was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 37,846 metric tons (mt). The directed fishery for Atka mackerel was closed on June 7, 1994 (59 FR 29964, June 10, 1994). That prohibition was rescinded on July 4, 1994 (59FR 33920, July 1, 1994), upon determination that the 1994 TAC for Atka mackerel in the CAD had not been reached.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the CAD soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 37,346 mt with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the CAD. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAD, effective from 12 noon, A.l.t., July 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

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

Dated: July 27, 1994.

Joe P. Clem,

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

[FR Doc. 94-18778 Filed 7-28-94; 3:50 pm]
BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 59, No. 147
Tuesday, August 2, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Baby Walkers; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on currently available information, the Commission has reason to believe that unreasonable risks of injury and death may be associated with baby walkers. The Commission knows of 11 deaths involving baby walkers since January 1989. One of these deaths involved a failure of the walker's seat. In the others, the walker may have provided the child with the mobility to access the hazard. In 1993, there were approximately 25,000 baby walker-related injuries treated in hospital emergency rooms in the United States.

The rate of walker-related injuries has increased significantly over the period 1984–1993. Almost all of the injuries during that period involved children under 15 months of age. About 79 percent of the incidents involved children who fell down stairs or between levels in a baby walker. Other injuries occurred when a walker tipped over or from burns when a child in a walker contacted a hot oven, heater, or radiator or when a child upset a container of hot liquid that the child was able to reach because he or she was supported by a walker.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Federal Hazardous Substances Act ("FHSA"). One result of the proceeding could be the promulgation of a rule mandating performance or design requirements or additional labeling for baby walkers. Such requirements might, for example, result in walkers that are less mobile, that will not pass through standard door openings at the head of stairs, or that will be immobilized if part of the walker crosses the edge of a step. If there is no feasible performance or design requirement that will adequately reduce the risks associated with baby walkers, the Commission can consider other alternatives.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with baby walkers, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury described in this notice.

DATES: Written comments and submissions in response to this notice must be received by the Commission by October 3, 1994.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Barbara Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477, ext. 1206.

SUPPLEMENTARY INFORMATION:

A. Background

For the reasons discussed in this notice, the U. S. Consumer Product Safety Commission ("CPSC" or "Commission") is beginning a rulemaking proceeding to address risks associated with baby walkers.[1] A baby walker is a device that supports a child so that the child can use its feet to move around before or while learning to walk. A baby walker generally consists of a fabric seat with leg openings mounted to a rigid plastic deck. The deck is attached to a base that usually has wheels to make it mobile. Walkers generally can be folded for storage, and may have a feeding tray, adjustable seat height, and a bouncing mechanism. Activity toys may be attached to the trays, and some walkers have wheel lock mechanisms.

The Commission has long recognized that hazards are associated with baby walkers. The Commission's regulations establish mandatory requirements for "baby walkers," "baby bouncers," and "bouncer-walkers." These products are banned under 16 CFR 1500.18(a)(6) unless they meet the criteria described in 16 CFR 1500.86 (a)(4). These criteria specify that baby walkers must be designed to prevent injury from any scissoring, shearing, or pinching when the frame or other components rotate or move relative to one another; cover coil springs that have spaces greater than 0.125 inches when fully extended; guard any holes, slots, or cracks greater than 0.125 inches in diameter or width; and prevent accidental collapse. The product also must be labeled with the name and address of the manufacturer, packer, distributor, or seller and with a code mark indicating the model number of the walker.

In 1986, a voluntary standard (ASTM F977) was published which contains performance requirements addressing some of the baby walker hazards addressed by the CPSC mandatory standard. In addition, the voluntary standard included six warnings that address the risk of falls down stairs and other hazards. In 1989, the ASTM voluntary standard was changed to require a permanent stairs-warning label in a place that will be seen by the consumer when placing a child in a walker. This new label states, "WARNING: Avoid serious injury. NEVER use near stairs."

The Commission's staff has recommended revisions to the current ASTM warning labels, including a warning label to tell consumers to block stairway openings, rather than to tell them never to use walkers near stairs. The staff also suggested that the stair warning label be redesigned according to the ANSI Z535.4–1991 Standard for Product Safety Signs and Labels. In addition, the staff suggested that the ASTM baby walker standard state specifically several options of where the

[1] The Commission voted 2–1 to begin this proceeding. Chairman Ann Brown and Commissioner Jacqueline Jones-Smith voted to publish this notice; Commissioner Mary Sheila Gall voted against. Statements by the Commissioners concerning this vote can be obtained from the Office of the Secretary

stair warning label should be placed to assure that it is conspicuous.

As the Commission's staff continued to monitor data submitted from hospital emergency rooms through the National Electronic Injury Surveillance System ("NEISS"), it became apparent that falls down stairs were a major cause of injuries associated with baby walkers. While the staff was considering what action to recommend for this hazard, the Commission was petitioned, in August of 1992, to ban wheeled baby walkers. The petitioners were the Consumer Federation of America ("CFA"), the American Academy of Pediatrics, the Washington Chapter of the American Academy of Pediatrics, the National Safe Kids Campaign, and Consumers Union. The petition asked that the Commission declare baby walkers to be a mechanical hazard under the FHSA. As discussed in section G of this notice, such a declaration would ban the product.

After considering the available information on deaths and injuries associated with walkers, and other available information, the Commission unanimously voted to deny the petition on April 15, 1993.[2] The petition was denied because the available information did not establish a reasonable probability that the Commission would be able to make the necessary statutory findings if a rulemaking proceeding were commenced at that time. It appeared that several potential design modifications to existing baby walkers were feasible to address the major hazard scenario with walkers—that of falls down stairs. These modifications included a device without wheels with a treadmill to simulate walking, a walker with a "wheel-stop" mechanism (which would resist motion of the walker if a wheel or feeler went over the edge of a step), or a walker that is too wide to fit through most door openings at the top of stairs. Given these possible alternatives to a total ban, the Commission could not conclude that it would likely be able to make the requisite statutory finding that the requested total ban was the least burdensome alternative that would adequately reduce the risks from baby walkers. In addition, not enough was known about the costs and benefits of a total ban to conclude that the Commission would likely be able to make the statutory findings that the ban was reasonably necessary to reduce an unreasonable risk of injury and that the benefits of the ban would bear a reasonable relationship to its costs.

Although the Commission denied the petition for a total ban, at the same time it directed the staff to develop a proposed project that would produce recommendations to address the hazards associated with baby walkers.[3] Shortly thereafter, the Commission approved a project to determine the feasibility of developing a standard to effectively reduce the risk of injury associated with baby walkers, particularly the risk of falling down stairs. The project included a special study of emergency-room-treated injuries related to walkers that were reported through NEISS. This data-gathering activity is discussed in section D of this notice.

During fiscal year 1993, the Commission's Office of Compliance and Enforcement conducted a field program to assess the compliance level of certain juvenile products with the mandatory small parts regulations (Juvenile Products Small Parts Compliance Survey, FPC 93–010). Baby walkers were one of the products included in the survey. As part of the survey, baby walkers were also screened for compliance with the mandatory requirements regarding scissoring, shearing, and pinching (16 CFR 1500.86(a)(4)), and for conformance with the warning label requirements in the voluntary standard (ASTM F977–89). The survey covered 74 major juvenile product manufacturers or importers that were randomly selected for inspection. Eleven of these firms manufactured or imported baby walkers. Thirty-four styles of baby walkers were screened. All walkers complied with the mandatory requirements regarding scissoring, shearing, and pinching, and all but two styles of one manufacturer conformed with the voluntary labeling requirements. This manufacturer agreed to label its current inventory and future production.

A status report on the baby walker project was submitted to the Commission in June 1994. After considering the status report, the Commission decided to commence a rulemaking proceeding by publishing this ANPR.

B. The Product

The products that are the subject of this proceeding are baby walkers, as described in section A of this notice. The Commission's staff does not expect this proceeding to result in additional features to prevent falls down stairs for stationary walkers and other walkers which a young child cannot move. However, performance requirements may have to be developed to determine which walkers have the requisite degree of immobility.

Most traditional walkers range in price from $25 to $60, with the average price about $32. The Commission's staff estimates that there were approximately 4 million new and used walkers in use in the U.S. in 1991. Consumers spend about $115 million per year on baby walkers. This represents sales of at least 3 million units.

Staff has conducted a number of interviews of caregivers in connection with the ongoing baby walker project. Caregivers were asked to evaluate the most useful functions of walkers. Caregivers believed most often that the walker, "Keeps the child happy or quiet," "Helps the child exercise," "Gives the child freedom and independence," and "Is a place to put the child while the caregiver is occupied."

Sixty-two percent of the parents in the follow-up investigations reported that the child used the walker more than once a day. For each use, 37 percent reported that the child typically was in the walker for less than 30 minutes; 45 percent reported that for each use the child typically was in the walker for about 30–60 minutes.

C. The Industry

The Commission knows of 18 manufacturers or importers of baby walkers and jumpers. The leading manufacturer sells several times as many walkers as the next largest, and the top 9 brands or private labels are thought to account for about 60 percent of the market.

D. Risks of Injury and Death

Deaths. The Commission is aware of 11 deaths related to baby walkers that have occurred between 1989 and 1993. Of these, four children drowned, four suffocated, two fell down stairs, and one fell out of a walker and received a fatal head injury. In one of these incidents, the seat loosened, allowing the child to slip downward and suffocate when his trachea was compressed against the walker's tray. In all the other incidents, the walker may have provided the child with the mobility to access the hazard.

The deaths reported to CPSC are not statistically representative, and may not include all the deaths associated with baby walkers during this time period. Also, with the exception of 1991, CPSC received death certificates from deaths classified as "falls" from only one or

[2] At that time, the Commission consisted of Chairman Jacqueline Jones-Smith, Commissioner Mary Sheila Gall, and Commissioner Carol Dawson.

[3] The Commission voted 2–1 to develop this project, with Commissioner Carol Dawson dissenting.

two states. Thus, the number of fall-related baby walker deaths known to CPSC is probably an undercount.

Injuries. In 1993, there were an estimated 25,000 baby walker-related injuries treated in hospital emergency rooms in the United States. Baby walkers account for higher numbers of injuries annually than does any other type of nursery product. For example, in 1991, there were an estimated 10,400 injuries related to strollers and carriages, the nursery product category with the next highest number of estimated injuries.

Based on an estimated 27,000 emergency-room-treated injuries to children under 15 months of age in 1991 and an estimated 4 million walkers in use, the estimated annual rate of injury is 6.75 injuries per 1,000 walkers in use. The most current data show a 12 percent increase in baby walker-related injuries treated in hospital emergency rooms for January through April 1994, compared to the same period in 1993.

In order to find out more about how baby walker injuries are occurring, the Commission's staff is identifying a sample of 300–400 cases through NEISS for the period beginning August 15, 1993, with data collection to continue through September 1994. These cases are being followed up by telephone to obtain additional information about the incident. In addition, incidents involving falls down stairs or steps, and other incidents where more detail is needed, are being assigned for on-site investigations. The data collected through February 1994 have been analyzed and are discussed below.

Of the baby walker incidents reported through NEISS between August 15, 1993, and February 1994, 79 percent were falls down stairs or between levels. About half of the stair fall incidents involved a fall down basement stairs. About 3 percent of the incidents were due to walker tipovers, 3 percent to burns, and 15 percent to other hazard patterns (for instance, babies hitting their heads on walker trays, climbing on walkers, etc.). In about 10 percent of all baby walker incidents, another child appeared to be directly involved in causing the accident. In stair fall incidents, approximately 5 percent involved other children.

The ages of the children injured ranged from 4 months to 2 years, with a median age of 8 months. About 95 percent of the victims were 15 months of age or younger.

Severity of injury. The majority of children involved in baby walker incidents (75 percent) received injuries classified as "less severe," even though the head and face were often the injured body parts. Less severe injuries include lacerations, contusions, abrasions, hematomas, dental injuries, punctures, and strains or sprains.

About one-fourth of the children (23 percent) received injuries classified as potentially "more severe," such as concussions, burns, fractures, and internal organ injuries. Incidents that resulted in severe injuries occurred even when parents were in the same room or area as the child in the walker. The majority of potentially severe injuries were head injuries resulting from children in walkers falling down a flight of basement stairs onto either a covered or uncovered cement floor. The remaining potentially severe injuries were burns and limb fractures. The injuries were of varying severity, ranging from children who were treated and released to injuries that resulted in hospitalizations up to 7 days. At the time of the telephone investigations, all of the 128 parents contacted through February 1994 reported that the children had "fully recovered."

In 1991, the proportion of "more severe" to "less severe" injuries related to walkers was similar to that of cribs, high chairs, playpens, and changing tables. There was a significantly higher proportion of "more severe" injuries related to baby walkers than to strollers and carriages.

During 1991, 7 percent of the children involved in walker- related incidents were hospitalized for observation or more extensive treatment. There were no significant differences between the proportions of hospitalizations to non-hospitalizations for baby walkers and cribs, high chairs, playpens, and changing tables. There was a significantly higher proportion of hospitalizations related to baby walkers than for strollers and carriages.

The mechanism of general stair-related injuries differs in some respects from the mechanism of stair-related injuries involving baby walkers. Falls down stairs without walkers involve a series of impacts; an initial mild to severe impact, followed by a series of mild impacts (tumbling). The bouncing of a walker down steps, however, may result in an initial backward thrust of the head as the walker descends down the steps followed by a forward head thrust. One author suggests that "[s]uch a sequence could add additional impact energy and thus more severe injury." (DiMario F: Chronic Subdural Hematoma—Another Babywalker-Stairs Related Injury. Clinical Pediatrics 1990; 29:405–8.)

E. Other Factors Related to Baby Walker Incidents

Step falls and doorway width. For the stair or step fall incidents, 82 percent of the respondents who agreed to take measurements reported the width of the narrowest dimension of the opening at the top of the stairs or step as 36 inches or less (approximately the size of a normal door opening).

Supervision of the Child and Precautions Taken. At the time of the incident, about half of the caregivers were in the same room or area as the child in the walker. For those caregivers who were in the same room or area with the child when the incident happened, 43 percent reported that they witnessed the incident. Some parents who did not witness the incident said they had looked away momentarily or were distracted by another child when the incident occurred. In some incidents where the caregivers were in another room or area than the child in the walker at the time of the incident, the child was in the caregiver's view.

Over half of the respondents (61 percent) for the stair and step fall incidents reported a closed door, gate, or some other barrier in use prior to, or around, the time of walker use (doors-78 percent, gates-16 percent, other barriers-6 percent.) In 90 percent of the stair and step fall incidents where a barrier was in use, the door, gate, or other barrier had been moved, left ajar, or not latched properly. Seven percent of the respondents for these incidents who reported a gate in use suggested that the gate may have failed; this was reported solely as "the walker pushed the gate open." Other stair and step fall incidents included cases where children bypassed a barrier or safety precaution or moved too quickly for a nearby adult to prevent the incident.

Ten percent of the respondents reported a baby walker incident prior to the incident in the study. Three percent reported a previous stair fall incident. Seventy-six percent of the respondents reported using the walker again after an injury occurred, including over half of those whose child was diagnosed as having a potentially serious injury. For the stair fall incidents where the walker was still available, 57 percent of the respondents who agreed to look for labeling information reported a label with a stair warning.

E. Existing Standards

As explained in section A of this notice, ASTM has a voluntary standard for baby walkers, ASTM F977. This standard has performance requirements that address walker tipover and

structural failure. Falls down stairs are addressed by a warning label. The CPSC staff's compliance program, also discussed in section A of this notice, indicated a high level of conformance with the stair warning label requirement of the voluntary standard.

At this time, ASTM is not considering performance requirements to address the hazard of children falling down stairs in walkers. ASTM members are waiting for completion of the CPSC data collection, discussed above, to determine the appropriate direction for any new requirements.

A voluntary safety standard published by the Canadian Juvenile Products Association, effective June 1, 1989, requires walkers to be constructed to preclude their passage through a simulated door opening 900 mm (35.4 inches) in width. In Canada, this standard had the same effect as a ban of the sale of walkers. Walker manufacturers apparently believed that the low market sales of walkers in Canada (about 150,000 annually as compared to 4 million in the U.S.) did not justify redesigning their products. However, due to the much larger market in the United States, and the fact that this alternative retains much of the mobility of a traditional walker, the Commission has no reason to believe that a standard similar to the Canadian one would eliminate the U.S. market for baby walkers.

F. Statutory Authority

The FHSA is the appropriate act for regulating risks associated with baby walkers or other articles intended for use by children that present a mechanical hazard. 15 U.S.C. 1261(F)(1)(D). Section 2(s) of the FHSA provides:

> An article may be determined (by rule) to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness . . . (4) from moving parts, (5) from lack or insufficiency of controls to reduce or stop motion, . . . (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

15 U.S.C. 1261(s). The Commission's current regulations for baby walkers were issued under the FHSA. 16 CFR 1500.18(a)(6), 1500.86(a)(4).

Section 2(s) of the FHSA provides CPSC with jurisdiction over unreasonable risks of children tipping over in walkers, being injured by a walker's moving or collapsible parts, or falling down stairs in walkers. However, the primary risk associated with walkers is that of children falling down stairs. The design features that may be implicated by this particular risk include, for example, the absence of an effective way to limit or stop the product's motion and its ability to fit through a standard doorway.

Declaring that all walkers, or walkers that fail to meet specified criteria, are a hazardous substance because they present a mechanical hazard would trigger the banning provision of FHSA § 2(q)(1)(A). This section of the act provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance. . . ." 15 U.S.C. 1261(q)(1)(A).

This proceeding under the FHSA to determine whether baby walkers present a mechanical hazard is being conducted under sections 3(f)–(i) of the FHSA. This involves a three-stage rulemaking, commenced by the publication of this ANPR.

The next stage in the rulemaking proceeding will be a decision either to publish a notice of proposed rulemaking ("NPR") or to terminate the proceeding. If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with FHSA section 3(h). 15 U.S.C. 1262(h). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 3(i)(1) of the FHSA. 15 U.S.C. 1262(i)(1). Before the Commission may issue a final regulation, it must make statutory findings concerning voluntary standards; the relationship of the costs and benefits of the rule; and the burden imposed by the regulation. FHSA sec. 3(i)(2), 15 U.S.C. 1262(i)(2).

G. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths related to baby walkers.

1. Performance or design requirement. For the reasons discussed above, it appears possible that a performance or design requirement can be developed that will reduce the risk of children falling down stairs in baby walkers. The staff is aware of the following product designs intended to address the hazard of falls down stairs:

1. Walkers with a diameter larger than the normal door opening to prevent access to stairs.

2. Walkers with a "wheel-stop" mechanism.

3. Walkers with mobility limited to a confined space.

4. Stationary alternatives.

The Commission concludes that it is possible to develop a performance or design requirement that will allow the use of one or more of these designs to address the risk of falls down stairs. These alternatives are discussed separately below.

Wide walkers. The results of the analysis of the current CPSC special study indicate that walkers with a 36-inch-diameter base theoretically could address 82 percent of the stair and step fall incidents, including almost all of the severe incidents (falls down basement stairs). A 36-inch requirement would add approximately 6 to 10 inches to the diameter of walkers currently on the market. There may be a perceived or actual loss of utility of such a product in terms of actual use by a child if it will not fit between furniture in most households. Also, there would be a loss of convenience if the walker is too large for convenient storage or for transporting to other locations by car.

If the product is unacceptable to consumers, they may choose to purchase used, traditional walkers. In this event, the percentage of incidents addressed by a larger diameter walker could be significantly less than 82 percent—at least for the period of time that used, traditional walkers are available.

Wheel-Stop Mechanisms. One manufacturer is marketing a walker with a wheel-stop mechanism which retails for around $55. The consumer can use the wheel-stop mechanism to manually retract all eight wheels so that the walker is stationary. Another manufacturer marketed a walker with an automatic wheel-stop mechanism, which retailed for $60–$80. This product had the wheels arranged so that if one wheel passed over a step, a second wheel would retract, causing the base ring to drop, grip the floor surface, and restrict further mobility of the walker. This product was discontinued due to limited sales.

Products with wheel-stop mechanisms provide all the utility and features of a traditional walker. The staff does not know how effective passive or automatically retracting wheels can be in addressing stair and step fall injuries.

Walkers with Mobility Limited to a Confined Space. One manufacturer plans to introduce a new walker with limited mobility in September 1994. This product is expected to retail for $80–$90 initially, with a goal of lowering the retail price to $69 with a higher sales volume. With this walker, a child can walk, clockwise or counter-

clockwise, around the circumference of a 36 inch stationary base. The child can also rotate the seat 360°.

There is a patent pending on a walker with a pivot point and control arm that converts a traditional walker into a tethered walker. A child can travel in a circle, clockwise or counterclockwise, around the weighted central pivot point. The control arm can be adjusted to increase or decrease the circumference of the walker's path.

Stationary Alternatives. A nonmobile product is being marketed that retails for around $50. This product has a 28-inch diameter saucer base and a seat that the child can bounce up and down and rotate 360°. Three legs can be lowered to stop the rocking motion.

Another nonmobile product is marketed that retails for around $70. This product has a seat that the child can bounce up and down and rotate 360°.

Theoretically, walkers with limited mobility or stationary alternative products could address almost all deaths and injuries associated with walkers. With restricted mobility, a child would not have access to stairs, steps, hot surfaces, uneven floor surfaces, or other hazards. However, mobility is a unique characteristic of a walker that is attractive to consumers and toddlers. Sales of traditional mobile walkers have always substantially exceeded sales of stationary products such as jumpers and bouncers.

The staff does not know whether stationary alternative products or walkers with limited mobility can provide levels of stimulation comparable to mobile walkers. If such products are unacceptable to consumers, they may choose to purchase used traditional walkers. In this event, the percentage of incidents addressed could be significantly less than expected—at least for the period of time that used traditional walkers are available.

2. Labeling and instructions. Another alternative is labeling the product to warn against its hazards and providing information on the risks in the product's instructions. The Commission's staff is working with members of the ASTM Section for Infant Walkers to revise the current labeling on baby walkers. However, labeling and instructions alone are not likely to adequately reduce the risk and should be used in conjunction with product modifications, where possible.

3. Voluntary standards. As noted above, there is no voluntary standard in existence that would adequately reduce the risk of injury from stair falls in walkers. Even if a voluntary standard were developed, the Commission has no basis for concluding that the standard would be conformed with generally by walker manufacturers.

H. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance, design, or labeling requirement for baby walkers that present an unreasonable risk of falling down stairs.

All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. The Commission is interested in any information about the ability of stationary alternative products or walkers with limited mobility to provide levels of stimulation comparable to mobile walkers. In addition, in accordance with section 9(a) of the FHSA, the Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than October 3, 1994.

Dated: July 27, 1994.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. ASTM F 977–86 Standard Consumer Safety Specification for Infant Walkers.

2. ASTM F 977–89 Standard Consumer Safety Specification for Infant Walkers.

3. Petition HP 92–2, Petition to Ban Baby Walkers, August 27, 1992.

4. Letter from Bruce W. Dixon, M.D., September 4, 1992.

5. Letter from Daniel and Lois Fermaglich, M.D.'s, concerning alternative walker designs, September 17, 1992.

6. Request for consolidation from Daniel and Teresa Fonua, September 24, 1992.

7. Supplementary information from petitioners, September 29, 1992.

8. Correspondence from Chung B. Kim, "Opposition to Petition No. HP92–2 for an Absolute Ban on Baby Walkers Intended for Use by Children," October 22, 1992.

9. Commission staff memo, from Frank Krivda, "Infant Walker Compliance Activities," November 17, 1992.

10. Correspondence from Graco Children's Products, Inc., "Address to the Commission: Comments Opposing the Petition of the Consumer Federation of American et al to Ban Baby Walkers," December 4, 1992.

11. Commission staff memo from Carolyn Meiers, "Petition to Ban Baby Walkers," December 8, 1992.

12. Commission staff memo, from Leonard E. Schachter, EPHA, "Petition Requesting a Ban of Baby Walkers (HP 92–2), December 9, 1992.

13. Commission staff memo, from John Preston, "Baby Walker Petition, HP 92–2," December 9, 1992.

14. Commission staff memo, from Anthony Homan, "Baby Walkers—Petition HP 92–2," December 11, 1992.

15. Letter from Locker, Greenberg & Brainin, P.C., representing the Juvenile Products Manufacturers Association, December 17, 1992.

16. Letter from George McKown, December 22, 1992.

17. Letter from James S. Todd, Executive Vice President, AMA, December 29, 1992.

18. Statement from Moneyworth Watermelon, January 8, 1993.

19. Letter from Taipei Inventors' Association, January 15, 1993.

20. Letter from Diane Meredith Belcher in support of ban, February 5, 1993.

21. Letter from Washington State Academy of Pediatric Dentists, February 11, 1993.

22. Letter from Jim Deming, M.D., Lake Tomah Clinic, February 12, 1993.

23. Undated letter from Sam and Joril Danna opposing ban.

24. Commission staff memo, from Terrance Karels, "Briefing package—Baby Walker Petition HP 92–2," March 15, 1993.

25. Letter from Sharlene McKenna, March 19, 1993.

26. Commission staff memo to the Commission transmitting letters received concerning the baby walker petition, March 23, 1993.

27. Letter from the American Physical Therapy Association, March 30, 1993.

28. Proposed changes to ASTM F 977–89, November 8, 1993.

29. Commission staff memo, from Manon Boudreault, "Report on Baby Walker Incidents for the period August 15, 1993, to February 28, 1994," May 18, 1994.

30. Commission staff memo, from Anthony Holman, "Baby Walkers—Regulatory Analysis Discussion," May 18, 1994.

31. Commission staff memo, from Suad Nakamura, "Baby Walker, Severe Injuries," May 26, 1994.

32. Commission staff memo, from Dollie Manley, "Infant Walkers Screened under the Juvenile Products Small Parts Compliance Survey, FPC 93-0101," June 1, 1994.

33. Commission staff memo, from Manon Boudreault, "Addendum to Report on Baby Walker Incidents Submitted May 18, 1994," June 8, 1994.

34. Briefing paper from Barbara Jacobson, "Baby Walker Project Status Report with Options," June 9, 1994.

35. Letter from William L. MacMillan, President of JPMA, June 30, 1994.

[FR Doc. 94-18789 Filed 8-1-94; 8:45 am]

BILLING CODE 6355-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-20430, File No. S7-15-94]

RIN 3235-AF97

Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment; extension of comment period.

SUMMARY: The Commission is extending from August 1, 1994 to September 30, 1994 the comment period for Investment Company Release No. 20313, which proposed rule 17f-6 under the Investment Company Act of 1940.

DATES: Comments must be received on or before September 30, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-15-94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Krentzman, Special Counsel, or Diane C. Blizzard, Assistant Director, at (202) 942-0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On May 24, 1994, the Commission issued Investment Company Act Release No. 20313 [59 FR 28286 (June 1, 1994)] ("Release No. 20313"), which proposed rule 17f-6 [17 CFR 270.17f-6] under the Investment Company Act of 1940 [15 U.S.C. 80a]. The proposed rule would permit registered management investment companies to use futures commission merchants and commodity clearing organizations as custodians of their assets in connection with futures contracts and commodity options regulated under the Commodity Exchange Act [7 U.S.C. 1-25].

Since Release No. 20313 was issued, the Commission has received a request from an interested person for an extension of the comment period. In light of the importance of the safekeeping of investment company assets and the benefit to the Commission of receiving carefully considered comments, the Commission believes a 60-day extension is appropriate.

The comment period for responding to Release No. 20313 is extended to September 30, 1994.

Dated: July 28, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-18740 Filed 8-1-94; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI19-01-5990; FRL-5026-4]

Approval and Promulgation of Implementation Plans; Michigan: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the comment period.

SUMMARY: The USEPA is extending the comment period for a proposed action published June 15, 1994 (59 FR 30742). On June 15, 1994 USEPA proposed disapproval of the State Implementation Plan (SIP) submitted by the State of Michigan for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). At the request of the Michigan Department of Natural Resources, USEPA is extending the comment period 60 days.

COMMENTS: Comments on the June 15, 1994 (59 FR 30742), proposed action are due September 14, 1994.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 353-8328.

Dated: July 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-18752 Filed 8-1-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 721

[OPPTS-50583I; FRL-4755-9]

Substituted Triazine Isocyanurate; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted triazine isocyanurate based on receipt of new data. The data indicate that, for purposes of section 5 of TSCA, the substance will not present an unreasonable risk to the environment.

DATES: Written comments must be received by EPA by September 1, 1994.

ADDRESSES: All comments must be sent in triplicate to: U.S. Environmental Protection Agency, ATTN: OPPT Document Receipt Office (7407), 401 M St., SW., Rm. E-G99, Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50583I. Unit III. of this preamble contains additional information on submitting comments containing CBI.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR

establishing significant new uses for substituted triazine isocyanurate. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for substituted triazine isocyanurate under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P-86-66

Chemical name: (generic) Substituted triazine isocyanurate.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: December 13, 1993.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to the human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.
Toxicity testing results: An acute oral gavage study of rats with a 14-day observation and neurotoxicity functional observational battery demonstrated a no observed adverse effect level of 1,000 mg/kg and a low observed adverse effect level of 2,000 mg/kg for decreased forelimb and hindlimb grip strength.
CFR citation: 40 CFR 721.9760.

II. Objectives and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance may present an unreasonable risk of injury to human health. EPA identified the tests considered necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing which was conducted by the PMN submitter pursuant to the 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50583 (P-86-66). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.9760 [Removed]

2. By removing § 721.9760.

[FR Doc. 94-18764 Filed 8-1-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52

RIN 0905-AC02

Grants for Research Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to revise regulations governing Public Health Service (PHS) grants for research projects to: accommodate changes necessitated by enactment of various statutes governing research project grant programs administered by the PHS; update references to statutes and regulations; and cover all research project grant programs administered by the PHS, so the regulations will not have to be amended each time a new research project grant program is established by statute or administrative action.

DATES: Comments must be received on or before October 3, 1994 in order to ensure that NIH will be able to consider the comments in preparing the final rule. The final rule would become effective 30 days after its publication in the **Federal Register.**

ADDRESSES: Comments should be sent to Mr. Jerry Moore, NIH Regulatory Affairs Officer, Division of Management Policy, National Institutes of Health, Building 31, Room 3B11, Bethesda, Maryland 20892-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, NIH Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, Bethesda, Maryland 20892–0001, telephone (301) 496–4606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The regulations at 42 CFR part 52 governing PHS grants for research projects were last amended on September 27, 1984 (49 FR 38110). Since the, Congress has enacted a number of statutes establishing research grant programs similar to those listed in § 52.1 of the regulation. In the past, new statutory authority would have been implemented by adding the new programs to the list of programs in § 52.1.

However, after considering the long list of programs to be added and the very limited number of substantive changes necessitated by the new statues, we have decided to propose deletion of the listing of research project grant programs in § 52.1, and references to that listing in other sections. The regulations would be amended to apply to all research project grant programs administered by the PHS. Thus, it will not be necessary to include a long list of programs in the regulations or to go through the lengthy process of amending the regulations in order for them to apply to a newly established program.

The PHS and/or its components that award research project grants will, as stated in proposed § 52.1, periodically publish a list of all the research project grant programs to which the regulations apply and the applicability of the regulations to new programs will be announced as PHS components initiate those programs. Under § 52.1, the regulations clearly apply to all research project grants administered by the PHS; thus, the lists described above are provided for the convenience of interested members of the public, rather than serving as a substantive notice of the applicability of the regulations. A list of the current research project grant authorities implemented by the regulations follows:

(1) Research into the cause, diagnosis, treatment, control, or prevention of the physical or mental diseases, injuries, or impairments to human life, as authorized by sections 301 and 303 related provisions of the Public Health Service Act (Act) (42 U.S.C. 241, 242a);

(2) Electronic product radiation control research programs designed to protect the public health and safety from electronic product radiation, as authorized by section 532 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ii);

(3) Research on health related educational technologies, medical library science and related activities, and for the development or dissemination of new knowledge, techniques, systems, and equipment for processing, storing, retrieving, and distributing information pertaining to health sciences, as authorized by section 473 of the Act (42 U.S.C. 286b–4);

(4) Research on the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism, as authorized by section 464H of the Act (42 U.S.C. 285n);

(5) Research on the causes, consequences and approaches of coping with adolescent sexual relations, contraceptive use, pregnancy, and parenthood, as authorized by section 2008 of the Act (42 U.S.C. 300z–7);

(6) Health services research activities, as authorized by section 301 and 464H of the Act (42 U.S.C. 241 and 285n) and defined in section 409 of the Act (42 U.S.C. 284d);

(7) Biomedical research in areas relating to Alzheimer's disease and related dementias, as authorized by section 445B of the Act (42 U.S.C. 285e–4);

(8) Research relating to medical rehabilitation, as authorized by section 452 of the Act (42 U.S.C. 285g–4);

(9) Basic research to identify, characterize, and quantify risks to human health from air pollutants, as authorized by section 103 of the Clean Air Act (42 U.S.C. 7403);

(10) Research relating to the evaluation of drug treatments for AIDS not approved by the Commissioner of the Food and Drug Administration, as authorized by section 2314 of the Act (42 U.S.C. 300cc–14);

(11) Research under the Medication Development Program to encourage and promote the development and use of medications to treat drug addiction; and collect, analyze, and disseminate data, as authorized by section 464P of the Act (42 U.S.C. 285o–4);

(12) International research relating to the development and evaluation of vaccines and treatments for AIDS, as authorized by section 2315 of the Act (42 U.S.C. 300cc–15);

(13) Long-term research into treatments for AIDS, as authorized by section 2320 of the Act (42 U.S.C. 300cc–20);

(14) Research relating to AIDS conducted outside of the United States by qualified foreign professionals and collaborative research involving American and foreign participants, as authorized in section 2351 of the Act (42 U.S.C. 300cc–41);

(15) Research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population, as authorized by section 1004 of the Act (42 U.S.C. 300a–2);

(16) Research on occupational safety and health problems in industry, as authorized by section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669a) and section 501 of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 951);

(17) Injury prevention and control research, as authorized by section 391 of the Act (42 U.S.C. 280b);

(18) Research into the prevention and control of childhood lead poisoning, as authorized by section 301 of the Act (42 U.S.C. 241);

(19) Investigation to identify strategies for prevention of childhood deaths from diarrhea, as authorized by sections 301 and 317(k)(3) of the Act (42 U.S.C. 241, 247b(k)(3));

(20) Support for radiation studies and research, as authorized under section 301 of the Act (42 U.S.C. 241) and section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a));

(21) Ecological and epidemiological research studies in Lyme disease, including disease surveillance, development and evaluation of prevention and control studies, and development of improved diagnostic tests, as authorized by section 301 of the Act (42 U.S.C. 241);

(22) Surveillance and epidemiologic studies for the prevention of infectious diseases and injuries in children in child day care settings, as authorized by sections 301, 317(k)(3), and 391 of the Act (42 U.S.C. 241, 247b(k)(3), 280b);

(23) Research into prevention and control of tuberculosis, especially research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations, as authorized by section 317(k) of the Act (42 U.S.C. 247b(k));

(24) Research to stimulate health-related technological innovation especially through the use of small business, minority and disadvantaged firms and increased private sector commercialization of innovations derived from Federal research and development, as authorized by section 301 of the Act, (42 U.S.C. 241), in accordance with the procedures prescribed pursuant to the Small

Business Innovation Development Act of 1982 (15 U.S.C. 638);

(25) Epidemiological studies, and state-based research capacity building projects for the prevention of primary and secondary disabilities; as authorized by section 301 of the Act (42 U.S.C. 241);

(26) Research for the development of knowledge and approaches to the epidemiology, etiology, diagnosis, treatment, control and prevention of narcotic addition, intravenous (IV)-related, AIDS and drug abuse, as authorized by sections 301 and 405 of the Act (42 U.S.C. 241, 284);

(27) HIV/AIDS surveillance, HIV serosurveillance surveys and studies, and epidemiologic research studies of AIDS and HIV infection, as authorized by sections 301 and 317(k)(3) of the Act (42 U.S.C. 241 and 247b(k)(3));

(28) Research into areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions, as authorized by section 603 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (42 U.S.C. 2487b);

(29) Research on clinical and health services on eye care and diabetes, as authorized by section 456 of the Act (42 U.S.C. 285i–1);

(30) Research on multiple sclerosis, especially research on the effects of genetics and hormonal changes on the progress of the disease, as authorized by section 460 of the Act (42 U.S.C. 285j–3); and

(31) Research on osteoporosis, paget's disease and related bone disorders, as authorized by section 409A of the Act (42 U.S.C. 284e).

A more detailed listing of the programs to be implemented by the regulations, as listed in the Catalog of Federal Domestic Assistance, appears at the end of this preamble.

In addition to the actions noted above, NIH proposes to limit the citation of authority for issuance of the regulations to the Secretary's general statutory authority for the issuance of regulations set forth in section 215 of the PHS Act, rather than citing the statutory authority for each research project grant program. The latter provisions do not require or explicitly authorize the issuance of regulations and thus 1 CFR part 21, subpart B, does not require inclusion of those statutes in the authority citation. It is also proposed to make minor changes required by new statutory authority, simplify the language in §§ 52.2–4 and 52.6, update PHS Act section numbers referenced in part 52 as necessitated by enactment of legislation, and update the listing of HHS policies and regulations in § 52.8. The purpose of this notice is to invite public comment on these proposed changes. The following statements are provided for the information of the public.

Regulatory Impact Statement

The Secretary has reviewed this proposed rule in accordance with the requirements of Executive Order 12866, Regulatory Planning and Review, and has determined that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order No. 12866. Therefore, the Secretary has determined that the proposed rule does not require: (1) An assessment of benefits anticipated from the proposed amendments; (2) an assessment of costs anticipated from the proposed amendments; or (3) an assessment of costs and benefits of potentially effective and reasonably feasible alternative to the proposed amendments.

Regulatory Flexibility Act

Because of the nonsubstantive nature of the proposed amendments, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Paperwork Reduction Act

The proposed regulations do not contain information collection requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered programs affected by the regulations are:

93.113—Biological Response to Environmental Health Hazards
93.114—Applied Toxicological Research and Testing
93.115—Biometry and Risk Estimation—Health Risks from Environmental Exposures
93.118—Acquired Immunodeficiency Syndrome (AIDS) Activity
93.121—Oral Diseases and Disorders Research
93.135—Centers for Research and Demonstration for Health Promotion and Disease Prevention
93.136—Injury control Research Projects
93.154—Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome
93.173—Biological Research Related to Deafness and Communicative Disorders
93.184—Disabilities Prevention
93.198—Biological Models and Materials Resources Program
93.242—Mental Health Research Grants
93.262—Occupational Safety and Health Research Grants
93.271—Alcohol Scientist Development Award; Scientist Development Award for Clinicians; and Research Scientist Award
93.273—Alcohol Research Programs
93.277—Drug Abuse Scientist Development Award for Clinicians, and Scientist Development Awards
93.279—Drug Abuse Research Programs
93.281—Mental Health Research Scientist Development Award, Research Scientist Development Award for Clinicians, and Research Scientist Award
93.283—Centers for Disease Control-Investigation and Technical Assistance
93.306—Comparative Medicine Program (formerly called Laboratory Animal Sciences and Primate Research)
93.333—General Clinical Research Centers
93.361—Nursing Research
93.371—Biomedical Research Technology
93.389—Research Centers in Minority Institutions
93.390—Academic Research Enhancement Award
93.393—Cancer Cause and Prevention Research
93.394—Cancer Detection and Diagnosis Research
93.395—Cancer Treatment Research
93.396—Cancer Biology Research
93.821—Biophysics and Physiological Sciences Research
93.837—Heart and Vascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research
93.846—Arthritis, Musculoskeletal and Skin Diseases Research
93.847—Diabetes, Endocrinology and Metabolic Research
93.848—Digestive Diseases and Nutrition Research
93.849—Kidney Diseases, Urology and Hematology Research

93.853—Clinical Research Related to Neurological Disorders
93.854—Biological Basis Research in the Neurosciences
93.855—Allergy, Immunology, and Transplantation Research
93.856—Microbiology and Infectious Diseases Research
93.859—Pharmacological Sciences
93.862—Genetics Research
93.863—Cellular and Molecular Basis of Disease Research
93.864—Population Research
93.865—Research for Mothers and Children
93.866—Aging Research
93.867—Vision Research
93.879—Medical Library Assistance
93.929—Center for Medical Rehabilitation Research
93.934—Fogarty International Research Collaboration Award
93.939—Blood Diseases and Resources Research
93.941—HIV Demonstration, Research, Public and Professional Education Projects
93.942—Research, Treatment and Education Programs on Lyme Disease in the United States
93.943—Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups
93.947—Tuberculosis Demonstration, Research, Public and Professional Education

List of Subjects in 42 CFR Part 52

Grant programs—health; Medical research; Occupational safety and health.

Dated: May 31, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 25, 1994.

Donna E. Shalala,

Secretary.

For reasons set out in the preamble, it is proposed to amend part 52 of title 42 of the Code of Federal Regulations to read as set forth below.

PART 52—GRANTS FOR RESEARCH PROJECTS

1. and 2. The authority citation for part 52 would be revised to read as follows:

Authority: 42 U.S.C. 216.

3. Section 52.1 would be revised to read as follows:

§ 52.1 To which programs do these regulations apply?

(a) *General.* The regulations of this part apply to all health-related research project grants administered by the PHS or its components. These regulations do not apply to research grants that are not for the support of an identified research project (sometimes referred to as general research support grants), grants for the construction or operation of research facilities, grants for prevention or educational programs, demonstration grants, traineeships, training grants, or to the support of research training under the National Research Service Awards program.

(b) *Specific programs covered.* From time to time the Secretary will publish a list of the research project grant programs covered by this part. The list is for informational purposes only and is not intended to restrict the statement of applicability in paragraph (a) of this section. In addition, information on particular research project grant programs, including applications and instructions, may be obtained from the component of the PHS that administers the program.

4. Section 52.2 would be revised to read as follows:

§ 52.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Department means the Department of Health and Human Services (HHS).

Grantee means the institution, organization, individual or other person designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

Principal investigator means a single individual designated by the grantee in the grant application and approved by the Secretary, who is responsible for the scientific and technical direction of the project.

Project means the particular activity for which funding is sought under this part as described in the application for grant award.

Public Health Service (PHS) means the operating division of the Department that consists of the Agency for Health Care Policy and Research, the Centers for Disease Control and Prevention, the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the Office of the Assistant Secretary for Health, the Substance Abuse and Mental Health Administration, and the Agency for Toxic Substances and Disease Registry.

Research means a systematic investigation, study or experiment designed to contribute to general knowledge relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanisms relating to, the biological functions, diseases, or related matters to be studied.

Secretary means the Secretary of HHS and any other officer or employee of the HHS to whom the authority involved may be delegated.

5. Section 52.3 would be revised to read as follows:

§ 52.3 Who is eligible to apply for a grant?

(a) *Persons eligible.* Any individual, corporation, public or private institution or agency, or other legal entity shall be eligible for a grant award, except:

(1) An individual or entity which is otherwise ineligible for an award under applicable law or regulation (e.g., only Diabetes Eye Research Institutions are eligible for research project grants on eye care and diabetes under section 456 of the PHS Act);

(2) Federal agencies or institutions, unless specifically authorized by law to receive the grant;

(3) Individuals, corporations, institutions, agencies, and other entities during the period they are debarred or suspended from eligibility for Federal financial assistance (see 45 CFR part 76).

(b) *Permissible activities within research projects.* Any project found by the Secretary to be a research project within the meaning of this part shall be eligible for a grant award. Eligible projects may consist of laboratory, clinical, population, field, statistical, basic, applied or other types of investigations, studies or experiments, or combinations thereof, and may either be limited to one, or a particular aspect of a problem or subject, or may consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities and resources.

(c) *Preferences.* In the award of grants for international research relating to the development and evaluation of vaccines and treatments for AIDS under section 2315 of the Act, preference shall be given to

(1) Activities conducted by, or in cooperation with, the World Health Organization and

(2) With respect to activities in the Western Hemisphere, activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

6. Section 52.4 would be revised to read as follows:

§ 52.4 How to apply for a grant?

Each institution interested in applying for a grant under this part must submit an application at such time and in such form and manner as the Secretary may prescribe.

7. Section 52.6 would be amended as follows:

In paragraph (a) the first sentence would be revised to read as set forth below; paragraphs (b), (c), (d) and (e) would be redesignated (c), (d), (e) and (f), respectively; new paragraph (b) would be added, and paragraphs (c)(2) and (d) would be revised to read as follows:

§ 52.6 Grant awards.

(a) Within the limits of funds available for such purpose, the Secretary will award a grant to those applicants whose approved projects will in the Secretary's judgment best promote the purposes of the statute authorizing the grant and the regulations of this part.* * *

(b) *Evaluation of unapproved drug treatments for AIDS.* Grants under section 2314 of the Act to support research relating to the evaluation of drug treatments for AIDS not approved by the Commissioner of the Food and Drug Administration, shall be subject to appropriate scientific and ethical guidelines established by the Secretary for each project, pursuant to section 2314(c) of the Act. In order to receive a grant, the applicant must agree to comply with those guidelines.

(c) *Notice of grant award.*

(1) * * *

(2) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit an application at the time and in the form and manner as the Secretary may prescribe to have support continued for each subsequent year.

(3) * * *

(d) *Multiple or concurrent awards.* Whenever a research project involves a number of different but related problems, activities or disciplines which require evaluation by different groups, or whenever support for a project could be more effectively administered by separate handling of separate aspects of the project, the Secretary may evaluate, approve and make awards pursuant to two or more concurrent applications, each dealing with one or more specified aspects of the project.

* * * * *

8. Section 52.8 would be revised to read as follows:

§ 52.8 Other HHS policies and regulations that apply.

Several other HHS policies and regulations apply to grants under this part. These include, but are not necessarily limited to:

37 CFR part 401—Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR part 50, subpart D—Public Health Service grant appeals procedure

45 CFR part 16—Procedures of the Departmental Grant Appeals Board

45 CFR part 46—Proteciton of human subjects

45 CFR part 74—Administration of grants

45 CFR part 75—Informal grant appeals procedures

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81—Practice and procedure for hearings under part 80 of this title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs and activities receiving Federal financial assistance

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR part 93—New restrictions on lobbying

51 FR 16958 (May 7, 1986), as may be amended, or its successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), as may be amended, or its successor.

§ 52.9 [Amended]

9. The heading of § 52.9 would be revised to read "Additional conditions."

[FR Doc. 94-18651 Filed 8-1-94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 432

RIN 1006-AA34

Fish and Wildlife Service

50 CFR Chapter I

Central Valley Project—Purposes, Uses, and Allocation of Water Supplies

AGENCIES: Department of the Interior, Bureau of Reclamation and Fish and Wildlife Service.

ACTION: Announcement of public meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service (Service) intend to assess the need for rules and regulations addressing implementation of certain provisions of the Central Valley Project Improvement Act (the Act). The Act applies to the Central Valley Project (CVP), California, and to the use and allocation of CVP water.

DATES: The deadline for receiving written comments is October 3, 1994. In addition, Reclamation and the Service will hold a series of public meetings to receive oral comments from interested parties. These public meetings are scheduled as follows:

- August 22, 1994, 7 p.m. to 9 p.m., Redding, California
- August 23, 1994, 1 p.m. to 3 p.m., Oakland, California
- August 24, 1994, 7 p.m. to 9 p.m., Visalia, California
- August 26, 1994, 10 a.m. to 12 p.m., Sacramento, California

ADDRESSES: Written comments should be sent to Gary Sackett, Attention: MP-400, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, or they may be provided to Reclamation and the Service at the public meetings. The public meetings will be held at the following locations:

- Redding—Red Lion Inn (Sierra Room), 1830 Hilltop Drive, Redding, CA 96002
- Oakland—Federal Building (Conference Room A and B), 1310 Clay Street, Oakland, CA 94612
- Visalia—Visalia Convention Center (San Joaquin Room), 303 East Acequia, Visalia, CA 93291
- Sacramento—Beverly Garland Hotel (Donner Room), 1780 Tribute Road, Sacramento, CA 95815

FOR FURTHER INFORMATION CONTACT: Gary Sackett, Attention: MP-400, Mid-Pacific Region, Bureau of Reclamation,

2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–4933, or TDD (916) 978–4417. To be placed on a mailing list to receive future information about any subsequent rulemaking actions, contact Barbara Massey, Public Affairs Office, MP–140, at the above address, telephone (916) 978–4919, or TDD (916) 978–4417.

SUPPLEMENTARY INFORMATION: The Act provides for a number of changes in the purposes and operation of the CVP, and in the use and allocation of CVP water. Subsection 3408(a) of the Act authorizes the Secretary of the Interior to promulgate "* * * such regulations * * * as may be necessary to implement the intent, purposes, and provisions * * *" of the Act. Reclamation and the Service have been authorized by the Secretary to act on his behalf in implementing the Act.

Reclamation and the Service have tentatively concluded that the following provisions of the Act should be considered for rulemaking:

Subsection	Title
3404(c)	Renewal of Long-Term Contracts.
3405(a)	Transfer of Central Valley Project Water.
3405(d)	Water Pricing.
3405(e)	Water Conservation Standards.
3406(b)(2) ...	800,000 Acre-Feet for Fish, Wildlife, and Habitat Restoration.
3406(b)(22) .	Incentives to Flood Fields for Waterfowl Habitat.
3407(a)–(d) .	Restoration Fund.
3408(c)–(d) .	Exchanges, Storage, Conveyance, and Banking.
3408(h)	Land Retirement.
3408(i)	Cost Sharing of Water Conservation Projects.

Public comment is invited on the questions of: (1) whether there are appropriate provisions of the Act to address through rulemaking, and (2) whether there are other provisions of the Act that should be addressed. The comments received will be evaluated as part of the process for finally determining which provisions of the Act to address in rulemaking actions.

The development of any proposed rules and regulations shall be scheduled to benefit from ongoing analyses in the Programmatic Environmental Impact Statement (PEIS) which is being prepared pursuant to Section 3409 of the Act. To the extent, if any, that the rulemaking requires compliance with the National Environmental Policy Act of 1969 (NEPA), such compliance will be coordinated with processes associated with completion and issuance of the PEIS and through such other NEPA compliance activities, if any, as may need to be completed subsequent to the finalization of the PEIS. Any final rulemaking documentation shall occur no earlier than the preparation and dissemination of the Record of Decision associated with the PEIS to fully encompass and ensure benefits from all aspects of this process.

Dated: July 25, 1994.

Roger K. Patterson,

Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation.

Dated: July 22, 1994.

Michael J. Spear,

Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 94–18490 Filed 8–1–94; 8:45 am]

BILLING CODE 4310–94–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–85, RM–8482]

Radio Broadcasting Services; Falmouth and Mashpee, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by J.J. Taylor Companies, Inc., proposing the reallotment of Channel 266A from Falmouth, Massachusetts, to Mashpee, Massachusetts, and modification of the license for Station WFAL(FM), to specify a new community of license. The coordinates for Channel 266A at Mashpee are 41–34–45 and 70–30–45. We shall propose to modify the license for Station WFAL(FM), Falmouth, in accordance with Section 1.420(i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 19, 1994, and reply comments on or before October 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Belisle, Leibowitz & Associates, One S.E. Third Avenue, Suite 1450, Miami, Florida 33131.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–85, adopted July 14, 1994, and released July 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–18728 Filed 8–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 10, 13, 15, 23, 25, 31, 45, and 52

[FAR Cases 90–31, 90–59, 90–67, 91–32, 91–51, 91–71, 91–82, 91–83, 91–100, 91–105, and 91–112]

Federal Acquisition Regulation; Withdrawal of Proposals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rules, withdrawal.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have decided to withdraw the following 11 proposed rules without further action at this point in time in order to prepare for the substantial effort required to rewrite the FAR as called for by the National Performance Review:

FAR Case	Subject	FR Date	FR Cite
90–31	Certification Challenge to BAA, Balance of Payments Program Certificate	6/27/90	55 FR 26342
90–59	Subcontractor Pricing	11/7/91	56 FR 57182
90–67	Preproduction and Startup Costs	5/3/91	56 FR 20506
91–32	Revision of FAR Part 10	7/11/91	56 FR 31844
91–51	Hazardous Warning Labels	11/18/91	56 FR 58296
91–71	Administration of Cost Accounting Standards	3/28/94	59 FR 14468
91–82	BPA Invoicing for Food Products	11/9/93	58 FR 59616
91–83	Government Property	3/28/94	59 FR 14460
90–100	Defective Cost or Pricing Data	12/9/93	58 FR 64824
91–105	First Article Testing and Approval	3/28/94	59 FR 14455
91–112	CODSIA Revisions—Compensation/Pensions/Benefits	3/28/94	59 FR 14458

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755.

List of Subjects in 48 CFR Parts 9, 10, 13, 15, 23, 25, 31, 45, and 52

Government procurement.

Dated: July 26, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 94–18698 Filed 8–1–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 251 and 252

Defense Federal Acquisition Regulation Supplement; Government Supply Sources

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement to clarify its policy concerning contractor payments for materials purchased from Government supply sources.

DATES: Commments on the proposed rule should be submitted in writing at the address shown below on or before October 3, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comment to: Defense Acquistion Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD (A&T) DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 94–D002 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Eric R. Mens, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Office of the Inspector General issued an audit report on June 3, 1994, (Report No. 94–119, Accounts Receivable for DoD Material) which addressed problems with contractors which were delinquent in making payments for materials purchased from the DoD supply system. The proposed rule, which is intended to address the problems identified in the Inspector General's report, revises the Defense FAR Supplement (DFARS) at 251.102(e) to require the contracting officer's authorization for the contractor to purchase from Government supply sources to specifically state the terms of the purchase; adds 251.105 and revises 252.251–7000(d)(4) to clarify that contractor payments for such purchases are due within 30 days of the Government's invoice; revises 252.251–7000(d)(4) to clarify that contractors must pay interest on late payments and that failure to pay may result in loss of the authorization to use Government supply sources; and adds 252.251–7000(f) to provide for identification of the contractor's billing and the Government's remittance address.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule clarifies that the Government terms for contractor payments for purchases from Government supply sources is the same as the standard commercial terms of payment in "net 30 days." The rule will only impact those small entities which fail to meet their payment obligations thereby incurring interest on the overdue amount, which also reflects acceptable commercial practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 251 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 251 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 251 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

2. Section 251.102 is amended by revising paragraph (e) to read as follows:

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251–7000, Ordering from Government Supply Sources.

* * * * *

3. Section 251.105 is added to read as follows:

251.105 Payment for shipments.

Contractor payments for purchases from Government sources are due

within 30 days of the date of the Government's invoice.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.251–7000 is amended to revise paragraph (d)(4) and add a new paragraph (f) to read as follows:

252.251–7000 Ordering from Government supply sources.

* * * * *

ORDERING FROM GOVERNMENT SUPPLY SOURCES (XXX 1994)

* * * * *

(d) * * *

(4) Pay invoices from Government supply sources within 30 days of the date of the invoice. For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the Contracting Officer terminating the Contractor's authorization to use Government supply sources. In the event the Contracting Officer terminates the authorization, such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) * * *

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contract and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

[FR Doc. 94–18649 Filed 8–1–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Notice 4]

RIN 2137–AB97

Excess Flow Valve Installation on Service Lines

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice of reopening comment period.

SUMMARY: This notice of reopening comment period invites public comment on a rulemaking proposal submitted by a group designated as the Joint Commenters. The Joint Commenters submitted the proposal as an alternative to a previously issued Notice of Proposed Rulemaking (NPRM) proposing requirements for the installation of excess flow valves (EFVs) on certain new and replaced gas service lines to improve safety and mitigate the consequences of service line incidents. EFVs shut off the flow of gas by closing automatically when a line is broken. RSPA solicits public comments on this alternative proposal for consideration in this rulemaking.

DATES: Interested persons are invited to submit written comments on this proposed alternative by October 3, 1994; however, late filed comments will be considered to the extent practicable. All persons must submit as part of their written comments all of the material that they consider relevant to any statement of fact made by them.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in Room 8421 between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Jack Willock, or Lloyd Ulrich at (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background Information

In 1993, RSPA published a notice of proposed rulemaking (NPRM) (Docket PS–118; Notice 2; 58 FR 21524; April 21, 1993), titled "Excess Flow Valve Installation on Service Lines" proposing to amend 49 CFR Part 192 to require installation of EFVs on new and replaced single residence service lines operating at a pressure of 10 psig or more. This NPRM also proposed performance standards for EFVs and proposed conditions under which EFVs must be installed. The comment period to this NPRM closed June 21, 1993, but late filed comments were to be considered to the extent practicable. The Joint Commenters filed Joint Supplemental Comments on December 20, 1993. In this document, the Joint Commenters propose regulatory language that those interests they represent could support if RSPA were to adopt their proposal. The entire Joint Commenters' proposal is available in the docket for review.

The Joint Commenters represent diverse interests including EFV manufacturers, a gas safety organization, and two gas pipeline distribution company organizations. The Joint Commenters do not include interests from state and local governments. Although not signatory to the Joint Supplemental Comments, the National Transportation Safety Board (NTSB) agrees with their recommendations. NTSB's comments are also available in the docket for review.

RSPA is reopening the comment period to seek public comment on the safety merits of the Joint Commenters' proposed alternative. RSPA is particularly interested in comments on whether it should adopt any or all of the alternative proposed requirements, with comments specifying which requirements and why.

Bypass Feature

RSPA is interested in receiving comments regarding the safety of installing and operating EFVs with or without the bypass feature. The NPRM proposed to disallow the bypass feature in an EFV whereas the Joint Commenters proposed to allow the feature. The bypass allows the EFV to reopen through use of a gas bleed-by that repressures the service line after it has been repaired. Upon repressuring, the EFV opens and service to the residence is restored.

Two large local distribution operators have pointed out potential hazards caused by automatically resetting EFVs reopening after closure. One of the distribution operators gave two examples of such hazards. First, the operator explained that many older appliances, such as space heaters and old conversion units, as well as many newer appliances, are not equipped with safety shut off valves designed to close when the flow of gas is interrupted, such as when a service line is severed. The operator explained that without the protection of safety shut off valves, such appliances would discharge raw gas into a building after service has been restored through the bypass following an EFV activation unless operator personnel visit each customer and manually relight the appliances.

In the second example, the operator cited a situation where gas would have been discharged into a residence even though safety shut off valves were installed. The operator stated that during a manual relight by operator

personnel of about 200 customers after loss of service, it discovered the safety shut off valves on two water heaters and one furnace had failed to close and would have discharged raw gas into the residences without the manual relight. This example of safety devices failing to work again points out the potential danger involved in automatic restoration of service absent operator personnel visiting each customer to manually relight appliances.

Because of the potential danger pointed out in these two examples, RSPA seeks comment on the conditions under which automatically resetting EFVs should or should not be required in residential service lines.

The other operator cited another potential hazard with automatic resetting EFVs. This operator said that an automatic resetting EFV could allow a damaging party to repair the service and place it back in operation without informing the operator, resulting in greater danger to the public from migrating gas than from the broken service itself. The operator said because it is common for a contractor to pinch back a line and fail to call the operator, the only way to ensure this does not occur is to install manually resetting valves. Manually resetting EFVs would require a service call by a service representative with equipment capable of back-pressuring the line in order to restore service. The service representative would not restore service without checking and relighting all appliances.

As stated in the NPRM, RSPA believes that each operator needs to be informed of all service line ruptures to assure that the line is repaired properly and returned to service in a safe operating condition. However, this operator indicated that because it is common practice for a contractor to repair a line and not call the operator, the operator is not assured that the repair is completed safely. Furthermore, the NPRM discussed an incident in a commercial building that resulted in eight deaths following an unreported, unsanctioned repair to a service line. Although an EFV would not be required in service to a commercial building under the proposed rule, the incident points out the potential for misuse by someone making unauthorized repairs.

RSPA seeks comment on the linkage between the bypass and unauthorized repairs to damaged service lines. In particular, RSPA seeks information on whether EFVs with the bypass would reduce pipeline safety by protecting a damaging party who makes unauthorized repairs to the damaged service line.

RSPA also seeks comment on all costs and benefits associated with manually excavating and resetting EFVs that do not have a bypass or reset feature. Of special interest are any benefits to be gained by reducing the number of unauthorized repairs and the incidents resulting therefrom.

Contaminants in the Gas Stream

Both the NPRM's and Joint Commenters' proposals do not require EFV installation when contaminants in the gas stream would cause the EFV to malfunction. In this regard, RSPA seeks information on criteria for determining the pipeline areas where contaminants may preclude the installation of EFVs.

Performance Standards

Due to the lack of industry standards for EFVs, the NPRM proposed performance standards concerning EFV construction and operation to assure an adequate level of safety. The Joint Commenters' proposal eliminates most of these proposed standards. RSPA has become aware that two pipeline safety standard committees, American Society for Testing Materials (ASTM) F17 and American National Standards Institute/ Gas Piping Technology Committee (ANSI/GPTC) Z380, are studying EFVs. The F17 group is developing standard test procedures for uniform performance testing of EFVs and expects to issue emergency standards soon. The emergency standards would expire upon completion of the normal ASTM standard cycle and issuance of permanent standards.

The Z380 committee is evaluating the need for using EFVs. They are also determining appropriate applications for the device. The standardized requirements should provide a higher level of reassurance about the reliability of EFVs. Reliability has been a concern due to the past absence of participation by pipeline industry-sponsored safety standard committees. Should RSPA await the completion of performance standards by either or both of these professional committees before proceeding with this EFV rulemaking?

Impact Assessment

RSPA prepared a regulatory evaluation to accompany the NPRM. This evaluation is on file in the Docket. Each year, according to the evaluation, about 300,000 new high pressure service lines are installed and 600,000 existing high pressure service lines are replaced. At a cost of $20 per EFV, the estimated annual impact of requiring EFV installation as proposed in both alternatives would be $18 million. Aggregate annual savings of $19-$31 million would result from reduced deaths, injuries, fires, explosions and evacuations.

The Joint Commenters say that the regulatory evaluation contains errors. RSPA seeks additional comments if new information is available. RSPA seeks information on where specifically the analysis is in error, and, if so, where specifically should it be changed? Please justify any proposed changes with supporting data.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113 and 60118; 49 CFR 1.53.

Issued in Washington, DC, on July 27, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–18771 Filed 8–1–94; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 59, No. 147
Tuesday, August 2, 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

Food and Nutrition Service

National Academy of Sciences, Institute of Medicine, Food and Nutrition Board, Committee on Scientific Evaluation of WIC Nutrition Risk Criteria; Opportunity To Provide Written Comments, Public Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Academy of Sciences' (NAS) Institute of Medicine (IOM), through its Food and Nutrition Board (FNB), will conduct the second of two public meetings to obtain additional perspectives about the scientific basis for the nutrition risk criteria used in the Special Supplemental Food Program for Women, Infants, and Children (WIC). Eligibility for WIC is based in part on nutrition risk. Through a grant from the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS), the NAS is reviewing the scientific basis for nutrition risk criteria used in WIC. At the end of the 30-month study, the NAS will publish a report and provide copies to the FNS containing its findings and recommendations.

DATES: This second public meeting will be held on Monday, September 19, 1994, beginning at 1 p.m. Anyone wishing to reserve a place on the agenda at the public meeting to make a 5-minute oral presentation must submit a written request to speak and a copy of their remarks no later than Friday, September 9, 1994. Additional oral presentations may be made on the day of the meeting only as time permits. Such requests should be made at the beginning of the public meeting, no later than 1 p.m. Written comments without oral presentations must also be submitted by September 9. Presentations made at this meeting will be part of the public record, and the press may be present.

ADDRESSES: This second public meeting will be held at the National Academy of Sciences' Arnold and Mabel Beckman Center, 100 Academy Drive, Irvine, California. Requests to make a 5-minute oral presentation about the scientific basis of WIC nutrition risk criteria at the public meeting or to submit written comments without an oral presentation should be sent to Robert Earl, Study Director, Food and Nutrition Board, Institute of Medicine (FO 3041), National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Robert Earl, at (202) 334–1917 [phone]; or (202) 334–2316 [facsimile].

SUPPLEMENTARY INFORMATION: The NAS, through the IOM's FNB, formed the Committee on Scientific Evaluation of WIC Nutrition Risk Criteria (committee) in October 1993 to examine the scientific basis for determining nutrition risk criteria used in the WIC program. The WIC program operates through a preventive approach to health care by providing supplemental foods and nutrition assessment and education to improve nutrition status and thus to improve pregnancy outcome and growth and development of infants and children (up to 5 years of age). The program links food assistance and health programs by its goal of improving nutritional status through food delivery and by serving as a gateway to the public health system principally through Medicaid-delivered health services for pregnant and lactating women, for infants, and for children. Eligibility for the WIC program is based on income (185 percent of poverty level); status as a pregnant or lactating woman, an infant, or a child; and nutrition risk.

Nutrition risk criteria include biochemical and anthropometric measurements, nutritionally related medical conditions, dietary deficiencies that impair or endanger health, and conditions that predispose persons to inadequate nutrition patterns or nutritionally related medical conditions. The appropriateness of nutrition risk criteria is an issue of major interest to the WIC community and of great significance to the future direction of the program. The committee deliberations will address these issues, thereby providing a basis for establishing appropriate guidance for nutrition risk criteria used to establish program eligibility.

The committee will review all WIC nutrition risk factors currently covered by the program. The committee's deliberations will begin with those risk criteria for which there is substantial scientific literature and move to those for which there is little or no scientific literature, that are most difficult to quantify, or that are not likely to be affected by the supplemental food package delivered through the program. The NAS plans to identify gaps in scientific knowledge, to examine specific segments of the WIC population identified to be at risk for each criterion, and if applicable, to report its findings regarding how to determine who is at risk for each criterion, including numerical values.

Public meetings will solicit information from WIC program administrators, staff, and participants as well as from researchers in the fields related to the nutrition risk criteria under study. Two public meetings are being conducted during the course of the committee's work, both in 1994. The first public meeting was held at the National Academy of Sciences, Washington, DC, on May 19, 1994. This second public meeting is scheduled to be held during the third committee meeting in September 1994 at the NAS west-coast meeting facility—the Arnold and Mabel Beckman Center, Irvine, California. A report of the committee's findings and recommendations will be published by the end of the study in April 1996.

Dated: July 22, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service, USDA.

[FR Doc. 94–18684 Filed 8–1–94; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Two Joe Timber Sales; Superior Ranger District, Lolo National Forest; Mineral County, MT; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for timber harvesting, prescribed burning, road access changes, and watershed rehabilitation in a 40,000-acre area near St. Regis, Montana.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than August 31, 1994.

ADDRESSES: Send written comments to Richard P. Kramer, Acting District Ranger, Superior Ranger District, Box 460, Superior, MT, 59872.

FOR FURTHER INFORMATION CONTACT: Terry Egenhoff, Environmental Coordinator, Superior Ranger District, as above, or phone: (406) 822–4233.

SUPPLEMENTARY INFORMATION: The responsible official who will make decisions based on this EIS is Richard P. Kramer, Acting District Ranger, Superior Ranger District, Box 460, Superior, MT, 59872. He will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The Forest Service proposes to harvest about 24.3 million board feet of timber from about 2,600 acres (about 2,200 of those acres to be burned after harvest), prescribed-burn about 400 additional acres for ecosystem and big game habitat improvements, reconstruct about 19.4 miles of road (primarily to mitigate existing water quality/fish impacts), and add new yearlong road closures to about 21.3 miles of currently open roads. New road construction would be limited to 0.4 miles of temporary road plus 0.2 miles of permanent road for helicopter landings. The proposed action also includes some experimental treatment of areas containing small portions of larger populations of an orchid (*Cypripedium fasciculatum*) listed as a sensitive species by the USDA Forest Service Northern Region.

Lands affected are within the Two Mile Creek and Little Joe Creek drainages, tributary to the St. Regis River, immediately southwest of the town of St. Regis, Montana. The project area is bounded by the Montana-Idaho state line to the south and west, and Interstate 90 to the north.

The purpose of this proposal is to carry out the goals and direction given in the Lolo National Forest Land and Resource Management Plan with ecosystem management principles. Key elements of the purpose and need are:

—maintain or enhance ecosystem health and productivity by manipulating vegetation (timber cutting and underburning) to increase age, structure, and composition diversity of biotic communities, by maintaining ecological disturbance processes in this fire-dominated ecosystem, and by removing some insect-infested, diseased, or high-risk trees from sites allocated by the forest plan to timber management;

—reduce existing sediment impacts to water and fish resources caused by existing roads;

—improve and maintain big game winter range and elk security conditions which are declining with current plant succession trends and existing open road access;

—contribute to short-term output goals and long-term forest plan expectations for timber production; and

—conduct some experimental treatments to learn about *Cypripedium fasciculatum*'s habitat requirements and tolerance for environmental disturbance.

The decision to be made is to what extent, if at all, the Forest Service should conduct timber harvest, prescribed burning, road construction or reconstruction, and road closures in the Two mile and Little Joe drainages, given the above purpose and need. This is a site-specific project decision, *not* a general management plan nor a programmatic analysis.

Public scoping has been conducted on most elements of this proposal under earlier proposals called Tujo-Recoyle and Sunset timber sales. This proposed action is a refinement of those proposals.

While quite a number of issues have been identified for environmental effects analysis, the following issues are the ones which so far have been found significant enough to guide alternative development and provide focus for the EIS:

—Timber harvest methods, primarily opposition to clearcutting and other forms of even-age management and concern over the size and extent of harvest openings.

—Road-related effects, including sediment production, fish habitat impacts, wildlife disturbance, and recreation opportunities (some people feel the area has too many roads or that too many roads are open during hunting season, while others are opposed to additional road closures because they limit some forms of recreation and forest use).

—Water quality and fish habitat are affected by existing roads and the proposed actions may have both beneficial and adverse effects on these resources.

—Elk security and big game winter range quality are declining due to existing open roads, harvest openings and plant succession trends, and the proposed actions could have both beneficial and adverse effects on these issues.

—*Cypripedium fasciculatum* may be regionally rare but large numbers are found in this vicinity. Ecologists view this as an opportunity to begin learning more about this plant's habitat needs and response to disturbances as an aid in developing conservation guidelines for the plant while others believe that the plant should be protected from all management-caused disturbances.

In addition to the proposed action, a range of alternatives will be developed in response to issues identified during scoping. Other alternatives planned for detailed study are:

—no action;

—no even-aged timber harvest and more road closures for increased elk security;

—the proposed action except no new road closures;

—watershed rehabilitation but no timber harvest in the Little Joe drainage and no experimental treatment of sensitive plants.

Public participation is important to the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. No formal scoping meetings are planned. However, two periods are specifically designated for comments on the analysis: (1) during this scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. A scoping document will be prepared and mailed to parties known to be interested in the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of issues and alternatives.

The Forest Service will continue to involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a draft EIS.

The draft EIS should be available for review in January, 1995. The final EIS

is scheduled for completion in June, 1995.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important, at this early stage, to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 19, 1994.

Richard P. Kramer,

Acting District Ranger, Superior Ranger District.

[FR Doc. 94–18701 Filed 8–1–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting Cancellation of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission which was to have convened at 1:00 p.m. and adjourned at 3:00 p.m. on Friday, September 9, 1994, at the Arkansas Excelsior Hotel, Finley-Vinson Room, #3 Statehouse Plaza, Little Rock, Arkansas 72201, has been canceled.

The original notice for the September 9, 1994, meeting was announced in the **Federal Register** on July 7, 1994, FR Doc. 94–16362, 59 FR 34798.

Persons desiring additional information, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009).

Dated at Washington, DC, July 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–18748 Filed 8–1–94; 8:45 am]

BILLING CODE 6335–01–F

Notice of Public Meeting Cancellation of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission which was to have convened at 6:00 p.m. and adjourned at 8:00 p.m. on Tuesday, September 13, 1994, at the Doubletree Hotel, Shadows Room, 300 Canal Street, New Orleans, Louisiana 70130, has been canceled.

The original notice for the September 13, 1994, meeting was announced in the **Federal Register** on July 7, 1994, FR Doc. 94–16363, 59 FR 34799.

Persons desiring additional information, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009).

Dated at Washington, DC, July 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–18747 Filed 8–1–94; 8:45 am]

BILLING CODE 6335–01–F

Notice of Public Meeting Cancellation of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission which was to have convened at 6:00 p.m. and adjourned at 8:00 p.m. on Wednesday, August 10, 1994, at the Edison Walthall Hotel, Azalea Room, 225 East Capitol Street, Jackson, Mississippi 39201, has been canceled.

The original notice for the August 10, 1994, meeting was announced in the **Federal Register** on July 7, 1994, FR Doc. 94–16361, 59 FR 34799.

Persons desiring additional information, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009).

Dated at Washington, DC, July 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–18749 Filed 8–1–94; 8:45 am]

BILLING CODE 6335–01–F

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: Quarterly Summary of Federal, State, and Local Tax Revenue.

Form Number(s): F–71, F–72, F–73.

Agency Approval Number: 0607–0112.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 6,057 hours.

Number of Respondents: 6,006.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts this survey on a quarterly basis to gather information on tax revenues collected by state and local tax collecting agencies. The Bureau uses the data to publish benchmark statistics on public sector taxes. The data are also used by the Bureau of Economic Analysis, the Federal Reserve Board, the Department of Treasury, and others to provide the most current information on the status of state and local governments.

Affected Public: State or local governments.

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 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–18720 Filed 8–1–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 27–94]

Foreign-Trade Zone 104—Savannah, GA; Wal-Mart Stores, Inc.; Distribution and Processing Facility; Application for Subzone Bulloch County, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting special-purpose subzone status for a new distribution and processing facility of Wal-Mart Stores, Inc., located in Bulloch County, Georgia, in the Savannah Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 15, 1994.

Wal-Mart is a nationwide discount merchandiser, headquartered in Bentonville, Arkansas. The company employs 520,000 people and its total sales exceed $67 billion.

Wal-Mart is constructing a new distribution/processing facility (1.5 mil. sq. ft. on 163-acre site) at County Road 204 and Highway 301, Statesboro, Georgia, some 45 miles northwest of Savannah. The facility will be used to store, test, and distribute a wide range of consumer products, some of which are of foreign origin. There will be processing activity for some products. The application contains requests for authority to assemble stereo systems (duty rate 3.7%) and camera kits (duty rate 3.0%) under zone procedures. Items sourced from abroad for the stereo assembly operations include: tuners, amplifiers, and turntables (duty rate range 4.4%–6.0%). Items sourced abroad for the camera kit assembly operations include: camera cases (plastic, leather, and other), lenses, and film (duty rate range 3.7%–20.0%).

Zone procedures would exempt Wal-Mart from Customs duty payments on the foreign products that are reexported. It would be able to defer Customs duty payments on domestic sales, and choose the finished product duty rates on the above noted items processed at the facility. The application indicates that zone savings would help improve the international competitiveness of the distribution/processing facility.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 3, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 17, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 120 Barnard St., A–107, Savannah, Georgia 31401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: July 22, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–18785 Filed 8–1–94; 8:45 am]

BILLING CODE: 3510–DS–P

International Trade Administration

[A–423–807]

Termination of Antidumping Duty Investigation: Certain Carbon and Alloy Steel Wire Rod From Belgium

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

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Ellen Grebasch, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0922 or 482–3773, respectively.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorous, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, ball bearing steel rods, and concrete reinforcing bars;
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth.

The products under investigations are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Termination of Investigations

On June 13, 1994, we published the preliminary determination of sales at less than fair value (59 FR 30337).

In a letter dated June 30, 1994, petitioner notified the Department of the withdrawal of its February 14, 1994, petition and requested termination of the antidumping investigation.

In accordance with Section 734(a)(1) of the Tariff Act of 1930, as amended, upon the petitioner's withdrawal of the petition, the Department may terminate an investigation after notice to all parties as a precondition to the proceeding. In addition, 19 CFR 353.17(a) requires that the Department first consult with the International Trade Commission (ITC). Finally, the Department may not terminate an investigation unless it concludes that termination is in the public interest.

We have notified all parties to the proceeding and consulted with the ITC. In addition, we have concluded that termination of the investigation is in the

public interest. Accordingly, we are terminating the antidumping investigation of certain alloy and carbon steel wire rod from Belgium. This action is taken pursuant to section 734(a)(1) of the Tariff Act of 1930, as amended.

Termination of Suspension of Liquidation

The Department of Commerce has instructed the U.S. Customs Service to discontinue suspension of liquidation of entries of steel wire rod from Belgium, entered or withdrawn from the warehouse for consumption, on or after June 13, 1994. All estimated antidumping duties deposited on entries of the subject merchandise shall be refunded and the bonds or other securities released at the time of liquidation.

Dated: July 25, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–18787 Filed 8–1–94; 8:45 am]

BILLING CODE 3510–DS–M

Oregon State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–022. *Applicant:* Oregon State University, Corvallis, OR 97331-7302. *Instrument:* Mass Spectrometer, Model API III Plus. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* See notice at 59 FR 16187, April 6, 1994. *Reasons:* The foreign instrument provides: (1) an atmospheric pressure ion source, (2) a mass range to 2400 amu and (3) an HPLC flow rate to 200 µl per minute. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–029. *Applicant:* University of Florida, Gainesville, FL 32611-7200. *Instrument:* Excimer Laser Pumped Dye Laser System, Model LPX 240i. *Manufacturer:* Lambda Physik, Germany. *Intended Use:* See notice at 59 FR 13706, March 23, 1994. *Reasons:* The foreign instrument provides: (1) a minimum pluse energy of 200 mJ at 308 nm and (2) two tunable UV dye lasers with frequency doubling and beam compensation. *Advice Received From:* National Institutes of Health, June 23, 1994.

Docket Number: 94–038. *Applicant:* University of South Dakota, Vermillion, SD 57069. *Instrument:* Light Scattering Correlator and Goniometer System, Model ALV/DLS/SLS-5000. *Manufacturer:* ALV-Laser Vertriebsgesellschaft m.b.H., Germany. *Intended Use:* See notice at 59 FR 16188, April 6, 1994. *Reasons:* The foreign instrument provides capability to simultaneously measure static and dynamic light scattering by the sample. *Advice Received From:* National Institutes of Health, June 23, 1994.

Docket Number: 94–049. *Applicant:* Mayo Foundation, Rochester, MN 55905. *Instrument:* Mass Spectrometer with Combined Gas Chromatograph/Combustion Interface, Model Delta S. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 23696, May 6, 1994. *Reasons:* The foreign instrument provides: (1) an inlet with combined gas chromatograph and radiation-reduction furnaces and (2) internal precisions of 0.01 percent and 0.006 per mil for 100 bar µl samples. *Advice Received From:* National Institutes of Health, June 23, 1994.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–18786 Filed 8–1–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 071594C]

Marine Mammals: Pinniped Removal Authority

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

ACTION: Notice of receipt of application to establish a Pinniped-Fishery Interaction Task Force; request for comments.

SUMMARY: NMFS announces the receipt of, and requests comments and information on, an application under section 120 of the Marine Mammal Protection Act (MMPA) from the Washington Department of Fish and Wildlife (WDFW). This application requests the Secretary of Commerce (Secretary) to establish a Pinniped-Fishery Interaction Task Force (Task Force) and initiate the process provided by the MMPA to authorize the intentional lethal taking of individually identifiable California sea lions that prey on wild winter-run steelhead that migrate through the Ballard Locks in Seattle, WA. This authorization is requested in order to protect the 1994–95 Lake Washington winter-run of steelhead.

DATES: Comments and information must be received by September 1, 1994.

ADDRESSES: Comments on the application should be addressed to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. A copy of the application and supplemental documents may be obtained by writing to this address or by telephoning the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, Northwest Region, NMFS, 206–526–6143 or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361 *et seq.*) as amended in 1994, provides the Secretary the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on salmonids that are either: (1) Listed under the Endangered Species Act (ESA); (2) approaching a threatened or endangered status; or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) Listed under the ESA; (2) designated as depleted; or (3) designated a strategic stock. The process for determining whether to implement the authority in section 120 commences with a state developing and submitting an application that provides a detailed description of the interaction problem, the means of identifying the individual pinnipeds, and expected benefits of the taking. Within 15 days of receiving an application, the Assistant

Administrator for Fisheries, NOAA (AA) must determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to address the situation described in the application. If the application provides sufficient evidence, NMFS must publish a notice in the **Federal Register** requesting public comment on the application, and establish a Task Force consisting of: (1) NMFS/NOAA staff; (2) scientists who are knowledgeable about the pinniped interaction; (3) representatives of affected conservation and fishing community organizations; (4) treaty Indian tribes; (5) the States; and (6) such other organizations as NMFS deems appropriate. The Task Force must, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests. Meetings of the Task Force must be open to the public. Within 60 days after establishment, and after reviewing public comments in response to the **Federal Register** notice, the Task Force is to recommend to NMFS approval or denial of the proposed intentional lethal taking along with recommendations on the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force must also suggest non-lethal alternatives, if available and practicable, including a recommended course of action. Within 30 days after receipt of the Task Force's recommendations, NMFS must either approve or deny the application. If such application is approved, NMFS must immediately take steps to implement the intentional lethal taking. The intentional lethal taking is to be performed by Federal or state agencies, or qualified individuals under contract to such agencies.

Notice of Request

On July 12, 1994, NMFS received an application, dated June 30, 1994, from the WDFW, to authorize the intentional lethal taking of individually identifiable California sea lions (*Zalophus californianus*) that prey on wild winter-run steelhead (*Oncorhynchus mykiss*) that migrate through the Ballard Locks in Seattle, WA. The WDFW requested that the Secretary establish a Task Force and initiate the process provided by section 120 of the MMPA so that authorization for lethal removal, if approved, is authorized in time for protection of the 1994–95 winter-run of steelhead that will migrate through the Ballard Locks from December 1994 through the end of March 1995.

The AA has determined that the WDFW's application does provide sufficient evidence to warrant establishment of a Task Force. The NMFS Northwest Regional Office will take the lead in establishing the Task Force and making arrangements for the meetings of the Task Force. These meetings will be open to the public.

The WDFW's application references several studies and documents prepared by NMFS and the WDFW which provide scientific information that California sea lions are negatively affecting the wild winter-run of steelhead migrating through the Ballard Locks through predation and obstruction of fish passage. Although other factors may have contributed to the decline of this wild steelhead population, extensive studies by NMFS and WDFW have documented that predation by California sea lions has been a principal factor since 1985 affecting the status of this steelhead run. Studies at the Ballard Locks have documented that California sea lions have consumed over 50 percent of the adult returns in recent years. This winter-run steelhead population has declined dramatically in recent years, and NMFS is currently undertaking a status review to determine whether this population should be proposed for listing under the ESA. Non-lethal means of controlling sea lion predation have not been successful in reducing predation and allowing increased passage through the Ballard Locks facility. Although the sea lion predation problem may involve as many as 40 animals, an average of only three to six animals have been responsible for much of the predation each year. Wild steelhead spawning escapement into the Lake Washington drainage has declined from about 2,500 fish in the mid-1980's to a 1993–94 spawning escapement of only 70 steelhead. The WDFW's application indicates that lethal removal is a short-term solution for an emergency situation in preventing extirpation of a wild salmonid stock. Their expected immediate benefit of selective lethal removal of depredating sea lions at the Ballard Locks will be to enhance steelhead escapement levels, thereby enhancing spawning success to maintain the stock.

Information Solicited

Public comments and information on the WDFW's application are requested and will be considered by the Task Force and NMFS in determining whether lethal removal should be authorized. A copy of the WDFW's application is available from NMFS (see **ADDRESSES**). In addition, NMFS and the WDFW are making available to the public copies of Environmental Assessments (EAs) published in 1989, 1992 and 1994 under the National Environmental Policy Act on the situation at Ballard Locks (see **ADDRESSES**). These EAs provide extensive background information on the problem and non-lethal efforts to address the problem. NMFS also has available limited copies of a recent report prepared for the Marine Mammal Commission entitled "A Description and Assessment of the Interaction Between California Sea Lions and Steelhead Trout at the Chittenden Locks, Seattle, Washington."

Dated: July 27, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–18703 Filed 8–1–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071494B]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Renewal of an experimental fishing permit.

SUMMARY: NMFS announces the renewal of experimental fishing permit (EFP) #93–1 to Terra Marine Research and Education, Inc. (TMRE), and participating vessels and shoreside processors. Under the renewal process, a new EFP #94–2 will be issued to authorize vessel operators, shoreside processors, and TMRE to retain voluntarily Pacific salmon caught as bycatch that would otherwise be required to be discarded at sea as prohibited species. This EFP was designed and modified to develop qualifying criteria for vessels and processors that may wish to participate in a voluntary salmon bycatch donation program being considered by the North Pacific Fishery Management Council (Council). Activities authorized under this EFP are intended to provide information not otherwise available through research or commercial fishing operations.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) may be obtained from Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907–586–7228.

SUPPLEMENTARY INFORMATION: Issuance of EFPs to authorize fishing that would otherwise be prohibited are authorized by the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and its implementing regulations at 50 CFR part 675. The procedures for renewing EFPs are contained in the regulations at § 675.6.

An EFP was issued to TMRE to test the feasibility of mandatory retention of Pacific salmon caught as bycatch in directed BSAI groundfish fisheries that would be processed and distributed to economically disadvantaged individuals (58 FR 42947, August 12, 1993). This EFP covered the period during: (1) The 1993 directed pollock non-roe season; (2) the 1994 directed pollock roe season; and (3) the 1994 directed Pacific cod season. However, NMFS lacks the authority to require mandatory retention of salmon for this purpose.

NMFS announced the receipt of an application for an EFP from TMRE in the **Federal Register** on May 4, 1994 (59 FR 23054). The application requested authorization for voluntary retention and processing of Pacific salmon caught as bycatch in the BSAI pollock and Pacific cod trawl fisheries for donation to economically disadvantaged individuals via foodbanks. The Council reviewed the EFP application at its April 18–24, 1994, meeting and recommended to the Director of the Alaska Region, NMFS (Regional Director), that the EFP be approved.

The Regional Director has approved the EFP application and has issued an EFP to TMRE and the participating vessels and shoreside processors. The EFP authorizes these vessel operators, shoreside processors, and TMRE to retain Pacific salmon caught as bycatch during: (1) The 1994 BSAI directed pollock non-roe or "B" season fishery; (2) the 1995 BSAI directed pollock roe or "A" season fishery; and (3) the 1995 BSAI directed Pacific cod fishery, for the purpose of producing salmon products to be distributed to economically disadvantaged individuals via foodbanks. The objective of this EFP is to provide a framework for voluntary retention and processing of salmon bycatch, which is currently required to be discarded at sea, and to develop standards and criteria for vessel operators and processors who may wish to participate in a voluntary salmon donation program being considered by the Council.

Classification

Based on the EA prepared for this EFP, the Assistant Administrator for Fisheries, NOAA, determined that no significant impact on the quality of the human environment will result from this EFP. The Regional Director determined that this experiment will not affect species listed as threatened or endangered under the Endangered Species Act in a way that was not already considered in previous formal and informal section 7 consultations. Additional information, including gear restrictions, scientific sampling procedures, project design, and disposition of harvested fish, is contained in the EFP.

This notice is exempt from OMB review under E.O. 12866.

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

Dated: July 27, 1994.

Joe P. Clem,

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

[FR Doc. 94–18704 Filed 8–1–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) scheduled for August 16–17, 1994 as published in the **Federal Register** (Vol. 59, No. 138, Page 37033, Wednesday, July 20, 1994, FR Doc. 94–17626) will be held on September 9, 1994.

Dated: July 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–18744 Filed 8–1–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Depot Maintenance Management

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Depot Maintenance Management scheduled for June 22, 1994 as published in the **Federal Register** (Vol. 59, No. 102, Page 27539, Friday, May 27, 1994, FR Doc. 94–12934) was held on July 27, 1994.

Dated: July 28, 1994.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–18745 Filed 8–1–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Finding of No Significant Impact (FNSI) and Environmental Assessment for Realignment of Fort Jackson, SC

AGENCY: Department of the Army, DoD.

ACTION: Finding of no significant impact.

SUMMARY: In accordance with procedures established by the Defense Base Closure and Realignment Act of 1990 (BRAC), the 1993 Defense Base Closure and Realignment Commission recommended that the Chaplain Center and School (CHCS) be relocated from Fort Monmouth, New Jersey, to Fort Jackson, South Carolina. The proposed action is necessary to implement this recommendation. Facility requirements of the CHCS include general and applied instructional facilities, administrative and operations area, historical property storage, and a library, as well as Protestant, Catholic, Jewish, and Moslem chapels.

Realigning the CHCS and associated activities will involve approximately 100 permanent party soldiers, 50 civilian employees, and an average daily student load of 165. To accomplish the increased mission at Fort Jackson, construction of a new CHCS administrative and instructional facility will be required.

The construction of a 136-unit Unaccompanied Officers Quarters (UOQ) is also included as part of this environmental assessment. However, the UOQ is not a BRAC 93 project, neither is it a result of the BRAC 93 realignment. The increase in unaccompanied officers due to the BRAC 91 realignment of the Soldier Support Institute (SSI) to Fort Jackson from Fort Benjamin Harrison has created a shortage of UOQ spaces. The construction of a new UOQ facility at Fort Jackson would reduce this deficit, requiring fewer unaccompanied officers to be housed off base. The UOQ was added to the BRAC 91 construction program after the Environmental Assessment prepared for the SSI was completed.

Alternatives Considered: Alternatives considered in the Environmental Assessment (EA) include the following.

the preferred alternative, which is to construct a CHCS facility near the Soldier Support Institute building currently under construction, and to construct a 136-unit Unaccompanied Officers Personnel Housing facility, which would provide housing for officer basic course student on temporary duty attending the Adjutant General, Finance, and Recruiting and Retention schools at the SSI; the No-Action Alternative; and various siting alternatives at the installation for both the CHCS and UOQ.

Feasibility criteria were based on such factors as operational impacts, environmental constraints, future expansion capability, base vehicular traffic flow, ease of accessibility from on and off post, heating and air conditioning requirements, proximity to dining facilities and billets, demolition requirements, and conduciveness to a campus atmosphere. This latter criteria responds to a desire to have academic training areas set apart from other military training activities.

Factors Considered in Determining that No Environmental Impact Statement is Required: Implementation of the proposed action would not significantly alter baseline environmental conditions at Fort Jackson. During construction there would be short-term increases in dust and particulate levels associated with construction activities. Mitigation measures are in place to minimize temporary impacts related to construction.

Construction will have no significant impact on ground water or on any wild and scenic rivers in South Carolina; however, it may have short-term impacts on some surface waters. These impacts will be negligible, since proper erosion and siltation control measures, as well as building designs that minimize erosion and flooding potential, will be utilized.

Combustion by-product emissions from construction equipment will be a short-term impact. Long-term increases in non-commercial vehicular emissions can be expected because of the additional personnel at Fort Jackson. Projected traffic increases are minor relative to the number of vehicles already on-post, and will not affect regional air quality attainment status; therefore, this impact is not considered significant.

The City of Columbia's water supply system and water treatment system is easily capable of absorbing the very minor increase in water usage and wastewater generation that will accompany the proposed realignment. Therefore, this expected increase in water usage and sewer discharge is not considered significant. Increased demand for electricity and heating fuels is considered to be negligible.

After coordinating with the U.S. Fish and Wildlife Service and the South Carolina Wildlife and Marine Resources Department, it was determined that BRAC 93 activities have no negative impacts on federally listed or proposed threatened and endangered species, including the red-cockaded woodpecker population at Fort Jackson. Coordination with the Charleston District U.S. Army Corps of Engineers revealed that there are no jurisdictional wetlands that will be impacted by construction of BRAC 93 CHCS facilities and the UOQ at Fort Jackson. The proposed construction will not have any adverse affect on any historic or cultural resources eligible for inclusion on the National Register of Historic Places.

The realignment action will have a positive impact on Richland and Lexington counties with respect to employment, population, business volume, and personal income. However, these increases will not significantly alter the socioeconomic characteristics of the Fort Jackson region.

Conclusion: It has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or human environment. Because there would be no significant environmental impacts resulting from the implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Comments must be received September 1, 1994.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire regarding this FNSI by writing to the U.S. Army Corps of Engineers, ATTN: Mr. Richard Muller, Planning Division, 803 Front Street, Norfolk, VA 23510–1096.

FOR FURTHER INFORMATION CONTACT: Questions regarding this FNSI may be directed to the U.S. Army Corps of Engineers, ATTN: Mr. Richard Miller, at (804) 441–7767.

Dated: July 27, 1994.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupation Health) OASA (IL&E).

[FR Doc. 94–18775 Filed 8–1–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/AT(EU)–69 for the transfer of 3.760 kilograms of uranium containing 743 grams of the isotope uranium-235 (enriched to 19.755 percent) from France to Austria for use as fuel in the ASTRA research reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, is has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 27, 1994.

Edward T. Fei,

Acting Director, Division of International and Regional Security, Office of Arms Control and Nonproliferation.

[FR Doc. 94–18782 Filed 8–1–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "Subsequent arrangment" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the shipment of 7,500 kilograms of uranium

containing approximately 74 kilograms of the isotope uranium-235 (less than one percent enrichment), and 0.5 grams of plutonium which is contained in nitric acid. The material will be shipped to British Nuclear Fuels plc in the United Kingdom. The uranium will be recovered and stored in the United Kingdom. Title to the recovered uranium will be retained by the United States Department of Energy.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 27, 1994.

Edward T. Fei,

Acting Director, Division of International and Regional Security, Office of Arms Control and Nonproliferation.

[FR Doc. 94–18783 Filed 8–1–94; 8:45 am]

BILLING CODE 6450–01–M

Draft Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes at the Hanford Site, Richland, WA, and Announcement of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Safe Interim Storage of Hanford Tank Wastes Draft Environmental Impact Statement (DOE/EIS–0212), prepared jointly with the Washington Department of Ecology (Ecology). The draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, and its implementing regulations and the Washington State Environmental Policy Act (SEPA) guidelines. DOE and Ecology have identified the need to resolve near-term tank safety issues associated with Watchlist tanks identified pursuant to Section 3137 of P.L. 101–510, the National Defense Authorization Act for Fiscal Year 1991, "Safety Measures for Waste Tanks at Hanford Nuclear Reservation," while continuing to provide safe storage for other Hanford wastes. This would be an interim action pending other actions that could be taken to convert waste to a more stable form based on decisions resulting from the Tank Waste Remediation System (TWRS) Environmental Impact Statement (EIS). The purpose for this action is to resolve safety issues concerning the generation of unacceptable levels of hydrogen in two Watchlist tanks, 101–SY and 103–SY. Current planning considers retrieval in dilute form of waste from Tanks 101–SY and 103–SY, hydrogen-generating Watchlist double shell tanks (DSTs) in the 200 West area, to be the highest priority action.

DATES: The Department invites comments on the Draft Statement from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the Draft Statement will be considered in preparing the Final Environmental Impact Statement (Final Statement) and should be received by September 19, 1994. Written comments received after that date will be considered to the degree practicable.

The Department will also hold three public hearings at which agencies, organizations, and the general public are invited to present oral comments or suggestions on the Draft Statement. Locations, dates, and times for the public hearings are provided in the sections of this notice entitled "PUBLIC HEARINGS." Written and oral comments will be given equal weight and will be considered in preparing the Final Statement. Requests for copies of the Draft Statement and/or Final Statement or questions concerning the project, should be sent to: Dr. Don Alexander, U.S. Department of Energy; or Mr. Geoff Tallent, Washington Department of Ecology at the addresses noted below.

ADDRESSES: Written comments on the Draft Statement should be received by September 19, 1994, for incorporation into the public hearing record. Oral comments will be accepted at the public hearings. Written comments, requests to speak at the hearings, or questions concerning the Safe Interim Storage of Hanford Tank Wastes EIS, should be directed to:

Dr. Donald H. Alexander, U.S. Department of Energy, P.O. Box 550, MSIN S7–51, Richland, WA 99352, (509) 372–2453

Mr. Geoff Tallent, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 99352, (206) 407–7112

If you request to speak, please indicate at which hearing(s). Envelopes should be labeled "Safe Interim Storage of Hanford Tank Wastes, Draft Environmental Impact Statement."

FOR FURTHER INFORMATION CONTACT: For general information on the Department's EIS process and other matters related to the National Environmental Policy Act, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background, Purpose and Need for the Proposed Action

DOE has instituted numerous actions directed toward resolving safety concerns regarding the Watchlist tanks. In addition to tank-specific safety evaluations, DOE is currently mitigating near-term risk of fire or explosion involving hydrogen gas generation from Tank 101–SY by operating a mixer pump which modifies the rate and mechanism of hydrogen releases. Mixer pump installations in other hydrogen-generating Watchlist tanks may also mitigate the near-term risks of accidents. However, DOE has identified retrieval and dilution of the wastes in flammable gas-generating Watchlist tanks as the primary mechanism for resolving safety issues which would assure safe storage of these wastes during the interim time frame prior to implementing decisions based on the TWRS EIS that might change the form of the waste. Retrieval of the waste and storage in a dilute form would be considered remediation, the final step in safety issue resolution of the hydrogen under this strategy, while installation and operation of mixer pumps would be considered mitigation. Dilution would eliminate the generation of unacceptable levels of hydrogen by altering the reactions that result in hydrogen build up. Mitigation by mixer pumps would eliminate the mechanisms by which hydrogen gas concentrates to unacceptable levels.

Because most of the Watchlist tanks are at or near capacity, dilution can best be accommodated through the use of other tank space rather than dilution in place. Upon review of available tank space and considering the potential for chemical incompatibility if existing DSTs were to be used as receiver tanks for Watchlist wastes, DOE is proposing to construct additional tank space to meet the need in the near term for storage of diluted wastes that would be retrieved from Watchlist Tanks 101–SY and 103–SY.

Environmental Impact Statement Preparation

The Draft Statement has been prepared in accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA), as implemented in regulations promulgated by the Council on Environmental Quality (40 CFR Parts

1500–1508) and by the Department's Implementing Procedures (10 CFR Part 1021). The Draft Statement has been prepared to assess the potential impacts of both the proposed action, and reasonable alternatives to the proposed action, on the human and natural environment.

A Notice of Intent (Notice) to prepare the Environmental Impact Statement and hold public scoping meetings in Spokane, Richland, and Seattle, Washington, Hood River and Portland, Oregon, was published by the Department in the **Federal Register** on January 28, 1994. The Notice invited oral and written comments and suggestions on the proposed scope of the Environmental Impact Statement, including environmental issues and alternatives, and invited pubic participation in the NEPA process. Overall, scoping comments were received that assisted in identifying major issues for subsequent in-depth analysis in the Draft Statement. As a result of the scoping process, an Environmental Impact Statement Implementation Plan was developed to define the scope and provide further guidance for preparing the Environmental Impact Statement.

The Draft Statement considers the proposed action and the no-action alternative, which includes a scenario that reasonably could be expected to result as a consequence of the no-action alternative. Impacts to the affected environment, geologic resources, seismology, water resources and hydrology, physical environment, radiation, sound level and noise, ecology including threatened and endangered species (plant and animal), and socioeconomic resources (including environmental justice) from construction of the proposed new tanks have been analyzed.

The Draft Statement provides an analysis of information prepared to evaluate the potential environmental impacts of the proposed construction and operation of six new tanks, an initial tank retrieval system and cross-site transfer system, and associated facilities.

Comment Procedures

Availability of Draft Statement

Copies of the Draft Statement are being distributed to organizations, environmental groups, and individuals known to be interested in or affected by the proposed project. Additional copies of either the main document or appendices to the main volume may be obtained by contacting the Department as provided in the section of this notice entitled **ADDRESS.**

Copies of the Draft Statement, and major documents referenced in the Draft Statement, are available for inspection at the locations identified below:

(1) U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 10585, (202) 586–6020, Monday–Friday: 9 a.m. to 4 p.m.

(2) U.S. Department of Energy, Richland Operations Office, Public Reading Room, Washington State University Tri-Cities, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday: 8 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

(3) Suzzallo Library, SM25, University of Washington Libraries, University of Washington, Seattle, WA 98185, (206) 543–9158, Monday–Thursday: 7:30 a.m. to 12 midnight, Friday: 7:30 a.m. to 6:30 p.m.; Saturday: 9 a.m. to 5 p.m.; Sunday 12 p.m. to 12 midnight.

(4) Foley Center, Gonzaga University, East 502 Boone Avenue, Spokane, WA 99258, (509) 328–4220, Extension 3125, Summer Hours: Monday–Friday: 8 a.m. to 9 p.m.; Saturday: 10 a.m. to 6 p.m.

(5) Portland State University, Branford Price Millar Library, SW., Harrison and Park, Portland, OR 97207, (503) 725–3690.

You may also receive a copy of the Draft Statement by calling the Hanford Cleanup Hotline toll-free at 1–800–321–2000. If you have special accommodation needs, contact Michelle Davis at (206) 407–7126 or (206) 407–7155 Telecommunications Device for the Deaf (TDD).

Written Comments. Interested parties are invited to provide comments on the content of the Draft Statement to the Department as indicated in the section of this notice entitled **ADDRESS.** Envelopes should be labeled "Safe Interim Storage of Hanford Tank Wastes, Draft Environmental Impact Statement." Comments received after September 19, 1994, will be considered to the extent practicable.

Public Hearings

Procedures

The public is invited to provide oral comments on the Draft Statement to the Department at the scheduled public hearings. Advance registration for presentation of oral comments at the hearings will be accepted up to the day prior to the scheduled meeting by calling 1–800–500–1660 (prior to 3 p.m.). Requests to speak at a specific time will be honored if possible. Registrants are allowed only to register themselves to speak and must confirm the time they are scheduled to speak at the registration desk the day of the hearing. Persons who have not registered in advance may register to speak when they arrive at the hearings to the extent that time is available. To ensure that as many persons as possible have the opportunity to present comments, five minutes will be allotted to each speaker. Persons presenting comments at the hearings are requested to provide the Department with written copies of their comments at the hearing, if possible. Written comments sent by mail at the office listed in the **ADDRESS** section above, must be received no later than September 19, 1994. Envelopes should be labeled "Safe Interim Storage of Hanford Tank Wastes, Draft Environmental Impact Statement."

Hearing Schedules and Locations. Public Hearings will be held at the following locations, times, and dates:

1. *Portland, OR*—Tuesday, August 30, 1994, Red Lion/Lloyd's Center, 1000 N.E. Multnomah, Portland, OR 97204, Phone: (503) 281–6111, Walter Thayer
2. *Pasco, WA*—Thursday, September 1, 1994, Pasco Red Lion, 2525 North 20th Pasco, WA 99302, Phone: (509) 547–0701, Robin
3. *Spokane, WA*—Wednesday, September 7, 1994, Spokane Sheraton, N. 322 Spokane Falls Court, Spokane, WA 99201, Phone: 1 (800) 848–9600 or (509) 455–9600.

Conduct of Hearings. The Department's rules and procedures for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. The hearings will not be of an adjudicatory or evidentiary nature. Speakers will not be cross-examined, although the presiding officer and the Department of Energy hearing panel members will respond to comments and questions from the public. In addition, the Department of Energy's representatives will be available to discuss the project in informal conversations. A transcript of the hearing will be prepared, and the entire record of each hearing, including the transcript, will be placed on file by the Department for inspection at the public locations given above in the **COMMENT PROCEDURES** section.

Signed in Richland, WA this 20th day of July 1994, for the United States Department of Energy.

Paul F.X. Dunigan, Jr.,

NEPA Compliance Officer.

[FR Doc. 94–18781 Filed 8–1–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER93-667-000, et al.]

Public Service Electric and Gas Company, et al.; Electric Rate and Corporate Regulation Filings

July 26, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Electric and Gas Company

[Docket No. ER93-667-000]

Take notice that on March 24, 1993, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an initial Rate Schedule for the sale of Energy and Capacity to Central Vermont Public Service Corporation (Central Vermont).

In response to further discussions with Commission Staff, PSE&G on July 21, 1994, tendered for filing the First Supplemental Agreement by and between PSE&G and Central Vermont which addresses FERC inquiries, defines terminology, and explains methodology.

Copies of the filing were served upon Central Vermont and the New Jersey Board of Public Utilities.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER94-1473-000]

Take notice that PSI Energy, Inc. (PSI), on July 20, 1994, tendered for filing an Interchange Agreement, dated July 1, 1994, between PSI and Electric Clearinghouse, Inc. (ECI).

The Interchange Agreement provides for the following service between PSI and ECI:

1. Exhibit A—Power Sales by ECI
2. Exhibit B—Power Sales by PSI

Copies of the filing were served on Electric Clearinghouse, Inc., Texas Public Utility Commission and the Indiana Utility Regulatory Commission.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Illinova Power Marketing, Inc.

[Docket No. ER94-1475-000]

Take notice that on July 20, 1994, Illinova Power Marketing, Inc. (IPMI) petitioned the Commission for acceptance of IPMI FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations IPMI is an indicated subsidiary of Illinova Corp., the parent company of Illinois Power Company.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Valley Electric Corporation

[Docket No. ER94-1476-000]

Take notice that on July 21, 1994, Ohio Valley Electric Corporation (OVEC) tendered for filing Modification No. 8, dated as of January 19, 1994, (Mod. No. 8) to the Inter-Company Power Agreement dated July 10, 1953, among OVEC and certain other utilities (the Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation "Ohio Valley Electric Corporation Rate Schedule FPC No. 1-B."

Mod. No. 8 would amend the Inter-Company Power Agreement to allow for the emergency supply of power and energy by OVEC to the other utilities that are parties to the Inter-Company Power Agreement, as well as for the recovery of an emergency power surcharge equal to the estimated load reduction costs of OVEC's sole retail customer, the United States Department of Energy. OVEC has requested an effective date of January 19, 1994.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, and the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. United Illuminating Company

[Docket No. ER94-1477-000]

Take notice that on July 21, 1994, The United Illuminating Company (UI) submitted for a supplement to Appendix B of its Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, to add entities eligible to purchase from UI under the Tariff.

Copies of this filing have been served on the Connecticut Commission and on the entities listed on the supplement.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Electrade Corporation

[Docket No. ER94-1478-000]

Take notice that Electrade Corporation (Electrade) on July 21, 1994, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, 385.207 (1993), its Rate Schedule No. 1, to be effective 60 days from and after July 21, 1994, and a petition for waivers of and blanket approvals under various regulations of the Commission, and clarification of jurisdiction under Section 201 of the Federal Power Act.

Electrade intends to engage in electric power and energy transactions as a marketer. Electrade's marketing activities will include purchasing capacity, energy and/or transmission services from electric utilities, qualifying facilities and independent power producers, and reselling such power to other purchasers. Electrade proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length. Electrade is not in the business of producing or transmitting electric power. Neither Electrade nor its affiliate currently has or contemplates acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at prices mutually agreed upon by the purchaser and Electrade.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation)

[Docket No. ER94-1479-000]

Take notice that on July 21, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.13 (1993), Amendment No. 2 to its Rate Schedule FERC No. 113, pursuant to which may sell capacity and associated energy to Central Hudson Gas & Electric Corporation (Central Hudson).

NYSEG requests that July 22, 1994, be allowed as the effective date of the filing and requests waiver of the notice requirement for good cause shown.

NYSEG served copies to the filing upon the New York State Public Service Commission and Central Hudson.

Comment date: August 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. University Cogeneration, Inc.

[Docket Nos. QF86-529-000 and EL94-76-000]

Take notice that on July 15, 1994, as amended on July 22, 1994, University Cogeneration, Inc. (Applicant), of 4464 Alvarado Canyon Road, San Diego, California 92120-4399, tendered for filing a Petition For Limited Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Applicant requests the Commission to temporarily waive the efficiency standard for qualifying cogeneration facilities as set forth in Section 292.205, 18 CFR 292.205, of the Commission's Regulations with respect to its 9 MW cogeneration facility located in Chula Vista, California. Specifically, Applicant requests waiver of the efficiency standard for the calendar year 1993 due to an unexpected decrease in the demand for steam by its unaffiliated steam host.

Comment date: September 1, 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. 94-18716 Filed 8-1-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-669-000, et al.]

CNG Transmission Corporation, et al.; Natural Gas Certificate Filings

July 25, 1994.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP94-669-000]

Take notice that on July 19, 1994, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94-669-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a storage service, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT proposes to abandon a storage service it is providing to UGI Utilities, Inc. (formerly UGI Corporation) (UGI) under CNGT's Rate Schedule GSS-II Storage Service, and pursuant to an agreement dated September 30, 1993. CNGT states that 666,667 Dekatherms of storage capacity and a maximum daily demand of 6,667 Dekatherms is provided to UGI.

CNGT explains that, upon receipt of the requested abandonment, CNGT would provide UGI with GSS-II service under Part 284 of the Commission's Regulations. CNGT states that the proposal would have no impact on customers since the proposal involves the conversion by UGI of Part 157 service to a corresponding level of Part 284 service.

Comment date: August 15, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP94-672-000]

Take notice that on July 20, 1994, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP94-672-000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, CIG proposes to abandon by sale or exchange to Associated Natural Gas, Inc. (ANGI) the Spindle Compressor Station and appurtenant facilities located in Weld County, Colorado. The compressor station consists of 5 compressor units totaling 2,296 horsepower. The jurisdictional facilities will be sold or exchanged at their net book value at the time of transfer. CIG states that the net book value of the jurisdictional facilities on May 31, 1994, was $679,693. CIG states that the Spindle facilities would become part of ANGI's non-jurisdictional facilities.

Comment date: August 15, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP94-673-000]

Take notice that on July 20, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP94-673-000 a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Policy Act (18 CFR 157.205 and 157.211) for authorization to operate one small volume measuring station and appurtenant facilities to provide increased natural gas deliveries to Southern Union Gas Company (Southern Union), under Northern's existing rate schedules to accommodate new commercial service to Seaboard Farms of Oklahoma (Seaboard), an end user located in Texas County, Oklahoma, and to continue service to an existing farm tap customer, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the estimated volumes proposed to be delivered to Southern Union for Seaboard are 200 Mcf on a peak day and 73,000 Mcf annually.

Northern also states that it is not proposing any new facilities pursuant to this request.

Northern further states that a copy of this filing has been mailed to each of the affected state commissions.

Comment date: September 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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. 94–18717 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–327–000]

Florida Gas Transmission Co., Notice of Tariff Filing

July 27, 1994.

Take notice that on July 25, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 166
First Revised Sheet No. 177A
Second Revised Sheet No. 178

In its restructuring orders, the Federal Energy Regulatory Commission (Commission) has indicated that capacity release programs should be designed so as to promote the maximum use of such programs, thus making the maximum amount of unused/excess capacity available to potential shippers. FGT states that it is filing the above tariff sheets to reflect certain revisions to the permanent release provisions of its capacity relinquishment mechanism which are necessary in order to continue to promote the Commission's desire to allow the maximum amount of participation in the capacity relinquishment program while at the same time not degrading FGT's standing in the financial community.

FGT notes that in recently issued orders, the Commission has stated that FGT must follow an "industry standard" of allowing a party to acquire transportation service upon the tendering of a three-month prepayment regardless of the term of the underlying service agreement. Specifically, pursuant to the Commission's "Order Granting Clarification" ("May 31 Order"), FGT states that any party apparently may now acquire relinquished capacity on a permanent basis on the FGT system by providing an escrow account in an amount equal to the charge for only three (3) months' service. Thereafter, the Relinquishing Shipper would not be liable for any further obligations. FGT believes that an unintended result of the May 31 Order is that a creditworthy shipper may now permanently relinquish capacity to an uncreditworthy shipper. Since the creditworthy Relinquishing Shipper would have no further liability, FGT states that its financial standing would be adversely affected because FGT could only look to the uncreditworthy Acquiring Shipper with potentially no assets for payment.

In view of the potential consequences of the May 31 Order, FGT, by this filing, is responding to the Commission's prior express invitation for FGT to propose an alternative, reasonable means to assure payment. The instant tariff filing proposes a reasonable alternative method to assure payment to FGT with very limited tariff changes. The instant proposal would apply only to permanent relinquishments.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. 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. 94–18715 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–72–000 and RP92–59–000]

Iroquois Gas Transmission System, L.P; Informal Settlement Conference

July 27, 1994.

Take notice that an informal conference will be convened in this proceeding on Tuesday, August 2, 1994, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E. Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Betsy R. Carr at (202) 208–1240.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18706 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–328–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

July 27, 1994.

Take notice that on July 25, 1994, K N Interstate Gas Transmission Co. (KNI) tendered for filing an application and proposed Original Volume Nos. 1–C and 1–D. KNI states that the proposed Original Volume Nos. 1–C and 1–D are to apply solely to its Buffalo Wallow System and will enable KNI to

implement the following market center services on that system: (1) Firm and interruptible transportation (Rate Schedules FT–BW and IT–BW); and (2) an optional Aggregation Pooling Service available as a component of Rate Schedules FT–BW and IT–BW. KNI requests the authority to charge market-based rates for all services performed pursuant to Rate Schedules FT–BW and IT–BW.

KNI also requests that the tendered volumes be accepted for filing and permitted to become effective on October 1, 1994, without suspension.

Finally, KNI requests that the Commission waive the notice requirements of § 154.22 of the Commission's Regulations to permit KNI to submit the instant filing more than 60 days before the proposed effective date of October 1, 1994, for proposed Original Volume Nos. 1–C and 1–D and that the Commission waive all other regulations that may otherwise be applicable so as to permit proposed Original Volume Nos. 1–C and 1–D to become effective as of October 1, 1994.

KNI states that copies of the filing were served upon KNI's customers and interested public bodies.

Any person desiring to be heard or to protest said application 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 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. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18711 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1467–000]

Niagara Mohawk Power Corp.; Notice of Filing

July 22, 1994.

Take notice that on July 18, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and LG&E Power Marketing (LG&E). This service Agreement specifies that LG&E has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and LG&E to enter into separately scheduled transactions under which NMPC will sell to LG&E capacity and/or energy as the parties may mutually agree.

NMPC requests an effective date of July 18, 1994. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and LG&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 August 5, 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. 94–18714 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–274–001]

Northern Natural Gas Co., Notice of Filing of Supplemental Material

July 27, 1994.

Take notice that on July 18, 1994, Northern Natural Gas Company (Northern) tendered for filing supplemental information in Docket No. RP94–274–001.

Northern states that the filing is being made to comply with Commission order in Docket No. RP94–274–000.

Northern states that copies of the supplemental material are being mailed to Northern's affected jurisdictional customers, interested state commissions, and those appearing on the RP94–274–000 service list.

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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 3, 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. 94–18710 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–31–000 and ES94–31–001]

PacifiCorp; Notice of Application

July 27, 1994.

Take notice that on July 19, 1994, and July 22, 1994, PacifiCorp filed an application and an amendment under § 204 of the Federal Power Act seeking authorization (1) to issue and sell its short-term commercial paper (Paper) in the U.S. or overseas in an aggregate principal amount not to exceed $750 million outstanding at any one time and (2) to issue its short-term promissory notes to and borrow from commercial banks under a 364-day revolving credit agreement (Agreement) in an aggregate principal amount not to exceed $150 million outstanding at any one time: provided that the aggregate principal amount of Paper and borrowings under the Agreement not exceed $750 million outstanding at any one time. Such authority shall be effective for a two-year period commencing upon the issuance of the Commission's letter order.

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 385.214). All such motions or protests should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 94–18708 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–32–000]

Robbins Resource Recovery Partners, L.P., Notice of Application

July 27, 1994.

Take notice that on July 21, 1994, Robbins Resource Recovery Partners, L.P. (RRRP) filed an application under § 204 of the Federal Power Act seeking authorization for RRRP to assume an obligation with respect to $390 million in long-term taxable and tax exempt bonds to be issued by the Village of Robbins, Illinois for the construction of a waste energy project.

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 385.214). All such motions or protests should be filed on or before August 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 94–18707 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–202–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

July 27, 1994.

In the Commission's order issued on June 3, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Thursday, August 18, 1994, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18709 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–026]

Transcontinental Gas Pipe Line Corp.; Notice of Refund Report

July 27, 1994.

Take notice that on April 11, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on April 8, 1994, to natural gas purchasers under TGPL's rate schedules FS and OFS. These refunds pertain to the transportation service provided in conjunction with sales under these rate schedules.

On December 16, 1993, TGPL filed a request to accelerate partial refunds in advance of the date provided under Article IV of the settlement approved by the Commission on November 4, 1993, in Docket No. RP92–137–015. The request was granted by the Commission on February 14, 1994, in Docket Nos. RP92–137–021, et al, subject to TGPL making refunds to all affected parties.

TGPL states that the refunds were calculated for the locked-in period from September 1, 1992, through October 31, 1993, based on the difference between the amounts billed and the amounts computed using the settlement rates. TGPL states that its report shows refunds totalling $4,992,548.05, including $309,299.95 of interest.

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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 3, 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. 94–18712 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–028]

Transcontinental Gas Pipe Line Corp.; Notice of Refund Report

July 27, 1944.

Take notice that on June 8, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) field with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds made on May 31, 1994. These refunds consisted of excess interruptible transportation revenues, and were made in accordance with Article V of TGPL's May 3, 1993, Stipulation and Agreement (Settlement). The Commission approved that settlement on November 4, 1993, in Docket No. RP92–137–015, and issued an order on rehearing on February 14, 1994, in Docket No. RP92–137–021.

According to TGPL, refunds, with interest, were made to all firm shippers utilizing firm transportation contracts (excluding those with rates based on an incremental cost of service) and to GSS customers. TGPL states that the refund covers the period September 1, 1992, through October 31, 1993. TGPL further states that the refunds for September 1, 1992, through August 31, 1993, totalled $15,786,588.44, while the refunds for September, 1993, and October, 1993, were $785,168.13 and $1,244,126.95, respectively.

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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 3, 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. 94–18713 Filed 8–1–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for

the disbursement of $56,149.35 (plus accrued interest) that Telum, Inc. remitted to the DOE pursuant to a Consent Order entered into by the DOE and Telum. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR Part 205, Subpart V.

DATES AND ADDRESSES: The Application for Refund must be filed in duplicate, addressed to "Telum Special Refund Proceeding," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

The application should display a prominent reference to Case Number LEF–0114 and be postmarked no later than October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Andrew W. Beckwith, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–4921 (Beckwith).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Telum, Inc. to the DOE to settle possible pricing violations with respect to its sale of middle distillates. The DOE is currently holding $56,149.35 in an interest-bearing escrow account pending distribution.

The OHA has determined to distribute these funds in a refund process in which we will accept a refund claim from the party injured as a result of Telum's alleged overcharges. The specific requirements that the applicant must meet in order to receive the refund are set out in Section III of the Decision. The claimant who meets these specific requirements will be eligible to receive a refund of the entire consent order amount plus any accrued interest. In the event that a valid refund application is not filed, the funds will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986, 15 U.S.C. §§ 4501–4507.

The Application for Refund must be postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**. Instructions for the completion of the refund application are set forth in the Decision that immediately follows this notice. The application should be sent to the address listed at the beginning of this notice.

All submissions, except those containing confidential information, will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: July 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

July 25, 1994.

Implementation of Special Refund Procedures

Name of Firm: Telum, Inc.
Date of Filing: October 7, 1993
Case Number: LEF–0114

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 7, 1993. The petition requests that OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order entered into by the DOE and Telum, Inc. (Telum).

I. Background

Telum was a "reseller-retailer" of "covered products" as those terms were defined in 6 CFR 150.352 and 10 CFR 212.31. Therefore, Telum was required to price middle distillate fuel in accordance with the price rule of the Mandatory Petroleum Price Regulations set forth at 10 C.F.R. Part 212, Subpart F, and antecedent regulations at 6 C.F.R. Part 150, Subpart L. As a result of an audit, the ERA alleged that Telum and entities under Telum's direction violated the price regulations in sales of middle distillate fuel to Salt River Project (Salt River) during a five month period from December 1, 1973, through April 30, 1974 (the audit period).* The auditors determined that during this period Telum made sales of middle distillates to Salt River at prices in excess of the maximum lawful selling price (MLSP) permitted by the regulations. Consequently, the ERA issued a Proposed Remedial Order (PRO) to Telum on May 28, 1980, alleging pricing violations in the sale of middle distillate fuel to Salt River. After revising its selection of the "nearest comparable outlet" with regard to the "new market" determination under 10 CFR 212.111(b), the ERA issued an Amended PRO on September 15, 1986, alleging that Telum had overcharged Salt River in its sales of middle distillate fuel in the amount of $357,587. On April 7, 1988, that Amended PRO was remanded by OHA to the ERA for a new determination regarding Telum's nearest comparable outlet and a recalculation of MLSPs and any overcharges in sales to Salt River. Telum, Inc., 17 DOE ¶ 83,010 (1988).

The ERA did not issue a second Amended PRO. Instead, on May 30, 1990, the DOE entered into a consent order (No. 820H00020Z) with Telum to resolve all administrative and civil claims related to Telum's compliance with the Federal petroleum price and allocation regulations in its resale transactions of petroleum products during the period December 1, 1973 through April 30, 1974. Specifically, Telum agreed to remit $60,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Telum has remitted $56,149.35 to the DOE, consisting of $51,626.18 toward payment of the $60,000 principal amount due and $4,523.17 toward payment of interest due on principal. The DOE has authorized a write-off of the remainder of the amount due for reasons of uncollectability. Telum is no longer in business, and Earl K. Cook, the former president of Telum, has indicated that he is unable to pay the remainder of the amount due. As of June 30, 1994, $9,615 in interest had accrued in the DOE escrow account on the amount paid by Telum.

On May 31, 1994, we issued a Proposed Decision and Order in which we determined that it was appropriate to establish a special refund proceeding with respect to the Telum consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute a refund to the party that was injured by Telum's alleged pricing violations in sales of middle distillates during the consent order period. Specifically, we proposed that Salt River, the party injured by Telum's alleged pricing violations, be eligible for the entire consent order fund plus accrued interest. The Proposed Decision was published in the **Federal Register** on June 6, 1994 (59 Fed. Reg. 29289), and comments on the proposed refund mechanism were to be submitted within 30 days of that date. No comments regarding the Proposed Decision and Order were received. Accordingly, we have determined that the proposed procedures should be adopted.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing Salt River's claim to a refund in this matter. This Decision sets forth the information that Salt River should submit in order to receive the entire Telum consent order fund.

I. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and

* Telum was incorporated as Bonus Oil Company on August 13, 1968. Bonus Oil Company's name was changed to Telum, Inc. effective December 3, 1974. For the purposes of this Decision, we will refer to the firm only as Telum.

The other entities under Telum's direction, as listed in the consent order, are: Industrial Fuels, Inc., an Arizona Corporation, and Giraud Corporation, a Utah corporation.

Appeals to fashion procedures to distribute refunds obtained as part of consent orders, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate method for distributing the Telum consent order fund. Therefore, we will grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Refund Procedures

A. Refund Claimant

In the Proposed Decision, we determined that insofar as possible the consent order fund should be distributed to the customer of Telum who was injured by the alleged overcharges. Salt River, the only Telum customer who made purchases during the consent order period that were covered by the PRO and Amended PRO, is the only Telum customer we identified as likely to have been injured by the alleged overcharges. Although the Telum consent order covers *all* sales of "covered products" by Telum for the period December 1, 1973 through April 30, 1974, the ERA audit files, the PRO, and the Amended PRO are all based only on sales by Telum to Salt River. The consent order, while lacking in specificity, was clearly arrived at in order to settle this one outstanding enforcement issue. We are thus able to use the information contained in the audit files for guidance as to the identity of Telum's injured customer and the extent of the alleged overcharges, as we have done in some prior refund proceedings. *See, e.g., Howard Oil Co.*, 15 DOE ¶ 85,072 (1986). Consequently, we are establishing a claims procedure in which Salt River may apply for a refund equal to the entire consent order fund. Limiting the universe of applicants to Salt River allows us to fashion a refund plan that will correspond most closely to the alleged overcharges settled by the consent order. *See Consumers Oil Co.*, 13 DOE ¶ 85,226 (1985); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In prior refund proceedings, in order to receive a full refund, claimants whose prices for goods and services are regulated by a governmental body, e.g., a public utility, have not been required to provide a detailed showing of injury. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986). Instead, regulated firms have been required to (i) Certify that they will pass any refund received through to their customers, (ii) provide us with a full explanation of how they plan to accomplish the restitution, and (iii) certify that they will notify the appropriate regulatory body of the receipt of the refund. *Id.* These requirements are based on the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers.

We have been informed by Salt River that the nature of its business is that of a municipal public power utility whose rates for electricity are set by a publicly-elected Board of Directors (i.e., a governmental body). *See* Memorandum of April 29, 1994 Telephone Conversation between John Egan, Spokesperson for Salt River, and Andrew Beckwith, OHA Staff Analyst. We have determined, therefore, that Salt River is a regulated firm as that category is defined above. *See City of Lubbock*, 18 DOE ¶ 85,116 (1988). Accordingly, we have determined that Salt River, as a regulated firm, need not make a showing that it was injured by the alleged overcharges. However, Salt River will be required to comply with the stipulations outlined above that are incumbent upon regulated firms when submitting an Application for Refund.

B. Calculation of Refund Amount

As stated above, the ERA audit files identify Salt River as the Telum customer injured by the alleged overcharges that were the subject of the consent order. In the Proposed Decision, we indicated our intention to find Salt River eligible for the entire amount of the consent order fund as restitution for the alleged overcharges. We received no comments in opposition to this proposal and therefore shall adopt it. In addition, Salt River will be eligible to receive all of the interest that has accrued on the consent order fund.

C. Application for Refund Procedures

An Application for Refund may now be filed by Salt River. Salt River's Application must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 C.F.R. § 205.286. The application must be in writing, signed by an authorized representative of Salt River, and specify that it pertains to the Telum, Inc. consent order fund, Case No. LEF-0114.

Salt River's Application for Refund must be filed in duplicate. A copy of the application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, DC. If Salt River believes that its application contains confidential information, it must so indicate on the first page of its application and submit two additional copies of its application from which the information that it claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

The application must also indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Telum enforcement proceeding. Salt River must also certify that it is not related to Telum, the consent order firm. The application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 USC 1001. Furthermore, Salt River should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. In addition, Salt River's employer identification number and current address must be listed in the application. The application should be sent to: Telum, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, Washington, DC 20585.

As indicated above, Salt River should also: (i) Certify that it will pass any refund received through to its customers, (ii) provide us with a full explanation of how it plans to accomplish the restitution, and (iii) certify that it will notify the appropriate regulatory body of the receipt of the refund.

In the event that Salt River does not file a refund application that meets the requirements set forth in this Decision and Order, the funds in the Telum consent order account shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Telum consent order escrow account that the OHA determines will not be used to effect direct restitution to Salt River will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) An Application for Refund from the funds remitted to the Department of Energy by Telum, Inc. pursuant to the consent order executed on May 30, 1990, may now be filed.

(2) The application must be postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: July 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-18780 Filed 8-1-94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[5026-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 1, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Pollution Prevention and Toxics

Title: National Survey of Management Accounting Professionals (EPA ICR # 1705.01). This ICR requests approval of a new information collection activity.

Abstract: EPA's Design for the Environment (DfE) Program encourages industry to identify and adopt product and process designs and production operations that pose the least possible risk to the environment. A part of these efforts is to determine whether and how the true costs of environmental protection and pollution prevention are factored into industry's corporate cost accounting and capital budgeting activities, and to encourage the consideration of such costs when and if they are not currently reflected in corporate financial calculations.

The information collected in this ICR will assist DfE's Accounting and Capital Budgeting Program to baseline typical and best accounting and budgeting practices among management accountants, measure the effectiveness of its various program elements, and set priorities for future DfE initiatives aimed at the professional accounting community. The information collection will describe the practices and perspectives of management accountants in U.S. manufacturing firms concerning pollution prevention project investments.

The survey contains five sections: Section 1 requests background information on the respondent and his/her firm; Section 2 looks at the firm's capital budgeting process, focusing on how, when, and by whom requests for capital appropriations for environmental projects are developed and approved; Section 3 asks for information on cost inventory to identify the scope of direct and indirect costs typically included in project financial analysis, and whether such costs are assessed quantitatively or qualitatively; Section 4 requests information on approaches to cost allocation—if and how costs are assigned to specific processes and/or products, versus lumped into overhead accounts; finally, Section 5 examines the firm's choice of financial indicators and time horizons for project profitability analysis.

The raw data will be analyzed for statistical purposes only, and will be presented in summary form without identifying individual respondents. OPPT, in cooperation with the Institute for Management Accountants, a professional society that is cooperating in the project, will determine the use and disposition of the final report.

Burden Statement: The estimated public reporting burden for this collection of information is estimated to require 1 hour per respondent. This estimate includes time to review the instructions, gather existing information, and prepare and submit the survey form. There are no recordkeeping requirements.

Respondents: A subset of the Institute for Management Accountants membership who identify their job function as either budgeting/planning or cost accounting, and who are associated with manufacturing firms included in SIC codes 20—39.

Estimated Number of Respondents: 900.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time survey response.

Estimated Total Annual Burden on Respondents: 900 hours.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street SW., Washington, DC 20460

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: July 28, 1994.

Jane Stewart,

Acting Director.

[FR Doc. 94–18753 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5026–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 1, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Application for Reimbursement to Local Government (EPA ICR # 1425.03; OMB # 2050–0077). This ICR requests renewal of the existing clearance.

Abstract: Section 123 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, allows any general purpose unit of local government to apply to EPA for reimbursements for costs incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance contaminant. The intent of the local government reimbursement program is to alleviate significant financial burden in carrying out temporary emergency measures.

This information collection requires applicants for reimbursement to submit an application package demonstrating the financial burden, and the consistency of the response with program eligibility criteria. The package contains four sections: Section 1 identifies the name and location of the local governmental unit; Section 2 describes the date and time of the incident, the location, source and cause of the release, identify of the hazardous substance involved, and the threats to human health and the environment; Section 3 asks for specifics on the response action, response participants, contacts with EPA, and the temporary measures for which reimbursement is sought; Section 4 contains the cost information (e.g., invoices, sales receipts, rental agreements) needed to determine the amount of potential reimbursement, as well as evidence of attempts to recover costs from the responsible parties, insurance, or the State.

Burden Statement: The estimated public reporting and recordkeeping burden for this collection of information is 20 hours per reimbursement application. This estimate includes time to review the instructions, gather existing information, and prepare and submit the form.

Respondents: Local governments carrying out temporary emergency measures resulting from the release, or threat of release, of a hazardous substance.

Estimated Number of Respondents: 90 local government units.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: On occasion, when needed for response reimbursement.

Estimated Total Annual Burden on Respondents: 1,800 hours.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street SW., Washington, DC 20460.

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: July 26, 1994.

Jane Stewart,

Acting Director.

[FR Doc. 94–18754 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5026–2]

Acid Rain Program: Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving 5-year nitrogen oxides compliance plans, according to the Acid Rain Program regulations (40 CFR part 76), for the following 11 utility plants: Dunkirk, Greenidge, and Milliken in New York; Chalk Point and Morgantown in Maryland; Brunner Island, Cheswick, Martins Creek, and Sunbury in Pennsylvania; and Mitchell and Mt. Storm in West Virginia.

FOR FURTHER INFORMATION: Contact the following persons for more information about a permit listed in this notice: for plants in New York, Gerry DeGaetano, (212) 264–6685, EPA Region 2, Air and Waste Management Division, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, New York, NY 10278; and for plants in Maryland, Pennsylvania, and West Virginia, Kim Peck, (215) 597–9839, EPA Region 3, Air, Radiation, and Toxics Division, 841 Chestnut Bldg., Philadelphia, PA 19107

Dated: July 27, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–18755 Filed 8–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5026–1]

Acid Rain Program: Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, 5-year Phase I Acid Rain Permits to 57 utility plants in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: The permits will become final on September 12, 1994, except those permits on which EPA receives significant adverse comment by September 1, 1994. If EPA receives significant adverse comment on a permit, EPA will withdraw the direct final issuance of that permit and simultaneously re-propose the permit. Such re-proposal will provide an opportunity for public comment and requests for a public hearing.

ADDRESSES: Administrative Records. The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at these locations:

For plants in New York: EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, New York, NY 10278.

For plants in Maryland, Pennsylvania, Virginia, and West Virginia: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107.

For plants in Illinois, Minnesota, and Ohio: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to the following addresses:

For plants in New York: EPA Region 2, Air and Waste Division, Attn: Steve Riva, Chief, Permitting and Toxics Support Section, Air Compliance Branch (address above).

For plants in Maryland, Pennsylvania, Virginia, West Virginia: EPA Region 3, Air, Radiation, and Toxics Division, Attn: Thomas Maslany, Director (address above).

For plants in Illinois, Minnesota, and Ohio: EPA Region 5 (A–18J), Air and Radiation Division, Attn: David Kee, Director (address above).

Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the permit. In the comment, include objections to the permit and the legal, factual, or other basis for the objections. This information will be used by EPA to determine if the comment is a significant adverse comment.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about a permit listed in this notice:

For plants in New York, Gerry DeGaetano at (212) 264–6685.

For plants in Maryland, Virginia, West Virginia, and Hatfield's Ferry and Mitchell in Pennsylvania, Kimberly Peck, (215) 597–9839; for Bruce Mansfield and New Castle in Pennsylvania, Richard Killian, (215) 597–7547.

For plants in Illinois, Cecilia Mijares, (312) 886–0968; in Minnesota, Allan Batka, (312) 886–7316; and in Ohio, Franklin Echevarria, (312) 886–9653.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. On January 11, 1993, EPA promulgated final rules implementing the program. Subsequently, several parties filed petitions for review of the rules with the U.S. Court of Appeals for the District of Columbia Circuit. On November 18, 1993, EPA published a notice of proposed revisions to rules regarding Phase I substitution and reduced utilization plans (sections 404(b) and (c) and 408(c)(1)(B) of the Act). On May 4, 1994, EPA and other parties signed a settlement agreement addressing the substitution and reduced utilization issues.

In today's action, EPA is issuing permits that are consistent with the May 4, 1994 settlement. Except as noted below, EPA approves for 1995–1999 all compliance options for which EPA deferred action for 1996–1999 in the draft permits. In addition, except as noted below, the numbers of substitution and compensating unit allowances allocated to each unit for 1995–1999 are identical to the numbers of allowances allocated to each unit for 1995 in the draft permits. The additional allowances discussed below, according to the settlement, are a one-time allocation and entail a simultaneous deduction of an equal number of allowances in a future year. Upon activation of conditionally-

approved plans, substitution or compensating unit allowances are allocated for the remaining years the plan is in effect. EPA issues the following permits:

Albany in New York.
C R Huntley in New York.
Dunkirk in New York.
Goudey in New York.
Greenidge in New York.
Hickling in New York.
Jennison in New York.
Milliken in New York.

Oswego in New York: 0 substitution allowances for each year and 86 additional allowances to unit 3 upon activation of substitution plan; 371 substitution allowances for each year and 8 additional allowances to unit 4 upon activation of substitution plan; 12,365 substitution allowances for each year and 2,533 additional allowances to unit 5 upon activation of substitution plan; 4,499 substitution allowances for each year and 79 additional allowances to unit 6 upon activation of substitution plan.

Somerset in New York.

Chalk Point in Maryland: No change for units 1 and 2; 9,000 substitution allowances for each year and 107 additional allowances to unit 3 upon activation of substitution plan; 1,519 substitution allowances for each year and 957 additional allowances to unit 4 upon activation of substitution plan.

Dickerson in Maryland.
Morgantown in Maryland.
Bruce Mansfield in Pennsylvania.
Hatfield's Ferry in Pennsylvania.
New Castle in Pennsylvania.

Mitchell in Pennsylvania: 1,101 substitution allowances for each year and 983 additional allowances to unit 33 upon activation of substitution plan, and 983 additional allowances if the unit becomes affected for nitrogen oxides (NO_X).

Glen Lyn in Virginia: 6,244 substitution allowances for each year and 762 additional allowances to unit 6 upon activation of substitution plan, and 762 additional allowances if the unit becomes affected for NO_X.

Potomac River in Virginia: 1,889 substitution allowances for each year and 24 additional allowances to unit 1 upon activation of substitution plan, and 24 additional allowances if the unit becomes affected for NO_X; 1,926 substitution allowances for each year and 32 additional allowances to unit 2 upon activation of substitution plan, and 32 additional allowances if the unit becomes affected for NO_X; 3,191 substitution allowances for each year and 148 additional allowances to unit 3 upon activation of substitution plan, and 148 additional allowances if the unit becomes affected for NO_X; 3,514 substitution allowances for each year and 79 additional allowances to unit 4 upon activation of substitution plan, and 79 additional allowances if the unit becomes affected for NO_X; 3,343 substitution allowances for each year and 146 additional allowances to unit 5 upon activation of substitution plan, and 146 additional allowances if the unit becomes affected for NO_X.

John E Amos in West Virginia.
Mitchell in West Virginia.
Pleasants in West Virginia.
Baldwin in Illinois.

Collins in Illinois: 1,217 substitution allowances for each year and 46 additional allowances to unit 1; 1,050 substitution allowances for each year and 29 additional allowances to unit 2; 1,856 substitution allowances for each year and 49 additional allowances to unit 3; 1,513 substitution allowances for each year and 42 additional allowances to unit 4 upon activation of substitution plan; 1,684 substitution allowances for each year and 38 additional allowances to unit 5 upon activation of substitution plan.

Crawford in Illinois: 2,501 substitution allowances for each year and 937 additional allowances to unit 7 upon activation of substitution plan, and 937 additional allowances if the unit becomes affected for NO_X, and 2,501 compensating allowances for 1 year and 937 additional allowances to unit 7 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 4,039 substitution allowances for each year and 1,286 additional allowances to unit 8 upon activation of substitution plan, and 1,286 additional allowances if the unit becomes affected for NO_X, and 4,039 compensating allowances for 1 year and 1,286 additional allowances to unit 8 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years.

Fisk in Illinois: 2,353 substitution allowances for each year and 1,071 additional allowances to unit 19 upon activation of substitution plan, and 1,071 additional allowances if the unit becomes affected for NO_X, and 2,353 compensating allowances for 1 year and 1,071 additional allowances to unit 19 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years.

Havana in Illinois.

Hennepin in Illinois: 9,847 substitution allowances for each year and 165 additional allowances to unit 1, and 165 additional allowances if the unit becomes affected for NO_X.

Joliet 9 in Illinois: 4,476 substitution allowances for each year and 1,119 additional allowances to unit 5 upon activation of substitution plan.

Joliet 29 in Illinois: 4,241 substitution allowances for each year and 1,308 additional allowances to unit 71 upon activation of substitution plan, and 1,308 additional allowances if the unit becomes affected for NO_X, and 4,241 compensating allowances for 1 year and 1,308 additional allowances to unit 71 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 3,356 substitution allowances for each year and 1,167 additional allowances to unit 72 upon activation of substitution plan, and 1,167 additional allowances if the unit becomes affected for NO_X, and 3,356 compensating allowances for 1 year and 1,167 additional allowances to unit 72 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 3,859 substitution allowances for each year and 1,341 additional allowances to unit 81 upon activation of substitution plan, and 1,341 additional allowances if the unit becomes affected for NO_X, and 3,859 compensating allowances for 1 year and 1,341 additional allowances to unit 81 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 3,972 substitution allowances for each year and 1,417 additional allowances to unit 82 upon activation of substitution plan, and 1,417 additional allowances if the unit becomes affected for NO_X, and 3,972 compensating allowances for 1 year and 1,417 additional allowances to unit 82 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years.

Kincaid in Illinois: disapproval of parts of reduced utilization plans for 4 years for units 1 and 2.

Meredosia in Illinois.

Newton in Illinois: 14,599 substitution allowances for each year and 560 additional allowances to unit 1.

Powerton in Illinois: 6,024 substitution allowances for each year and 2,002 additional allowances to unit 51 upon activation of substitution plan; 6,005 substitution allowances for each year and 1,924 additional allowances to unit 52 upon activation of substitution plan; 5,850 substitution allowances for each year and 2,306 additional allowances to unit 61 upon activation of substitution plan; 5,838 substitution

allowances for each year and 2,382 additional allowances to unit 62 upon activation of substitution plan.

State Line in Illinois: 2,808 substitution allowances for each year and 474 additional allowances to unit 3 upon activation of substitution plan, and 474 additional allowances if the unit becomes affected for NO_X, and 2,808 compensating allowances for 1 year and 474 additional allowances to unit 3 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 4,883 substitution allowances for each year and 852 additional allowances to unit 4 upon activation of substitution plan.

Vermilion in Illinois.

Waukegan in Illinois: 4,560 substitution allowances for each year and 1,442 additional allowances to unit 7 upon activation of substitution plan, and 1,442 additional allowances if the unit becomes affected for NO_{1X}, and 4,560 compensating allowances for 1 year and 1,442 additional allowances to unit 3 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 3,612 substitution allowances for each year and 1,146 additional allowances to unit 8 upon activation of substitution plan, and 1,146 additional allowances if the unit becomes affected for NO_X, and 3,612 compensating allowances for 1 year and 1,146 additional allowances to unit 8 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 1,085 substitution allowances for each year and 342 additional allowances to unit 17 upon activation of substitution plan.

Will County in Illinois: 1,730 substitution allowances for each year and 698 additional allowances to unit 1 upon activation of substitution plan; 1,666 substitution allowances for each year and 715 additional allowances to unit 2 upon activation of substitution plan; 3,717 substitution allowances for each year and 1,223 additional allowances to unit 3 upon activation of substitution plan, and 1,223 additional allowances if the unit becomes affected for NO_X, and 3,717 compensating allowances for 1 year and 1,223 additional allowances to unit 3 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years; 6,756 substitution allowances for each year and 1,926 additional allowances to unit 4 upon activation of substitution plan, and 1,926 additional allowances if the unit becomes affected for NO_X, and 6,756 compensating allowances for 1 year and 1,926 additional allowances to unit 4 upon activation of reduced utilization plan, and disapproval of parts of reduced utilization plans for remaining 4 years.

Wood River in Illinois.

Allen S King in Minnesota: 22,867 substitution allowances for each year and 8,824 additional allowances to unit 1 upon activation of substitution plan.

Black Dog in Minnesota: 427 substitution allowances for each year and 78 additional allowances to unit 1 upon activation of substitution plan, and 78 additional allowances if the unit becomes affected for NO_X; no change for unit 2; 1,145 substitution allowances for each year and 976 additional allowances to unit 3 upon activation of substitution plan, and 976 additional allowances if the unit becomes affected for NO_X; 2,297 substitution allowances for each year and 2,561 additional allowances to unit 4 upon activation of substitution plan, and 2,561 additional allowances if the unit becomes affected for NO_X.

High Bridge in Minnesota: 299 substitution allowances for each year and 2,944 additional allowances to unit 3; 242 substitution allowances for each year and 2,168 additional allowances to unit 4; 410 substitution allowances for each year and 4,052 additional allowances to unit 5; no change for unit 6.

Riverside in Minnesota: 2,891 substitution allowances for each year and 5,591 additional allowances to unit 8 upon activation of substitution plan.

Sherburne County in Minnesota: 4,681 substitution allowances for each year and 11,478 additional allowances to unit 1; 4,727 substitution allowances for each year and 11,532 additional allowances to unit 2.

Acme in Ohio: 0 substitution allowances for each year and 18 additional allowances to unit 13; 12 substitution allowances for each year and 2 additional allowances to unit 14; 16 substitution allowances for each year and 2 additional allowances to unit 15; no changes for units 16, 91 and 92.

Ashtabula in Ohio: no change to unit 7; 7,487 substitution allowances for each year and 3,266 additional allowances to unit 8 upon activation of substitution plan, and 3,266 additional allowances if the unit becomes affected for NO_X; 7,016 substitution allowances for each year and 2,157 additional allowances to unit 9 upon activation of substitution plan, and 2,157 additional allowances if the unit becomes affected for NO_K; 6,155 substitution allowances for each year and 2,120 additional allowances to unit 10 upon activation of substitution plan, and 2,120 additional allowances if the unit becomes affected for NO_X; 6,452 substitution allowances for each year and 2,254 additional allowances to unit 11 upon activation of substitution plan, and 2,254 additional allowances if the unit becomes affected for NO_X.

Avon Lake in Ohio: 8,763 substitution allowances for each year and 1,086 additional allowances to unit 9 upon activation of substitution plan, and 1,086 additional allowances if the unit becomes affected for NO_X; 7,879 substitution allowances for each year and 769 additional allowances to unit 10 upon activation of substitution plan, and 769 additional allowances if the unit becomes affected for NO_X; no change for units 11 and 12.

Bay Shore in Ohio: 7,414 substitution allowances for each year and 132 additional allowances to unit 1 upon activation of substitution plan, and 132 additional allowances if the unit becomes affected for NO_X; 6,957 substitution allowances for each year and 354 additional allowances to unit 2 upon activation of substitution plan, and 354 additional allowances if the unit becomes affected for NO_X; no change for units 3 and 4.

Edgewater in Ohio: no change for units 11 and 12; disapproval of part of reduced utilization plan for unit 13.

Gorge in Ohio: 2,503 substitution allowances for each year and 100 additional allowances to unit 25; 2,791 substitution allowances and 138 additional allowances to unit 26.

J M Stuart in Ohio.

Lake Shore in Ohio: 4,508 substitution allowances for each year and 259 additional allowances to unit 18 upon activation of substitution plan, and 259 additional allowances if the unit becomes affected for NO_X; no change for units 91, 92, 93 and 94.

Niles in Ohio.

Miami Fort in Ohio.

R E Burger in Ohio.

Toronto in Ohio: 5,315 substitution allowances for each year and 10 additional allowances to unit 9; no change for units 10 and 11.

W H Sammis in Ohio: no change for unit 1; 7,317 substitution allowances for each year and 39 additional allowances to unit 2 upon activation of substitution plan, and 39 additional allowances if the unit becomes affected for NO_X; 8,336 substitution allowances for each year and 52 additional allowances to unit 3 upon activation of substitution plan, and 52 additional allowances if the unit becomes affected for NO_X; no change for unit 4.

Dated: July 27, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 91-141; DA 94-819]

Commission Requirements for Cost Support Material To Be Filed With Virtual Collocation Tariffs for Special Access and Switched Transport

AGENCY: Federal Communications Commission.

SUMMARY: On July 25, 1994, the Commission adopted a separate Memorandum Opinion and Order modifying its rules governing provision of expanded interconnection service. Specifically, the Commission lifted the requirement that local exchange carriers provide physical collocation, but required certain local exchange carriers to provide virtual collocation. In this Order, the Common Carrier Bureau (Bureau), under delegated authority, establishes specific requirements for the cost support information that must accompany the local exchange carriers' virtual collocation tariffs.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Tariff Division, Common Carrier Bureau, (202) 418-1529.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Tariff Review Plan Order adopted July 25, 1994, and released July 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street NW., Washington, DC 20037. The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information should contact Timothy Fain, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, (202) 395-3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418-0214.

Please note: The Commission has requested expedited review of this collection by August 1, 1994 under the provisions of 5 CFR 1320.18.

Title: Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport.

Respondents: Business or other for profit.

Frequency of Response: One time collection.

Estimated Annual Burden: 16 respondents; 1 response per respondent; 194 hours per response; 3104 hours total annual burden.

Needs and Uses: The information required is necessary for efficient review of the required revisions of the local telephone companies' expanded interconnection tariffs. The information collected will be used to determine whether the charges offered are just and reasonable as the Act requires.

Regulatory Flexibility Analysis: The Commission has determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because each of them has a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23-24 (1980). To the extent that small telephone companies will be affected by these rules, the Commission hereby certifies that these rules will not have a significant effect on a substantial number of "small entities."

Summary of Report and Order: In Memorandum Opinion and Order in this Docket adopted on July 14, 1994, the Commission required all Tier 1 local exchange carriers (LECs) other than participants in National Exchange Carrier Association (NECA) pools to offer virtual collocation. Those tariffs must be filed on or before September 1, 1994, to become effective on December 15, 1994. In the Tariff Review Plan Order released concurrently with the Memorandum Opinion and Order, the Common Carrier Bureau, under delegated authority, adopted requirements for cost support information which LECs must submit with their virtual collocation tariffs.

The Tariff Review Plan (TRP) disaggregates expanded interconnection service, by basic service function, into the following seven categories: (1) Provisioning Function, (2) Entrance Function, (3) Termination Function, (4) Cross-Connection Function, (5) Equipment Installation Function, (6) Maintenance and Repair Function, and (7) Technician Training Function. The Bureau recognized that the Commission did not mandate a detailed rate structure, but required LECs to categorize their rate elements into these functions for purposes of the TRP. For each function, the TRP requires a complete list of plant and equipment, including the name of the plant or equipment item, the associated Part 32 account numbers, gross investment amounts, and estimated depreciable lives. The TRP also requires detailed expense and tax information, including the name of the expense or tax, the Part 32 account numbers, and the expense or tax amount.

In addition to the TRP, LECs must provide documentation supporting their entries in the TRP form, submit cost support information for the overhead loading factors used to develop their expanded interconnection rates, and overhead loading factors on a service-by-service basis for all point-to-point special access services they offer. Finally, LECs are also required to provide a sample price out for the provision of 100 DS1s, assuming that nonrecurring costs will be amortized over a five year period at an 11.25 percent discount rate.

Federal Communications Commission.

William F. Caton.

Acting Secretary.

Approved by OMB, 3060-xxxx, Expires 10/31/94

See below for information regarding public burden estimate.

NOTICE: This tariff review plan (TRP) contains requirements for summary cost support material that certain local exchange carriers (LECs) must file to support their tariff filings in partial fulfillment of Section 61.38 or Sections 61.44 through 61.49 of the Commission's Rules. TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. The information in the TRPs is used by the FCC to evaluate rates. Your response is mandatory. Public reporting burden for this collection of information is estimated to average 194 hours per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Appendix A—Instructions for Tariff Review Plan

ROW INSTRUCTIONS:

(1) LECs may add more rows, if needed.
(2) Row 1: total of Rows 2 through 20.
(3) Row 23: Find Cost of Money (Percentage)=i by substituting i into the following equation: Row #22=@pmt (Row #1, i, Row #1 / Row #21) − Row #21.
(4) Row 26: Total of Rows 27 through 32.
(5) Row 34: Total of Rows 35 through 50.
(6) Row 51: Sum of Rows 21, 22, 24, 25, 26, 33, 34 for Recurring TRP chart.
(7) Row 52: Row 51 / 12 for Recurring TRP chart. For Nonrecurring TRP, sum rows as in (6) above.
(8) Row 55: (Row 53* 12) / Sum (Rows 21, 22, 24, 25, 33).
(9) Row 56: Row 53 / Row 52.

DS1 PROVISIONING FUNCTION

[Nonrecurring Rate]

	Rate Element Name #1	Rate element name #2	Rate element name #3	Rate element name #4
Total Investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 ADMIN AND OTHER EXPENSE: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				

DS1 Provisioning Function—Continued

[Nonrecurring Rate]

	Rate Element Name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) Provisioning Function includes all costs associated with service order processing and design engineering for equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, per additional DS1 arrangement, etc.

DS3 Provisioning Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 MAINTENENCE EXPENSE	$	$	$	$
34 ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement	$	$	$	$
55 Ratio: Rate Per Unit/Direct Cost				

DS3 Provisioning Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) Provisioning Function includes all costs associated with service order processing and design engineering for equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, per additional DS1 arrangement, etc.

DS1 Entrance Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total Investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				

DS1 ENTRANCE FUNCTION—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate/Unit Cost				

Notes:

(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS1 ENTRANCE FUNCTION

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total Investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt 32 Acct No	$	$	$	$
36 List: Name—Pt 32 Acct No	$	$	$	$
37 List: Name—Pt 32 Acct No	$	$	$	$
38 List: Name—Pt 32 Acct No	$	$	$	$
39 List: Name—Pt 32 Acct No	$	$	$	$
40 List: Name—Pt 32 Acct No	$	$	$	$
41 List: Name—Pt 32 Acct No	$	$	$	$
42 List: Name—Pt 32 Acct No	$	$	$	$
43 List: Name—Pt 32 Acct No	$	$	$	$
44 List: Name—Pt 32 Acct No	$	$	$	$
45 List: Name—Pt 32 Acct No	$	$	$	$
46 List: Name—Pt 32 Acct No	$	$	$	$
47 List: Name—Pt 32 Acct No	$	$	$	$
48 List: Name—Pt 32 Acct No	$	$	$	$
49 List: Name—Pt 32 Acct No	$	$	$	$
50 List: Name—Pt 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				

DS1 Entrance Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS3 Entrance Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				

DS3 ENTRANCE FUNCTION—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate/Unit Cost				

Notes:

(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS3 ENTRANCE FUNCTION

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				

DS3 Entrance Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS1 Equipment Installation Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement.				
55 Ratio: Rate Per Unit/Direct Cost.				

DS1 Equipment Installation Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
56 Ratio: Rate Per Unit/Unit Cost.				

Notes:
(1) The Equipment Installation Function includes costs of installing and testing the central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, etc.

DS3 Equipment Installation Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring cost per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Equipment Installation Function includes costs of installing and testing the central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, etc.

DS1 Cross—Connection Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name-Pt. 32 Account No	$	$	$	$
36 List: Name-Pt. 32 Account No	$	$	$	$
37 List: Name-Pt. 32 Account No	$	$	$	$
38 List: Name-Pt. 32 Account No	$	$	$	$
39 List: Name-Pt. 32 Account No	$	$	$	$
40 List: Name-Pt. 32 Account No	$	$	$	$
41 List: Name-Pt. 32 Account No	$	$	$	$
42 List: Name-Pt. 32 Account No	$	$	$	$
43 List: Name-Pt. 32 Account No	$	$	$	$
44 List: Name-Pt. 32 Account No	$	$	$	$
45 List: Name-Pt. 32 Account No	$	$	$	$
46 List: Name-Pt. 32 Account No	$	$	$	$
47 List: Name-Pt. 32 Account No	$	$	$	$
48 List: Name-Pt. 32 Account No	$	$	$	$
49 List: Name-Pt. 32 Account No	$	$	$	$
50 List: Name-Pt. 32 Account No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				
56 Ratio: Rate/Unit Cost				

Notes:
(1) Cross—Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS1 arrangement, etc.

DS1 Cross—Connection Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip.	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense.				
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement	$	$	$	$
55 Ratio: Rate Per Unit/Direct Cost	$	$	$	$
56 Ratio: Rate Per Unit/Unit Cost	$	$	$	$

Notes:

(1) Cross—Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated tot he interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS 1 arrangement, etc.

DS3 Cross—Connection Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 Cross—Connection Function—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				
56 Ratio: Rate/Unit Cost				

Notes:

(1) Cross-Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS3 arrangement, etc.

DS3 Cross—Connection Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip.	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 CROSS—CONNECTION FUNCTION—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) Cross—Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS3 arrangement, etc.

DS1 TERMINATION FUNCTION

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS1 Termination Function—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS1 Termination Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS1 Termination Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS3 Termination Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 Termination Function—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				
56 Ratio: Rate/Direct Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS3 Termination Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 Termination Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS1 Maintenance and Repair Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS1 Maintenance and Repair Function—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				
56 Ratio: Rate/Unit Cost				

Notes:

(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS1 Maintenance and Repair Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS1 Maintenance and Repair Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Direct Cost				

Notes:

(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Maintenance and Repair Function

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 Maintenance and Repair Function—Continued

[Recurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51 Annual cost per unit	$	$	$	$
52 Monthly cost per unit	$	$	$	$
53 Monthly rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate/Direct Cost				
56 Ratio: Rate/Direct Cost				

Notes:

(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Maintenance and Repair Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$

DS3 Maintenance and Repair Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List:	$	$	$	$
29 List:	$	$	$	$
30 List:	$	$	$	$
31 List:	$	$	$	$
32 List:	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate Per Unit/Direct Cost				
56 Ratio: Rate Per Unit/Unit Cost				

Notes:

(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS1 Technician Training Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$

DS1 Technician Training Function—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement.				
55 Ratio: Rate Per Unit/Direct Cost.				
56 Ratio: Rate Per Unit/Direct Cost.				

Notes:

(1) The Technician Training Function includes the LEC's costs of training its technicians to install, repair and maintain the interconnector—designated electronic equipment with which the technicians are unfamiliar.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Technician Training Function

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
1 Total investment: List Plant & Equip	$	$	$	$
2 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
3 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
4 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
5 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
6 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
7 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
8 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
9 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
10 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
11 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
12 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
13 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
14 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
15 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
16 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
17 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
18 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
19 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
20 List: Name—Pt. 32 Acct No.—Dep. Life	$	$	$	$
21 Depreciation expense	$	$	$	$
22 Cost of money ($ Amount)	$	$	$	$
23 Cost of money (Percentage)	%	%	%	%
24 Federal income tax	$	$	$	$

DS3 TECHNICIAN TRAINING FUNCTION—Continued

[Nonrecurring Rate]

	Rate element name #1	Rate element name #2	Rate element name #3	Rate element name #4
25 State and local income tax	$	$	$	$
26 Other tax: List Taxes	$	$	$	$
27 List: Property Tax	$	$	$	$
28 List	$	$	$	$
29 List	$	$	$	$
30 List	$	$	$	$
31 List	$	$	$	$
32 List	$	$	$	$
33 Maintenance expense	$	$	$	$
34 Admin and other expense: List Expense	$	$	$	$
35 List: Name—Pt. 32 Acct No	$	$	$	$
36 List: Name—Pt. 32 Acct No	$	$	$	$
37 List: Name—Pt. 32 Acct No	$	$	$	$
38 List: Name—Pt. 32 Acct No	$	$	$	$
39 List: Name—Pt. 32 Acct No	$	$	$	$
40 List: Name—Pt. 32 Acct No	$	$	$	$
41 List: Name—Pt. 32 Acct No	$	$	$	$
42 List: Name—Pt. 32 Acct No	$	$	$	$
43 List: Name—Pt. 32 Acct No	$	$	$	$
44 List: Name—Pt. 32 Acct No	$	$	$	$
45 List: Name—Pt. 32 Acct No	$	$	$	$
46 List: Name—Pt. 32 Acct No	$	$	$	$
47 List: Name—Pt. 32 Acct No	$	$	$	$
48 List: Name—Pt. 32 Acct No	$	$	$	$
49 List: Name—Pt. 32 Acct No	$	$	$	$
50 List: Name—Pt. 32 Acct No	$	$	$	$
51				
52 Nonrecurring cost per unit	$	$	$	$
53 Nonrecurring rate per unit	$	$	$	$
54 Unit of measurement				
55 Ratio: Rate per unit/Direct Cost				
56 Ratio: Rate per unit/Unit Cost				

Notes:

(1) The Technician Training Function includes the LEC's costs of training its technicians to install, repair and maintain the interconnector—designated electronic equipment with which the technicians are unfamiliar.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

APPENDIX B

(LEC NAME) EIS OVERHEAD ANALYSIS

Virtual EIS rate elements	Proposed rate (a)	Direct cost (b)	Overhead factor (c)=(a/b)
1 DS1 X–Connect	$0.00	$0.00	0.00
2 DS3 X–Connect	$0.00	$0.00	0.00
3 Rate Element Name	$0.00	$0.00	0.00
4 Rate Element Name	$0.00	$0.00	0.00
5 Rate Element Name	$0.00	$0.00	0.00
6 Rate Element Name	$0.00	$0.00	0.00
7 Rate Element Name	$0.00	$0.00	0.00
8 Rate Element Name	$0.00	$0.00	0.00
9 Rate Element Name	$0.00	$0.00	0.00
10 Rate Element Name	$0.00	$0.00	0.00
11 Rate Element Name	$0.00	$0.00	0.00
12 DS1 X–Connect NRC	$0.00	$0.00	0.00
13 DS3 X–Connect NRC	$0.00	$0.00	0.00
14 Rate Element Name NRC	$0.00	$0.00	0.00
15 Rate Element Name NRC	$0.00	$0.00	0.00
16 Rate Element Name NRC	$0.00	$0.00	0.00
17 Rate Element Name NRC	$0.00	$0.00	0.00
18 Rate Element Name NRC	$0.00	$0.00	0.00
19 Rate Element Name NRC	$0.00	$0.00	0.00
20 Rate Element Name NRC	$0.00	$0.00	0.00
21 Rate Element Name NRC	$0.00	$0.00	0.00
22 Rate Element Name NRC	$0.00	$0.00	0.00

NOTES:

APPENDIX C.—SAMPLE PRICE OUT CHART

(Virtual Expanded Interconnection)

ABC COMPANY MODEL OFFICE—Cost of Providing 100 DS1s

	Rate	Req/100–DS1	Total Non rec.
1. Non-recurring Charges			
Service Order Processing/Design Eng	$0.00	1	$0.00
Equipment Installation—Total	$0.00	100	$0.00
Entrance (e.g., cable and cable pull)	$0.00		$0.00
Termination Equipment (e.g., OLTM)	$0.00		$0.00
DS1 Cross-connect			
Training	$0.00		$0.00
Total NRC's			$0.00
Equivalent Monthly Payment			$0.00
Over 5 Years @ 11.25% Interest			$0.00
2. Recurring Charges	Rate	Req/100–DS1	Total Monthly
Entrance Space (e.g. conduit, riser)	$0.00		$0.00
DS1 Cross-connect	$0.00	100	$0.00
Maintenance and Repair—Total	$0.00		$0.00
Entrance (e.g., cable and cable pull)	$0.00		$0.00
Termination Equipment (e.g., OLTM)	$0.00		$0.00
DS1 Cross-connect	$0.00	100	$0.00
Total Recurring			$0.00
Total Monthly Cost			$0.00
Monthly Cost per DS1			$0.00

[FR Doc. 94–18588 Filed 8–1–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jackson County Port Authority /Gearbulk Pool Ltd.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200874.

Title: Jackson County Port Authority/ Gearbulk Pool Ltd.

Parties: Port of Pascagoula ("Port"), Gearbulk Pool Ltd. ("Gearbulk").

Synopsis: The proposed Agreement authorizes the Port to perform freight handling services to Gearbulk. In addition, the Port will pay Gearbulk a volume incentive award based on the number of vessel calls and tons of cargo handled at the Port.

By Order of the Federal Maritime Commission.

Dated: July 28, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–18788 Filed 8–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banknorth Group, 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 26, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Banknorth Group, Inc., Burlington, Vermont; to acquire 100 percent of the voting shares of North American Bank Corporation, Farmington, New Hampshire, and thereby indirectly acquire Farmington National Bank, Farmington, New Hampshire.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Victory Bancshares, Inc., Mount Victory, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Mt. Victory State Bank, Mount Victory, Ohio.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bankshares, Inc., Cornelia, Georgia; to acquire 100 percent of the voting shares of The Bank of Troup County, LaGrange, Georgia.

2. Regions Financial Corporation, Birmingham, Alabama; to merge with American Bancshares, Inc., Monroe, Louisiana, and thereby indirectly acquire First American Bank & Trust of Louisiana, Monroe, Louisiana.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, and BOKF Merger Corporation Number Four, both of Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Citizens Holding Company, Muskogee, Oklahoma, and thereby indirectly acquire Citizens Bank, Muskogee, Oklahoma, and Citizens Bank of Northwest Arkansas, Fayetteville, Arkansas. In connection with this application, BOKF Merger Corporation Number Four has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, July 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–18722 Filed 8–1–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[G N #2259]

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Annmarie Surprenant, Ph.D., Glaxo Institute for Molecular Biology. An inquiry and investigation conducted by the Oregon Health Sciences University (OHSU) found that Annmarie Surprenant, Ph.D., had misrepresented her academic credentials in a grant application for Public Health Service (PHS) research funds. The OHSU found that Dr. Surprenant had falsely stated that she had earned an M.K. degree from the University of Illinois at Chicago in 1976. As a result of the OHSU investigation, Dr. Surprenant resigned from the OHSU faculty. During its oversight review of the OHSU report, the Office of Research Integrity (ORI) discovered that Dr. Surprenant had also falsely claimed to have earned an M.D. on two additional PHS research grant applications. Based upon the OHSU report, as well as the information obtained by ORI during its oversight review, ORI found that Dr. Surprenant engaged in scientific misconduct by falsely claiming to have earned an M.D. in three PHS research grant applications. Dr. Surprenant accepted the ORI finding and agreed to a Voluntary Exclusion and Settlement Agreement under which she will not apply for Federal grant or contract funds and will not serve on PHS advisory committees, boards, or peer review groups for a three year period beginning June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations Office of Research Integrity 301–443–5330.

Dated: July 26, 1994.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–18776 Filed 8–1–94; 8:45 am]

BILLING CODE 4160–17–M

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Anand Tewari, M.D., Stanford University. The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Dr. Tewari while a postdoctoral fellow in the Department of Surgery, Stanford University School of Medicine. ORI concluded that Dr. Tewari committed scientific misconduct in clinical research supported by an NIH grant by fabricating ophthalmologic examination results; fabricating and falsifying blood gas data; fabricating and falsifying values for glycerol determinations; falsifying standard errors and including fabricated data on platelet counts in a published article, "Effects of interleukin-1 on platlet counts" (*The Lancet* 336:712–714 (1990)), and related abstracts; and providing to his supervisors summaries of data that included falsified and fabricated data which were used in a PHS grant application. The published article containing the falsified and fabricated data was retracted on August 22, 1992. *The Lancet* 340:496. Dr. Tewari accepted the ORI findings and agreed to a Voluntary Exclusion and Settlement Agreement under which he may not apply for Federal grant or contract funds except for the non-research training or practice of clinical medicine, and may not serve on PHS advisory committees, boards, or peer review groups for a five-year period beginning March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations Office of Research Integrity 301–443–5330.

Dated: July 27, 1994.

Lyle W. Bivins,

Director, Office of Research Integrity.

[FR Doc. 94–18777 Filed 8–1–94; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 94F–0251]

Registration and Consulting Co. AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Registration and Consulting Co. AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione (C.I. Solvent Blue 104) as a colorant in polyethylene phthalate polymers intended for use in food-contact articles.

DATES: Written comments on the petitioner's environmental assessment by September 1, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4423) has been filed by Registration and Consulting Co. AG, c/o Reynaldo A. Gustilo, 125A 18th St., suite 142, Newport Plaza, Jersey City, NJ 07310. The petition proposes that the food additive regulations be amended in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione (C.I. Solvent Blue 104) as a colorant in polyethylene phthalate polymers intended for use in food-contact articles and complying with 21 CFR 177.1630.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before (*insert date 30 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–18725 Filed 8–1–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–05; F–21901–04]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 140 acres. The lands involved are in the vicinity of Eagle, Alaska, located within Secs. 25 and 36, T. 2 N., R. 26 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 1, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

James F. Moore,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–18702 Filed 8–1–94; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–930–4210–06; AZA–26180, AZA–26965]

Withdrawal and Cancellation of Applications, Opening of Lands; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By letters dated June 29, 1994, the U.S. Department of Agriculture, Forest Service, requested the withdrawal and cancellation of applications AZA–26180 and AZA–26965. Application AZA–26180 requested the withdrawal of 94,651 acres of national forest land located in the Coronado National Forest for the "Sky Islands" project. Application AZA–26965 requested the withdrawal of 90.00 acres of national forest land located in the Tonto National Forest for the Payson Visitor Information Center. This action will cancel the withdrawal applications and is considered a record clearing action only. Termination of the 2-year segregation is statutory and automatically restores the land to its original status. In this instance, the lands are open to location and entry under the mining laws, subject to valid existing rights. It has been and continues to remain open to all other uses applicable to national forest land including mineral leasing.

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

SUPPLEMENTARY INFORMATION: The Notices of Proposed Withdrawal were published in the **Federal Register** on September 27, 1991, and July 22, 1992, respectively. The notices closed the land to location and entry under the mining laws only for a period of 2 years. The land remained open to other uses applicable to national forest lands, including mineral leasing. The temporary segregation on AZA–26180 expired on September 26, 1993, and on AZA–26965 on July 21, 1994. For specific land descriptions see previously published notices in the **Federal Registers** dated September 27, 1991, (Vol. 56, No. 188, page 49200) and July 21, 1992, (Vol. 57, No. 141, page 32558). The land in the two notices aggregate approximately 94,741.00 acres located in the Coronado and Tonto National Forests in Pima, Graham, Cochise and Gila Counties in Arizona.

Dated: July 21, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94–18700 Filed 8–1–94; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Reclamation

Navajo Project, Colorado-New Mexico

AGENCY: Bureau of Exclamation, Interior.

ACTION: Notice of environmental scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and agency policy, the Bureau of Reclamation (Reclamation), in cooperation with the Public Service Company of New Mexico, will conduct two environmental scoping meetings on the proposal to renew/extend Public Service Company of New Mexico's water service contract. The two meetings will be held to obtain information for use in determining the scope of environmental issues and impacts related to the proposal. The results of the meetings will help Reclamation determine whether an environmental impact statement will be prepared on the proposed action.

DATES: The scoping meetings will be held on:

- August 17, 1994, from 4 to 9 p.m., Farmington, New Mexico
- August 18, 1994, from 4 to 9 p.m., Shiprock, New Mexico

The public is invited.

ADDRESSES: The meetings will be held in the:

- City Council Chambers, 800 Municipal Drive, Farmington, New Mexico
- Central Consolidated School Administration Office Boardroom, Shiprock, New Mexico

FOR FURTHER INFORMATION CONTACT: The contact person for this environmental scoping effort is Errol Jensen, Bureau of Reclamation, Durango Projects Office, P.O. Box 640, Durango, Colorado 81302, telephone (303) 385-6570. Written comments regarding the proposed action and requests to be included on a mailing list should be mailed to PRC Environmental Management, Inc., 2021 Girard Boulevard, SE., Suite 250, Albuquerque, New Mexico 87106.

SUPPLEMENTARY INFORMATION: The Public Service Company of New Mexico currently has a water service contract (USBR Contract No. 14-06-400-4831) with Reclamation for an annual use of 16,200 acre-feet of water from Navajo Reservoir, in San Juan County, New Mexico. The contract water is diverted from the San Juan River near Waterflow, New Mexico, via a weir and backwater pumping system. Water is stored in a small reservoir at the San Juan Generating Station. The existing water service contract was executed in 1968, amended in 1977, and expires in 2005.

Reclamation is the lead Federal agency to ensure compliance with the NEPA for the proposed action. The Public Service Company of New Mexico has requested Reclamation to initiate the environmental scoping process and prepare the environmental document. Reclamation is initiating the scoping process now to allow sufficient time to identify and resolve environmental concerns relevant to the proposed water service contract renewal and extension.

Dated: July 28, 1994.

Charles A. Calhoun,

Regional Director, Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 94-18842 Filed 8-1-94; 8:45 am]

BILLING CODE 4310-04-M

Fish and Wildlife Service

Opportunity for Review and Comment on Draft Recovery Plan for the Endangered and Threatened Fishes of the Rio Yaqui is Extended

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U. S. Fish and Wildlife Service (Service) announces the extention of a public review and comment period on a draft recovery plan for endangered and threatened fishes of the Rio Yaqui. Four species are included in the recovery plan: Yaqui catfish (*Ictalurus pricei*), and beautiful shiner (*Cyprinella formosa*), both listed by the Service as threatened species on August 31, 1984 (49 FR 34494); Yaqui chub (*Gila purpurea*) listed by the Service as endangered on August 31, 1984 (49 FR 34494); and Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), listed by the Service as endangered on March 11, 1967, (32 FR 4001). The Notice of Availability for review and comment was published on June 7, 1994. The 60-day period was scheduled to close on August 8, 1994. Via this notice, the comment period is extended until October 7, 1994. All comments received during the entire period, June 7, 1994, through October 7, 1994, will be considered prior to finalization of the recovery plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, San Bernardino National Wildlife Refuge 1408 10th Street, Douglas, Arizona 85607. Written comments and materials regarding the plan should be addressed to the Refuge Manager. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cobble, U. S. Fish and Wildlife Refuge Manager, telephone (602) 823-4251 or at the above address.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 25, 1994.

James A. Young,

Regional Director.

[FR Doc. 94-18770 Filed 8-1-94; 8:45 am]

BILLING CODE 4310-55-P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National register were received by the National Park Service before July 23, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by August 17, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

California

Monterey County

Black, Mary C.W., Studio House, 556 Abrego St., Monterey, 94001007

Colorado

Conejos County

Place Hotel, 429 Main St., Antonito, 94001013

Denver County

Lewis, A.T., New Building, 1531 Stout St., Denver, 94001006

Fremont County

Christ Episcopal Church, 802 Harrison Ave., Canon City, 94001011

Mesa County

Handy Chapel, 202 White Ave., Grand Junction, 94001012

Delaware

New Castle County

Walnut Green School, Jct. of DE 82 and Owl's Nest Rd. Greenville vicinity, 94001014

Idaho

Idaho County

Arctic Point Fire Lookout, N of Big Creek, Idaho Primitive Area, Payette NF, Big Creek vicinity, 94001019

Chinese Mining Camp Archeological Site, NW of Warren, Payette NF, Warren vicinity, 94001018

Cold Meadows Guard Station, NE of McCall, Frank Church—River of No Return Wilderness, Payette NF, McCall vicinity, 94001017

Massachusetts

Barnstable County

Marconi—RCA Wireless Receiving Station, Jct. of Old Comers Rd. and Orleans Rd., Chatham, 94000996

Montana

Lincoln County

Ant Flat Ranger Station, Kootnai NF, Fortine vicinity, 94001021

New Jersey

Burlington County

Evans, Amos, House (Evesham Township MPS), 501 E. Main St., Evesham Township, Marlton, 94001008

Stokes—Evans House, 52 E. Main St., Evesham Township, Marlton, 94001009

Essex County

Hahne and Company, 609 Broad St., Newark, 94001005

Hunterdon County

Mulligan, M.C., & Sons Quarry, 56 Main St., Clinton, 94001010

New York

Chautauqua County

Clymer District School No. 5, 7929 Clymer Center Rd. (Co. Rt. 613), Clymer, 94001004

Dutchess County

Tousey, Benjamin C., House, Jct. of Salt Point Tpk. and Schultzville Rd., Clinton, 94001002

Herkimer County

Dolge, Alfred, Hose Co. No. 1 Building, Jct. of S. Main and Slawson Sts., SW corner, Dolgeville, 94001003

Orange County

Moffat Library, W. Main St., Washingtonville, 94001000

Rockland County

Mount Moor African—American Cemetery, Dexter Rd., off NY 54A, Clarkstown, 94001001

North Carolina

Watauga County

Green Park Historic District, Jct. of US 321 and Green Hill and Rock Rds., Blowing Rock, 94001020

Texas

Aransas County

Hoopes—Smith House, 417 N. Broadway, Rockport, 94001016

Harris County

West, James and Jessie, Mansion, 3303 NASA Rd. 1, Pasadena, 94001015

Wisconsin

Dodge County

Boller, W.H., Meat Market and Residence, 705 S. Water St., Lomira, 94000997

Pierce County

Miller, H.S., Bank, 223 Broad St., Prescott, 94000998

Racine County

Lincoln School, 1800 State St., Racine, 94000999

[FR Doc. 94–18686 Filed 8–1–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29653 (Sub-No. 6)]

The Baltimore and Ohio Railroad Company, et al.; Pooling of Car Service Regarding Multi-Level Cars

AGENCY: Interstate Commerce Commission.

ACTION: Notice of application.

SUMMARY: The signatory railroads [1] to an agreement for the pooling of car service with respect to multi-level cars used to transport motor vehicles (multi-level cars) and boxcars used to transport automobile parts (auto-parts boxcars) filed an application seeking approval of an amendment to their existing agreement. The amendment involves the authority of the Steering Committee or Executive Committee, established pursuant to the agreement, to issue recommendations on the optimum pool size and the number of cars each carrier should contribute to the pool. A proceeding is instituted to consider the subject application.

DATES: Comments on the proposed amendment must be filed by September 1, 1994. Replies must be filed by September 21, 1994.

ADDRESSES: Send comments referring to Finance Docket No. 29653 (Sub-No. 6) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423; and (2) applicants' representative: Daniel Saphire, Association of American Railroads, 50 F Street, N.W., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [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, D.C. 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721].

Decided: July 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–18766 Filed 8–1–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The Atchison, Topeka and Santa Fe Railway Company; Burlington Northern Railroad Company; Canadian Pacific Limited; Chicago and North Western Transportation Company; CN North America Systems; Consolidated Rail Corporation; CSX Transportation Incorporated; Florida East Coast Railway Company; Illinois Central Railroad Company; Missouri Pacific Railroad Company; New York, Susquehanna and Western Railway Corporation; Norfolk Southern Corporation; Soo Line Railroad Company; Southern Pacific Transportation Company; and Union Pacific Railroad Company.

[Finance Docket No. 32503]

Consolidated Rail Corporation—Trackage Rights Exemption—Buffalo & Pittsburgh Railroad, Inc.

Buffalo & Pittsburgh Railroad, Inc. (B&P), has agreed to grant Consolidated Rail Corporation (Conrail) overhead trackage rights over approximately 39 miles of rail line between the connection of B&P's line of railroad with The Pittsburgh & Shawmut Railroad (P&S) at milepost 259.5±, at West Mosgrove, PA, and Conrail milepost 2.0±, at Cloe, PA. The trackage rights were to become effective on or after July 19, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street, 16A, P.O. Box 41416, Philadelphia, PA 19101–1416.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 18, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–18767 Filed 8–1–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 31989]

The Elk River Railroad, Inc.—Exemption—Construction and Operation of a Line of Railroad in Clay and Kanawha Counties, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final scope of study for environmental impact statement.

SUMMARY: This notice announces the final scope of study prepared in response to written comments, as well as oral comments given at public meetings, for the environmental impact statement to be prepared for the above proceeding. Written comments on the final scope are requested.

DATES: Written comments on the final scope of work are due August 29, 1994.

ADDRESSES: Victoria J. Dettmar, Interstate Commerce Commission, Section of Environmental Analysis, Room 3221, 12th and Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael Dalton (202) 927–6202 or Victoria Dettmar (202) 927–6211.

SUPPLEMENTARY INFORMATION: The Elk River Railroad (TERRI) has filed a petition for exemption with the Commission seeking authority to construct and operate a 30 mile line from Hartland to Falling Rock, West Virginia. The proposed line would connect TERRI's existing line with a Consolidated Rail Corporation (Conrail) line near Blue Creek, West Virginia, thus allowing TERRI to interchange traffic with either CSXT or Conrail.

We believe that if the Commission approves the construction and operation, this action would constitute a major Federal action having the potential to significantly affect the quality of the human environment. Therefore, we will prepare an environmental impact statement (EIS). A notice of intent to prepare an EIS and to hold public scoping meetings for this proceeding was published on May 6, 1994. The notice requested comments in writing or orally at public scoping meetings that were held in Clendenin, West Virginia and Clay, West Virginia on May 31 and June 1, 1994, respectively. Over 100 parties provided comments and/or attended the scoping meetings. In accordance with the Commission's environmental rules at 49 CFR 1105, the final scope of study is summarized below.

SUMMARY OF THE SCOPE OF STUDY: Construction and operation activities may significantly affect the environment in the project area. Based on the comments and our initial evaluation, the proposed construction and operation may result in a number of environmental impacts. These impacts may include:

Land Use Impacts
Socioeconomic Impacts from Physical Environmental Changes
Impacts to Water Resources
Impacts to Wildlife
Transportation and Safety Impacts
Energy Impacts
Air Quality Impacts Noise Impacts
Impacts to Historic and Cultural Resources
Impacts to Recreational Resources.

Copies of the complete scope of study have been served on all the parties to this proceeding. A copy of the scoping document may be obtained by contacting Michael Dalton at (202) 927–6202 or Victoria Dettmar at (202) 927–6211.

A notice of availability of the draft EIS will be announced in the **Federal Register** and served on parties to the proceeding.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Acting Secretary.

Scope of Environmental Impact Statement

Executive Summary

Description of Proposed Action and Alternatives

1. Summary of the existing rail line
2. Description of the proposed action
3. Description of alternatives
   a. Proposed route
   b. No action (denial of the proposal)

Description of Existing Environment

Specific description including existing land use, transportation, physiography and soil, water resources, biological resources, air quality, noise, socioeconomic setting, historic and cultural resources, and recreational resources in the project area.

Environmental Analysis of Proposed Action and Alternatives

A. Land Use Impacts

1. Present and future access to properties located along the right-of-way.
2. Assessment of impacts to other land use, including encroachments on the right-of-way:
   a. playground located on the right-of-way.
   b. parking lots located on the right-of-way.
   c. sheds and other structures located on the right-of-way.
3. Assessment of the need for noxious weed control and use of herbicides.
4. Assessment of the project's effect on designed flood zones or floodplains.

B. Transportation and Safety Impacts

1. Effect of train operations on Clendenin and other communities.
2. Potential delays experienced by general vehicles, school buses, and emergency calls at rail/road crossings.
3. Evaluation of the need for warning signals or gates at grade crossings.
4. Access across rail line for emergency vehicles.
5. Degradation of area road systems.
6. Evaluation of the impact of rail service on transportation safety, including the occurrence of accidents and release of hazardous materials.
7. Potential for derailments and clean-up plans and procedures.
8. Concerns regarding children attempting to jump on trains passing through towns.

C. Energy Impacts

1. Assessment of impacts on transportation of any energy resources.
2. Anticipated impacts on any recyclable commodities.
3. Impact on overall energy consumption and efficiency that would result from increased use of trains.

D. Water Resource Impacts

1. Possible water quality impacts from erosion and sedimentation that would be associated with bridge building, other construction activities, and rail operations.
2. Analysis of the disturbance of soil and vegetation in water bodies, floodplains, and/or wetlands that could result during bridge building, other construction activities, and rail operations.
3. Possible water quality degradation that could result from industrial development.
4. Water quality degradation that could result from accidental releases of hazardous materials in rail transportation.
5. Water quality degradation that could result if herbicides used to control vegetation wash into the Elk River
6. Impacts from contaminated soil resulting from leaks, derailments, and fueling that may occur along the right-of-way.

E. Impacts on Biological Resources

1. Assessment of the impact of construction and operation activities on any threatened and endangered species in the vicinity of the right-of-way.
2. Assessment of the impact of construction and operation activities on wildlife from conversion of habitat within the right-of-way to rail use.
3. Discussion of concerns regarding disturbance of vegetation in adjacent wetlands and floodplains during bridge building, other construction activities, and rail operations.
4. Evaluation of the impact of erosion and sedimentation during bridge building, other construction activities, and rail operations on aquatic wildlife and habitat.

F. Air Quality Impacts

1. Emissions from construction

a. fugitive dust from wind erosion of surfaces stripped of vegetation calculated under EPA's PM–10 regulations.
b. dust from scraper and dozer operations calculated under EPA's PM–10 regulations.
c. emissions from combustion of diesel fuel by heavy equipment.
2. Air pollutants during operation
a. combustion of diesel fuel by trains.
b. coal dust from trains.
c. calculation of emission rates for significant pollutants.

G. Noise Impacts

1. Construction-related noise due to use of heavy machinery.
2. Long-term noise impacts associated with operation of rail line
a. calculation of Leq measurements of Ldn contours for rural communities and areas along the line.
b. assessment of impact to sensitive receptors (e.g. schools, churches).

H. Impacts on Socioeconomics

1. Evaluation of social and economic impacts resulting from changes in the physical environment due to construction and operation of the proposed line.

I. Impacts on Historic and Cultural Resources

1. Impacts to structures (buildings and bridges) that may be eligible for listing on the *National Register of Historic Places.*
2. Impacts to archaeological resources.

J. Impacts on Recreational Resources

1. Effects of construction and operation on wildlife and other recreational resources, including the Elk River.
2. Effects of construction and operation on opportunities for hunting, fishing, and bird watching.

Proposed Mitigation

1. Necessary and appropriate mitigation.

[FR Doc. 94–18768 Filed 8–1–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: August 4, 1994, Full Commission Meeting, 8:30 a.m.–4:00 p.m.; August 5, 1994, Full Commission Meeting, 8:30 a.m.–3:00 p.m.

ADDRESSES: Hyatt Fisherman's Wharf, 555 North Point Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, Suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 94–18685 Filed 8–1–94; 8:45 am]

BILLING CODE 6820–EA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–002]

Issuance of Final Design Approval System 80+ Design; ASEA-Brown Boveri-Combustion Engineering

The U.S. Nuclear Regulatory Commission has issued a final design approval (FDA) to Asea-Brown Boveri-Combustion Engineering (ABB–CE) pursuant to 10 CFR Part 52, Appendix O, for the System 80+ standard design. This FDA allows the System 80+ standard design to be referenced in an application for a construction permit or operating license pursuant to 10 CFR Part 50, or in an application for a combined license pursuant to 10 CFR Part 52.

In addition, ABB–CE has completed the technical review stage of design certification pursuant to the applicable requirements of Subpart B of 10 CFR Part 52. The staff performed its technical review of the ABB–CE Standard Safety Analysis Report-Design Certification (CESSAR–DC), certified design material, and technical specifications in accordance with the standards for review of design certification applications stated in 10 CFR Section 52.48 that are applicable and technically relevant to the System 80+ standard design, including the exemptions and applicable regulations identified in Section 1.6 of the final safety evaluation report (FSER).

On the basis of its evaluation and independent analyses, as discussed in the FSER, the staff concludes that, subject to satisfactory completion of the System 80+ design control document (DCD), ABB–CE's application for design certification compiles with those portions of 10 CFR Section 52.47 that are applicable and technically relevant to the System 80+ standard design. Therefore, the staff and the Advisory Committee on Reactor Safeguards will use the System 80+ design and will rely on it in the administrative review phase of the design certification rulemaking process in accordance with 10 CFR 52.51.

A copy of the FDA has been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20037, for review by interested persons.

Dated at Rockville, Maryland, this 26th day of July 1994.

For The Nuclear Regulatory Commission.

William D. Travers,

Deputy Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 94–18734 Filed 8–1–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Evidence of Coverage Under An Employer Group Health Plan
(2) *Form(s) submitted:* RL–311–F
(3) *OMB Number:* New Collection
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* New Collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households, Businesses or other for-profit
(8) *Estimated annual number of respondents:* 300
(9) *Total annual responses:* 600
(10) *Average time per response:* .16667 hours
(11) *Total annual reporting hours:* 100
(12) *Collection description:* The collection obtains information from employers which is needed by the Railroad Retirement Board for determining if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplementary medical insurance coverage under Medicare.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting

documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–18699 Filed 8–1–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Department 56, Inc.
Common Stock, $.01 Par Value (File No. 7–12733)
Kendall International, Inc.
Common Stock, $.01 Par Value (File No. 7–12734)
Korean Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12735)
Southern Africa Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12736)
Regency Health Service, Inc.
Common Stock, $.01 Par Value (File No. 7–12737)
Three Five Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–12738)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18739 Filed 8–1–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

July 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Dominion Resources Black Warrior Trust
Trust Units (File No. 7–12739)
Nations Balanced Target Maturity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12740)
Franklin Electronic Publishers
Common Stock, No Par Value (File No. 7–12741)
Franchise Finance Corporation of America
Common Stock, $.01 Par Value (File No. 7–12742)
Amway Japan Limited
American Depositary Shares (rep ½ shr. of Common Stock, No Par Value (File No. 7–12743)
Ferrellgas Partners, L.P.
Common Stock, No Par Value (File No. 7–12744)
Greenwich Street Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12745)
Laboratorio Chile S.A.
American Depositary Shares (each rep. 15 shrs. of Common Stock, No Par Value (File No. 7–12746)
Grupo Sidek S.A. De C.V.
American Depositary Shares (each rep. 4 shrs. of Series L Common Stock, No Par Value (File No. 7–12747)
Vastar Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–12748)
Arbor Property Trust
Common Shares of Beneficial Interest, Common Stock, No Par Value (File No. 7–12749)
Broadway Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–12750)
Broadway Stores, Inc.
Warrants (exp. Oct. 8, 1999), Common Stock, No Par Value (File No. 7–12751)
CKE Restaurant, Inc.
Common Stock, $.01 Par Value (File No. 7–12752)
Coram Healthcare Corporation
Common Stock, $.01 Par Value (File No. 7–12753)
Corimon S.A.C.A.
American Depositary Shares (each representing 35 Common Shares) Common Stock, No Par Value (File No. 7–12754)
Daimler-Benz AG
American Depositary Receipts Rights to Subscribe, Common Stock, No Par Value (File No. 7–12755)
Dime Bancorp
Common Stock, $1.00 Par Value (File No. 7–12756)
Energy Service Company
Common Stock, $.10 Par Value (File No. 7–12757)
Filtertek, Inc.
Class A Common Stock, No Par Value (File No. 7–12758)
Hong Kong Telecommunications Limited
American Depositary Shares (each representing 10 Ord. Shrs.) Common Stock, No Par Value (File No. 7–12759)
New America High Income Fund, Inc.
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12760)
Japan Equity Fund, Inc.
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12761)
Lehman Brothers Holding, Inc.
Common Stock, $.01 Par Value (File No. 7–12762)
Lasmo Plc
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12763)
Lexington Corporate Properties, Inc.
Common Stock, $.001 Par Value (File No. 7–12764)
National Health Laboratories Holding, Inc.
(Hld Comp) Common Stock, $.01 Par Value (File No. 7–12765)
Norsk Hydro A.S.
American Depositary Shares, Rights to Subscribe, Common Stock, No Par Value (File No. 7–12766)
Commercial Net Lease Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12767)
OHM Corporation
Common Stock, $.10 Par Value (File No. 7–12768)
Providian Corporation
Common Stock, $1.00 Par Value (File No. 7–12769)
Resorts International, Inc.
Common Stock, $.01 Par Value (File No. 7–12770)
Revco D.S., Inc.
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12771)
RMI Titanium Company
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12772)
Security Capital Industrial Trust
Rights to Subscribe, Common Stock, No Par Value (File No. 7–12773)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12774)
Standard Pacific, L.P.
Common Stock, $.01 Par Value (File No. 7–12775)

Superior Industries International, Inc.
Common Stock, $.50 Par Value (File No. 7–12776)
Spectra Vision, Inc.
Common Stock, $4.001 Par Value (File No. 7–12777)
Spectra Vision, Inc.
Contingent Value Right, Common Stock, $.001 Par Value (File No. 7–12778)
TCC Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–12779)
Toastmaster, Inc.
Common Stock, $.10 Par Value (File No. 7–12780)
Triarc Companies, Inc.
Common Stock, $.10 Par Value (File No. 7–12781)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the securities and exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18737 Filed 8–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34442; File No. SR–NASD–93–51]

Self-Regulatory Organizations; Notice of Filing of Amended Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Eligibility of Disputes for Arbitration

July 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Part I, Section 3, and Part III, Section 15 of the Code of Arbitration Procedure ("Code") to permit the Director to delegate the duties and responsibilities of the Director and to permit the Director of Arbitration to make final determinations regarding the eligibility of claims for arbitration under the Code. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Code of Arbitration Procedure

Director of Arbitration

Sec. 3. The Board of Governors of the Association shall appoint a Director of Arbitration (*hereinafter "Director"*) who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. *The Director* [He] shall be directly responsible to the National Arbitration Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. *The duties and functions of the Director may be delegated as appropriate by the Director. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and responsibilities of the Director, the President or an Executive Vice President of the Association may appoint an interim Director.*

* * * * * *

[Time Limitation on Submission]
Eligibility

Sec. 15 (*a*) No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the [act or] dispute, claim or controversy. This section shall not extend or limit applicable statutes of limitations [nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction].

(b) After the filing of a statement of claim, counterclaim, cross-claim or third-party claim (hereinafter "claim") pursuant to Section 13 or 25 of the Code, the Director of Arbitration shall determine if the claim is eligible for submission to arbitration by determining if the claim alleges that less than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing of the claim. If the claim does not state clearly, that less than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing, the Director may ask the claimant to modify the claim, within a time period set by the Director, to so state. The Director will determine the eligibility of the claim for submission to arbitration either on the basis of the claim as stated in the original claim or, if modified, on the basis of the modified claim.

(c) Following service of a claim, but prior to the earlier of (1) the date the parties are notified of the appointment of the arbitrators pursuant to Sections 13 or 19 of the Code, or (2) the date the Director appoints an arbitrator to consider prehearing issues pursuant to Section 32(e) of the Code, a responding party disputing the eligibility of a claim shall, along with, or after, submitting an executed Uniform Submission Agreement and any fees or deposits required under the Code, submit a notice of objection to the Director of Arbitration supported by statements of fact and documentary evidence asserting that more than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing. The claimant and any other party may respond to the notice of objection within the time period set by the Director. The Director shall promptly determine on the basis of the written record only, after considering any responses timely submitted, if the claim is eligible for submission to arbitration by determining if the disputing party's objections and assertions regarding eligibility:

(i) contradict the allegations in the claim relating to eligibility;

(ii) are supported by documentary evidence; and,

(iii) are not contradicted by other allegations which, if true, would prevail.

(d) Any determination by the Director pursuant to subparagraph (b) or (c) is final.

(e) Any determination by the Director pursuant to subparagraph (b) or (c) that a claim is ineligible:

(i) shall not limit the right of any party to offer evidence concerning the event or occurrence which was the basis of the eligibility determination at any other stage of the proceeding on the claim for

[1] The NASD originally filed the proposed rule change on September 21, 1993.

any purpose other than contesting the eligibility of the claim determined to be ineligible;

(ii) shall not bar a claimant from bringing the claim before a judicial forum, notwithstanding any existing predispute arbitration agreement;

(iii) shall not affect the rights and remedies of the claimant with respect to such claim, notwithstanding any existing predispute arbitration agreement; and,

(iv) shall mean that the limitation period on eligibility set forth in Subsection (a) shall continue to run as though the claim had never been filed.

(f) Any determination by the Director relating to eligibility shall set forth in writing the occurrence or event that was the basis for the determination.

(g) No party shall seek to enforce any agreement to arbitrate if the claim has been determined to be ineligible under this Section.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Amendment to Section 3 of the Code

The current provisions of Section 3 of the Code provide for the appointment of a Director of Arbitration by the NASD Board of Governors to perform all administrative duties and functions in connection with matters submitted to the NASD for arbitration. The Director has, on occasion, found it necessary to delegate certain functions of the Director to other senior management employees of the NASD's Arbitration Department, especially as a result of the significant growth in the Department's staff and workload. The NASD believes this delegation power is inherent in the authority of the Director to manage the functions of the NASD's Arbitration Department. Nevertheless, the NASD is proposing to amend Section 3 of the Code to expressly provide for such delegation.

The proposed rule change to Section 3 provides that the duties and functions of the Director may be delegated as appropriate by the Director. Further, in the event that the Director has been incapacitated, resigned, removed or has been permanently or indefinitely disabled from the performance of the duties and functions of the Director, the proposed rule change provides that the President of the Association or an Executive Vice President may appoint an interim Director to perform the functions and responsibilities of the Director.

The purpose of this rule change is to clarify the lines of authority and delegation powers of the Director under the Code. The amendment also specifies that the power to delegate functions resides with the Director unless circumstances occur which render the Director permanently or indefinitely unable to perform the duties and functions of the Director.

Amendment to Section 15 of the Code

The current provisions of Section 15 of the Code specify that claims or controversies are not eligible for submission to arbitration where 6 years have elapsed from the occurrence or event giving rise to the matter. Section 15 does not specify the party responsible for determining whether 6 years have elapsed from the occurrence or event giving rise to the matter. As a result, there have been conflicting decisions over who possesses such authority; the Director, the courts or arbitrators. In addition, the current provisions of Section 15 do not provide a procedure for a respondent to challenge the eligibility of a claim, and there is no requirement that the event or occurrence establishing the eligibility of a claim be identified.

Express Grant of Authority to Director to Determine Eligibility

The NASD is proposing to amend Section 15 to add six new subsections giving the Director the authority to determine whether the claim alleges that less than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing of the claim. Under the proposed rule change the Director's eligibility determination will be final and will not be subject to review by the arbitrators under Section 35 of the Code. Further, by placing the authority to make final eligibility determinations, as a matter of the contract to arbitrate, in the hands of the Director, the proposed rule change is intended to foreclose attempts by parties to an arbitration to seek different eligibility rulings from the courts or arbitrators. The NASD believes that this amendment is consistent with recent court decisions on the question of arbitrability. It is beyond dispute that, unless the parties have agreed otherwise, the courts, not the arbitrators, determine if a contract to arbitrate exists between the parties. *See AT&T Technologies, Inc.* v. *Communications Workers of America*, 475 U.S. 643, 649 (1986). Thus, *unless the parties have agreed otherwise*, the courts determine the scope of the agreement to arbitrate, including whether a matter is eligible for arbitration on subject matter, timeliness or other grounds. *Id.* (emphasis added). The NASD expressly intends that the proposed amendment to Section 15 will constitute the agreement of the parties to have the issue of eligibility decided by the Director of Arbitration.

Arbitration agreements are contractual obligations which are governed by general principles of contract interpretation. *Haviland* v. *Goldman Sachs & Co.*, 736 F.Supp. 507 (S.D.N.Y. 1990); *Nilson* v. *Prudential-Bache Securities*, 761 F.Supp. 279 (S.D.N.Y. 1991). Therefore, unless the purpose or provisions of the agreement to arbitrate run counter to the Federal Arbitration Act or public policy, parties may agree to any terms they desire (*See, e.g., Apollo Computer, Inc.* v. *Berg*, 886 F.2d 469, 473 (1st Cir. 1989) ("Parties may . . . agree to allow the arbitrator to decide both whether a particular dispute is arbitrable as well as the merits of the dispute."), and the courts must give effect to such freely negotiated terms. *See Snyder* v. *Smith*, 736 F.2d 409, 419 (7th Cir. 1984).

Because Section 15 does not specify who has the authority to determine if a claim is eligible for submission to arbitration, the courts have construed that term of the agreement and have routinely held that it is a question of fact relating to the scope of the agreement to arbitrate and that such questions of fact are for the courts to decide. *See, e.g., Edward D. Jones & Co.* v. *Sorrells*, 957 F.2d 509, 514 (7th Cir. 1992), *citing as controlling, AT&T, supra*, at 649. The NASD, however, is expressly intending that under amended Section 15 the Director will make eligibility determinations; the effect of the amendment being that the parties to an agreement to arbitrate before the NASD will have agreed that the Director alone will determine if the claim is eligible for submission to arbitration before the NASD.

In addition, current Section 15, entitled "Time Limitation on

Eligibility," is proposed to be retitled "Eligibility" and renumbered Subsection 15(a). The language of current Section 15 (proposed new Subsection 15(a)) is also being amended to eliminate the provision that states that the six year eligibility limitation does not apply to cases directed to arbitration by a court. Therefore, a court order directing the parties to arbitration is not a determination that the matter is eligible for arbitration under the rules of the NASD. These changes are intended to further clarify the distinction between issues related to eligibility, which the forum is entitled to control, and statutes of limitations, which are governed by applicable law. The relationship is discussed in more detail below.

Determination of Eligibility Upon Filing of a Claim

New Subsection 15(b) provides that when a claim is filed pursuant to Section 13 or 25 of the Code (i.e., when the Statement of Claim, Uniform Submission Agreement, each properly executed, and required fees have been received by the Arbitration Department and the Statement of Claim is ready to be served), the Director of Abritration will examine each claim for relief to determine if it alleges less than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing of the claim. For example, if a claim seeks recovery of the purchase price of an investment on the basis of misstatements or lack of suitability *at the time of purchase*, and the purchase occurred nine (9) years before the claim was filed, it will be ineligible for arbitration. If, however, the same claim seeks recovery for loss of the value of the investment on the basis of misstatements or omissions which caused the claimant to refrain from selling the investment, and the misstatements or omissions occurred five (5) years ago, the claim will be eligible for arbitration.[2]

In each example, the Director of Arbitration will not be making eligibility determinations on the basis of subjective evaluations of whether the eligibility of the claim is proven, but, rather, solely on an objective determination of whether the claim has stated that the occurrence or event giving rise to the claim took place within six (6) years.[3]

In addition, proposed Subsection 15(b) provides that if the Statement of Claim fails to clearly state that less than six (6) years have elapsed between the occurrence or event giving rise to the dispute, claim or controversy and filing, the Director may ask the claimant to modify the Statement of Claim to do so.[4] The time limit for a response will be set in communications with the claimant. If the claimant fails or refuses to respond, the Director of Arbitration will determine the eligibility of the claim for submission to arbitration on the basis of the Statement of Claim then on file. Thus, while the Director will give the claimant a chance to correct any deficiencies to permit the claimant to establish the eligibility of the claim, the opportunity will not be open-ended.

Determination of Disputed Eligibility

Proposed new Subsection 15(c) provides that a responding party, after service of the Statement of Claim, but prior to the date the parties are notified of the appointment of the arbitrators for the hearing or the appointment of an arbitrator to consider prehearing issues, may file a notice of objection to dispute the determination of the Director of Arbitration that the Statement of Claim alleges that less than six (6) years have elapsed between the event or occurrence giving rise to the dispute, claim or controversy giving rise to the claim and filing. The notice must be supported by statements of fact and documentary evidence and may only be submitted along with or after the responding party submits an executed Uniform Submission Agreement and pays any fees or deposits required under the Code.[5]

Following submission of the notice of objection, the Director of Arbitration must notify the other parties that one of the responding parties has disputed the eligibility of the claim.[6] The Director will then permit the claimant and any other party to respond to the allegations of the responding party with respect to eligibility within such time period as the Director of Arbitration establishes in communications with the parties.

After considering the written record only, and any responses timely submitted, the Director will determine if the disputing party's allegations with respect to eligibility: (1) contradict the allegations in the Statement of Claim relating to eligibility; (2) are supported by documentary evidence; and (3) are not contradicted by other allegations which, if true, would prevail over the contradictory allegations of the disputing responding party. If the Director makes affirmative determinations on all of these matters, the claim will be ineligible.

For example, if in the scenario cited above, the claimant had stated that the transaction had occurred within five (5) years of filing, that would have been enough to make it eligible. If the respondent objected and in turn asserted as a statement of fact, in contradiction of the claimant's allegation, that the transaction had occurred nine (9) years before filing and attached a copy of the claimant's account statement in support of the allegation, the claimant would have to come forward with an allegation further disputing the account statement in order to prevent a determination that the claim is ineligible. An allegation that the account statement is fraudulent would be sufficient to overcome the

[2] *See infra* discussion concerning bifurcation of claims. The proposed rule change will not permit an otherwise ineligible claim to become eligible through the allegation of fraudulent concealment and equitable tolling. In the example cited above, for instance, if the claimant alleged that the respondent made a series of misstatements dating back nine (9) years to the original transaction, the claim would be eligible for arbitration only to the extent that recovery was sought or could be had for misstatements made within six (6) years of filing. While the NASD would not necessarily ask the claimant to clarify the claim, the eligibility determination, which would be part of the record upon submission to the arbitrators, would advise the parties and the arbitrators of the limitation on the claims submitted for arbitration.

[3] The NASD notes, and assumes that claimants and respondents are aware, that bad faith allegations of fraud, or other facts, designed to establish or defeat the eligibility of a claim, would be counterproductive. If the eligibility of a claim were established or, for those claims in which a portion of the initial claims were determined to be ineligible, defeated as a result of such bad faith allegations and the nature of the allegations was discovered by the arbitrators prior to the award, such conduct may affect the arbitrators' determination of credibility issues in the case, or of the nature and amount of the remedies and relief awarded. The NASD notes further that any such bad faith allegations by a member or associated person may result in a referral of the matter for disciplinary investigation and action as conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

[4] *See supra* n. 2.

[5] By conditioning the submission of a notice of objection on the submission of a Uniform Submission Agreement and appropriate fees, the NASD avoids expending resources making eligibility determinations for parties that have not complied with the requirements of the Code or paid for the use of the forum. The NASD does not believe that a party disputing the eligibility of a claim should be able to have its objection considered if it has no intention of participating in the arbitration of the claim without engaging in collateral litigation. By insisting on the submission of an executed Uniform Submission Agreement, the NASD and the other parties to the matter should be able to defend against any such collateral litigation by asserting that the objecting party agreed to be bound by the provisions of the Code, one of which (Section 15) grants the Director the exclusive authority to determine the eligibility of a claim.

[6] The Director's notification to the parties of the eligibility dispute and the time limitation for a response does not relieve the parties of the obligation under other provisions of the Code to serve the other parties with copies of pleadings and submissions.

disputing party's allegation, as would production of an account statement supporting the transaction date alleged by the claimant.[7] Therefore, the proposed rule establishes a presumption in favor of the eligibility of a claim which can only be overcome by an undisputed showing to the contrary.[8]

Proposed Subsection 15(f) requires the Director's determination be in writing and set forth the occurrence or event that is the basis for the eligibility determination.

Finality and Effect of an Eligibility Determination

Proposed Subsections 15(d) and (e) resolve several issues relating to eligibility determinations. First, under proposed subsection 15(d) any determination by the Director will be final. This provision is intended to foreclose relitigation of eligibility before the arbitrators. Because the terms of the proposed rule provide that the Director will determine if a claim is eligible for submission to arbitration, the finality of the determination precludes an arbitrator from revisiting the issue under any circumstances.[9]

Second, a determination that a claim is ineligible will not: (1) limit the right of any party to offer evidence concerning the event or occurrence which was the basis of the eligibility determination at any other stage of the proceeding on the claim for any purpose other than contesting the eligibility of the claim determined to be ineligible; (2) bar a claimant from bringing the substantive claim before a judicial forum, notwithstanding the fact that the parties have an arbitration agreement; or (3) affect the rights and remedies of the claimant with respect to such claim provided by applicable law. The eligibility rule never was intended to serve as an election of remedy provision that would eviscerate any surviving causes of action under applicable law after six years have elapsed. The intent of this proposed provision is to ensure that the effect of the eligibility determination is limited solely to the issue of access to the NASD's arbitration forum.

Finally, proposed Subsection (e)(iv) provides that if a claim is ineligible for arbitration, the limitation period on eligibility set forth in Subsection (a) shall continue to run as though the claim had never been filed. This is a relation back provision that is intended to prevent the filing of an ineligible claim from tolling the running of the eligibility provision while the NASD determines that the claim is ineligible. Thus, for example, if a claim is filed and the claimant fails to modify the claim pursuant to the Director's request under Subsection (b), or the claimant fails to overcome the respondent's notice of objection under Subsection (c), the Director may determine that the claim is ineligible. If the claimant later resubmits the claim pleading facts showing the claim would have been eligible when it was originally submitted, but the time period has subsequently run, the claim will not be eligible.

Avoidance of Vexatious Litigation

Proposed new Subsection 15(g) prohibits parties from seeking to enforce an agreement to arbitrate a claim which has been determined to be ineligible for arbitration by the NASD. This provision is intended to prevent collateral attacks and vexatious litigation over eligibility determinations. Its effect is to bar a respondent (or a claimant) from seeking a court order either to compel the NASD to accept the case for arbitration, or to compel a claimant (or respondent) into arbitration in another forum, after the Director has determined the claim to be ineligible. Thus, members would be prohibited from moving to compel arbitration before the American Arbitration Association ("AAA") or another self regulatory organization ("SRO"), for instance, if AAA or the SRO is an alternative forum choice in arbitration agreements, after the NASD's Director of Arbitration has declared the claim to be ineligible for arbitration before the NASD. Under this provision members could be subject to disciplinary action for seeking to enforce an agreement to arbitrate.

Relationship of Eligibility to Statute of Limitations Defenses

As discussed above with respect to tolling, the NASD intends that the proposed rule change will sharpen the distinction between eligibility and statutes of limitation. The Director's determination that a claim is eligible for arbitration has no effect on whether a relevant statute of limitations operates as a defense to a claim.

For example, a claim which is based on an event which occurred five years ago would be eligible for arbitration; however, if the claim were based on a private right of action under Section 10(b) of the Securities Exchange Act of 1934, the respondent could still plead the 1 year/3 year statute of limitations on such actions as a defense before the arbitrators. Similarly, if the claim were based on an event which occurred seven (7) years ago, and which was based on a breach of fiduciary duty for which tolling might apply under applicable state law, the fact that it was ineligible for arbitration would not affect the ability of the claimant to bring the claim for relief in court and to assert equitable tolling as a counterdefense to the respondent's statute of limitations defense. Thus, the Director's eligibility determination will not affect the substantive claim or defenses.

Finally, the NASD is aware that under New York law, which is often applicable to an arbitration or to one or more parties to a proceeding, a respondent in an arbitration case must file an application for an order enjoining the arbitration of a claim on statute of limitations grounds within twenty days of service of the claim in order to preserve any statute of limitations defense for use in a subsequent court proceeding. The filing of such an application will have no effect on the Director's eligibility determination; if the claim is eligible, the respondent can raise his statute of limitations defense before the arbitrator, if it is ineligible, he can raise the defense in court.

The NASD intends to make the proposed amendments to Section 15 applicable to all claims filed after the effective date of the amendments without regard to when the cause of action accrued or arose, or the timing of the event or occurrence giving rise to the dispute. The NASD will advise its members that the proposed amendment will apply retroactively to all claims brought after the effective date of the amendment. The NASD will also advise its members and associated persons that they have expressly agreed that under the NASD's rules all agreements currently in effect are subject to the amendment to the Code. Although one court has recently held that amendments to the Code do not apply to claims which have already accrued to require arbitration of the claim,[10] the NASD believes that case was a decision about the scope of the agreement to arbitrate—*i.e.*, whether the parties had agreed to arbitrate the particular claim—

[7] *See supra* n. 3.

[8] *See supra* n. 2*l*.

[9] The NASD recognizes that new facts relevant to an eligibility determination could arise through an amendment to the claim pursuant to Section 39(b) of the Code, which requires the consent of the arbitrators before an amendment to the pleadings is permitted. because the NASD intends that the determination of eligibility will occur before a matter is submitted to the arbitrators, an amendment to the claim permitted by the arbitrators under Section 39(b) would not reopen the eligibility issue for the arbitrators or for anyone else to decide.

[10] *Kresock v. Bankers Trust Company*, 21 F. 3d 176, 179 (2d Cir. 1994) ("*Kresock*").

a subject which courts have virtually always held is for the courts to decide.[11]

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change will protect investors and the public interest by facilitating the arbitration process through expeditious resolution of eligibility issues arising under Section 15 of the Code by authorizing the Director to determine whether a claim or controversy occurred less than 6 years prior to filing in the event eligibility is disputed by a responding party. Moreover, in order to protect investors and the public interest by avoiding disruptions and uncertainty about the authority to act under the Code, the NASD is proposing to amend Section 3 of the Code to permit the duties and functions of the Director to be delegated by the Director or the Executive Vice President, Member Services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The original proposed rule change was published for comment by the SEC on October 26, 1993 in Securities Exchange Act Release No. 33108. The SEC received three comment letters in response.[12] In addition, the SEC, in letters dated January 31, 1994[13] and February 4, 1994,[14] requested responses from the NASD on certain issues raised by the commenters and on other questions related to the proposed rule change.

Responses to SEC Questions and Comments

With respect to the first question in the SEC's January 31, 1994 letter, and those of two of the commenters, relating to the perception that the proposed rule change would permit the Arbitration Department staff to exercise "significant case-related [discretion on] eligibility determination[s]," the NASD responds in two parts. First, any arbitration forum has the inherent right to limit access to its forum in order to preserve and direct resources to the disposition of cases in the manner it deems most efficient. The Code currently limits access to the forum to those cases where the dispute, claim or controversy occurred within six years of submission of the claim. Second, the Arbitration Department currently determines the eligibility of a claim for arbitration as a matter of the sufficiency of the allegations in a statement of claim. The Department examines the statement of claim to determine if it alleges events or occurrences on which the claim is based and which, on their face, are within six years of the filing of the claim. If it does, the claim is eligible for arbitration. If the respondent contests the eligibility of a claim, the issue is currently resolved by the courts or the arbitrators, depending on where the respondent pursued resolution of the issue.

The proposed rule change brings the issue of eligibility, both as a threshold matter and with respect to disputes among the parties over eligibility, within the authority of the Director of Arbitration to decide. The threshold test will remain the sufficiency of the allegations in a claim. Sufficiency in this context does not require the claimant to sustain the burden of proof of eligibility to any level, it is merely an inquiry into whether the claim on its face states when the events or occurrences giving rise to the claim occurred. If the facts alleged in a claim are ambiguous or are not sufficient on their face to determine if a claim is eligible for arbitration, the staff will advise the claimant and request modification of the statement of claim. If the claimant does not modify the statement of claim to permit a determination of eligibility, the Director will determine if the claim is eligible on the basis of the claim as stated.[15] If the modification discloses facts which show that the claim is ineligible, it will be rejected as ineligible. The inquiry to be made by the Director in these instances is objective and goes to the existence of statements of facts in the claim, not subjective weighing of evidence.

Under the proposed rule change, in the event a respondent disputes the facts alleged by the claimant as supporting the eligibility of the claim following the threshold determination that the claim is eligible, the respondent carries a heavy burden of showing that the timing of the events or occurrences giving rise to the claim are other than those alleged by the claimant. In the absence of proof that is not subject to reasonable dispute that the claim is ineligible, the Director will presume that the claim is eligible.

Paragraph 2(a) of the Commission's January 31, 1994 letter identified a distinction between then-proposed Subsections 15(a) and 15(b) in that the latter sets forth a procedure for determining eligibility, while the former does not. The NASD agrees with the Commission's concerns and has amended the proposed rule change pursuant to Amendment No. 1 to clarify the procedures. Amendment No. 1 also addresses the concern set forth in paragraph 2(b) of the January 31, 1994, letter about the effect of a threshold determination of eligibility on the claimant's right to seek a judicial remedy.

With respect to the question in paragraph 3 of the January 31, 1994 letter, the proposed rule contemplates that eligibility will be determined prior to the appointment of the arbitrators, whether as a threshold matter only, as a result of a challenge by a respondent or both. The NASD believes that the amendments described herein contemplate that eligibility determinations made by the Director are final and that such determinations resolve the question of whether a claim can be submitted to arbitration. Once submitted, the issue cannot be revisited.[16] Disputes over eligibility must be raised and resolved within the

[11] The court stated that the parties could not have agreed to arbitrate the claim in issue in the *Kresock* case thereby rejecting the NASD's assertion, supported by the NASD's rule filing on the amendment in issue, that the amendment was merely a codification of existing interpretations of the Code. Moreover, the amendments to the Code at issue in *Kresock*, according to the court, did not purport to apply retroactively.

[12] Letter from Gregory L. Wilmes, Esq., Briol & Wilmes, to Jonathan G. Katz, Secretary, Commission (November 17, 1993) ("*Wilmes*"); Letter from Michael E. Friedman, Esq. to Jonathan Katz (December 3, 1993) ("*Friedman*"); Letter from Harry S. Miller, Esq., Shafner & Gilleran, to Jonathan Katz (January 27, 1994) ("*Miller*").

[13] Letter from Ethan D. Corey, Staff Attorney, Over-the-Counter Regulation, Commission to Suzanne E. Rothwell, Associate General Counsel, NASD (January 31, 1994).

[14] Letter from Ethan D. Corey, Staff Attorney, Over-the-Counter Regulation, Commission to Elliott R. Curzon, Senior Attorney, NASD (February 4, 1994).

[15] A statement of claim will generally be regarded as insufficient to determine eligibility if it cannot be determined from its plain language whether any part of the claim is based on occurrences or events less than six (6) years old. As stated above, if it appears that some part of the claim is based on occurrences or events less than six (6) years old, those portions may be submitted to arbitration. *See supra* n. 1, and discussion of bifurcation *infra*.

[16] The NASD recognizes that new facts relevant to an eligibility determination could arise through an amendment to the claim pursuant to Section 39(b) of the Code, which requires the consent of the arbitrators before an amendment to the pleadings is permitted. Because the NASD intends that the determination of eligibility will occur before a matter is submitted to the arbitrators, an amendment to the claim permitted by the arbitrators under Section 39(b) would not reopen the eligibility issue for the arbitrators or for anyone else to decide.

context of the process described in proposed new Section 15, or they are waived. The NASD does not believe an amendment is required to address this issue.

Responses to Commenters

With respect to the arguments of the commenters that the proposed rule change contradicts the holdings of various courts on the issue of eligibility determinations,[17] the NASD does not agree. Arbitration is a creature of contract, *AT&T Technologies, supra*, and it is for the parties, through the choice of a forum, to determine the terms of the contract. *See, e.g., U.S. Steelworkers* v. *Warrior Gulf Navigation Co.*, 363 U.S. 574 (1960). There is, therefore, no impediment erected by the courts which would prevent the NASD from adopting a rule which permits the Director of Arbitration to decide issues affecting access to the NASD's arbitration forum. further, the proposed rule, by its terms, does not affect the substance of a claim—an eligibility determination by the Director does not bar a party from asserting the claim in court.

Another commenter asserted that under the proposed rule the Director of Arbitration would be conducting fact-finding hearings to determine eligibility.[18] The proposed rule will not produce such a result. As discussed in more detail above, eligibility will be determined as a matter of the sufficiency of the allegations in a statement of claim, not as a subjective decision regarding disputed facts.

Finally, a third commenter[19] raised four issues: (1) whether the time limit for filing a claim under the proposed eligibility rule can be tolled; (2) whether the proposed rule will permit the Director of Arbitration to bifurcate claims by declining to take jurisdiction over ineligible portions of a claim; (3) how bifurcated claims will proceed; and (4) whether it is fair to bar a party from seeking to enforce an agreement to arbitrate where the claim has been ruled ineligible.

On the first issue, the courts have said that the time limits in an eligibility rule such as Section 15 of the Code are contractual, they do not operate like a statute of limitations, and, therefore, they are generally not subject to tolling. *See, e.g., AT&T Technologies, supra; Paine Webber Inc.* v. *Hofmann*, 984 F.2d 1372 (3d Cir. 1993). The NASD has not applied tolling to eligibility issues historically, and does not plan to apply tolling under the proposed rule.[20] Contrary to the assertion of the commenter, application of the eligibility limit without tolling will not deprive investors of their right to recourse. An ineligible claimant will retain his right to seek relief in the courts to the same extent as it existed prior to filing the claim in arbitration.

On the second issue, also raised in the February 4, 1994 letter from the SEC, the proposed rule change will require bifurcation of claims to the extent claims which are based on events or occurrences more than six years prior to the filing of the claim will be ineligible for arbitration. Thus, where a statement of claim sets forth events or occurrences as the basis for claims for relief, those which occurred less than six years ago will be eligible for arbitration, while the claimant would be required to pursue his remedies in court for claims based on events or occurrences more than six years old. In the NASD's view, bifurcation is an acceptable result in such cases. *See Pompano-Windy City Partners* v. *Bear Stearns & Co.*, 698 F.Supp. 504 (S.D.N.Y. 1988), citing *Dean Witter Reynolds* v. *Byrd*, 470 U.S. 213, 225 (1985) (White, J. concurring).

With respect to the third issue, the NASD takes no position on how such bifurcated claims should proceed. The NASD's Arbitration Department manages its docket without regard to issues facing participants in other forums. To the extent a court permits or requires the ineligible portion of a bifurcated matter to proceed, it is entirely within its power to do so.

Finally, on the fourth issue, it is not only fair, but essential for public arbitration claimants, for the proposed rule change to bar parties from seeking to enforce an agreement to arbitrate where the claim has been determined to be ineligible. For example, if a claim is ruled ineligible, the proposed rule will bar the respondent from seeking an order from a court compelling the arbitration of the case. This will relieve the claimant of defending against such collateral attacks on the eligibility determination while pursuing his remedies in court, a situation which would be vexatious and expensive for claimants.

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

The NASD's proposed rule change addresses an important issue increasingly common in arbitration proceedings, namely, the use of contentious litigation tactics to determine whether claims are eligible for arbitration under NASD rules. Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commentators address the following:

1. The proposed rule change would permit respondents to challenge the eligibility of a claim at any time before the parties are notified of the appointment of the arbitrators for the hearing or the appointment of an arbitrator to consider prehearing issues. Should respondents be required to raise their objections at an earlier point in the process, for instance, not later than the time by which they file their answer to the Statement of Claim?

2. The proposed rule change is based upon a rule approved by the Securities Industry Conference on Arbitration ("SICA") at its regular meeting on April 21, 1993. The form of the rule approved by SICA provided, in pertinent part:

(c) A determination by the Director of Arbitration pursuant to subparagraph (b) that a claim is ineligible shall not constitute a bar to asserting the underlying claim in a judicial forum. With respect to any such ineligible claims, the parties will have available to them the rights and remedies provided by applicable law, notwithstanding, any (i) existing predispute arbitration agreement or (ii) decisions on eligibility. No party shall

[17] Wilmes, Friedman.

[18] Friedman.

[19] Miller.

[20] Section 18(b) of the Code provides that the six year limitation on submission to arbitration provided under Section 15 of the Code is tolled for so long as a court of competent jurisdiction retains jurisdiction over the matter. This provision is a contractual tolling provision which prevents the eligibility limit from running under the narrow circumstance specified. Equitable tolling, by contrast, is a creature of the equitable powers of the courts to the effect that the fraud or dilatory conduct of the defendant should not be permitted to result in the lapse of time for bringing a cause of action. As stated above, the eligibility limitation addresses only the access of parties to the NASD's forum, not the merits of the claim, defenses thereto or the ability of a claimant to pursue his claim in court.

seek to enforce any agreement to arbitrate where the claim has been determined to be ineligible under this section.

Do the pertinent provisions of proposed sections 15(d) and 15(e) differ substantively from the rule approved by SICA? If not, does the proposed rule change set forth the consequences of a determination of ineligibility in a manner that will be more readily understandable to all parties, including *pro se* claimants, than the form of the rule approved by SICA?

3. The Commission understands that proposed Section 15(e)(iv) is intended to address claims that are filed with the NASD more than once. For those claims that previously have been submitted, and have been determined to be ineligible under Section 15, there would be no tolling of time periods for purposes of the eligibility rule with respect to the time period during which the NASD previously considered the claim. Accordingly, a claimant who resubmits a matter in revised form a second time would have to calculate the eligibility time period from the date of occurrence or event giving rise to the dispute. Is this understanding fairly implied from Section 15(e)(iv)?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–93–51 and should be submitted by August 23, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18736 Filed 8–1–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Thermolase Corporation
When Issued Common Stock, $.01 Par Value (File No. 7–12717)
Dycam, Inc.
Common Stock, $.01 Par Value (File No. 7–12718)
WCI Steel, Inc.
Common Stock, No Par Value (File No. 7–12719)
Bush Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–12720)
Grupo Sidek S.A. De C.V.
American Depository Shares, each representing 4 shares of Series L Common Stock, No Par Value (File No. 7–12721)
Merrimac Industries, Inc.
Common Stock, $.50 Par Value (File No. 7–12722)
Taiwan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12723)
SunAmerica, Inc.
$1.11 Dep. Rep. (Each representing ⅕ Shares of Ser. A Mand. Conv. Prem. Divi. Pfd Stock) (File No. 7–12724)
SunAmerica, Inc.
9¼ Pfd Series B Cum. (File No. 7–12725)
UAL Corporation
Dep. Shares each representing 1.100 of a Share of 2¼ PC Series B Pfd Stock (File No. 7–12726)
Greenbrier Companies, Inc.
Common Stock, $0.001 Par Value (File No. 7–12727)
Greenwich Street Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–122728)
Paragon Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12729)
Dominion Resources Black Warrior Trust
Common Stock, No Par Value (File No. 7–12730)
Amway Japan Limited
Common Stock, No Par Value (File No. 7–12731)
Nations Balanced Target Maturity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12732)

These securities are listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 220549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18738 Filed 8–1–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 94–10]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Reviews Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on July 26, 1994.

Jon H. Seymour,

Assistant Secretary for Administration.

Nominations for Performance Review Boards Fiscal Year 1994 Performance Appraisal Cycle

Office of the Secretary

Donald R. Trilling, Director, Office of Environment, Energy and Safety, Office of the Secretary
Nancy K. MacRae, Deputy Director, Office of International Transportation and Trade, Office of the Secretary
Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights and General Law, Office of the Secretary
Paul M. Geier, Assistant General Counsel for Litigation, Office of the Secretary
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[FR Doc. 94–18691 Filed 8–1–94; 8:45 am]

BILLING CODE 4910–62–P

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), P.L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 94–5–40 established the currently effective two-month SFFL applicable through July 31, 1994.

In establishing the SFFL for the two-month period beginning August 1, 1994, we have projected non-fuel costs based on the year ended March 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–7–36 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3099
Latin America	1.3538
Pacific	2.0087
Canada	1.4405

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: July 27, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–18689 Filed 8–1–94; 8:45 am]

BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94–5–41, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1994, we have projected non-fuel costs based on the year ended March 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–7–37 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.0995
Western Hemisphere	1.1360
Pacific	1.5008

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: July 27, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–18690 Filed 8–1–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[NHTSA Docket No. 94–004; Notice 2]

Highway Safety Programs; Model Specifications for Screening Devices To Measure Alcohol in Bodily Fluids

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

ACTION: Notice.

SUMMARY: This notice establishes Model Specifications for the performance and testing of alcohol screening devices. These devices test for the presence of alcohol, and may use breath or other bodily fluids, such as saliva, to do so. NHTSA is establishing these specifications to support State laws that target youthful offenders (i.e., "zero tolerance" laws) and the Department of Transportation's regulations on Alcohol Misuse Prevention, and in recognition of industry efforts to develop new technologies (e.g., non-breath devices) that measure alcohol content from bodily fluids.

A Conforming Products List (CPL) will be published identifying the devices that meet NHTSA's Model Specifications. The CPL can serve as a guide for those interested in purchasing devices that screen for the presence of alcohol.

DATES: The Model Specifications established by this notice become effective August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Lori A. Miller, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–9835.

SUPPLEMENTARY INFORMATION: On December 15, 1992 (57 FR 59382), the U.S. Department of Transportation (DOT) published a notice of proposed rulemaking (NPRM) to implement the "Omnibus Transportation Employee Testing Act of 1991," which requires alcohol testing programs in the aviation, motor carrier, rail, and mass transit industries. The Research and Special Programs Administration (RSPA) proposed similar regulations for the pipeline industry. In general, the NPRM proposed to prohibit covered employees from performing safety-sensitive functions when test results indicate alcohol concentration levels of 0.04 or greater. The NPRM proposed to apply slightly different consequences to employees having alcohol concentration levels of 0.02 or greater but less than 0.04.

To determine alcohol concentration, the NPRM proposed to use breath as measured by those evidential breath testing devices (EBTs) listed on NHTSA's Conforming Products List (CPL) which are capable of providing a printed result, sequentially numbering the tests conducted, and distinguishing alcohol from acetone at the 0.02 BAC level. EBT's listed on NHTSA's CPL have been tested and determined to meet the agency's Model Specifications for EBTs, which were last amended on September 17, 1993 (58 FR 48705).

In a final rule published on February 15, 1994 (59 FR 7340), DOT amended its regulations and added procedures for conducting alcohol testing in transportation workplaces (49 CFR Part 40). This final rule differed from the NPRM in a number of respects. The final rule required the use of breath testing devices listed on the CPL for EBTs. For screening devices, it permitted the use of EBTs on the CPL that do not print the result, but only if confirmation tests are conducted using EBTs listed on the CPL which are capable of providing a printed result. (These devices must also be capable of distinguishing alcohol from acetone at the 0.02 BAC level and sequentially numbering the tests conducted.)

NHTSA published a separate notice in the same issue of the Federal Register (59 FR 7372) proposing to adopt Model Specifications and a CPL that would permit additional alcohol testing devices to be used for screening purposes. In its notice, NHTSA proposed to establish Model Specifications for alcohol screening devices, which differ from the Model Specifications for Evidential Breath Testing devices in a number of important respects. It stated that the proposed Model Specifications are designed to test whether devices are suitable for screening, not evidential, purposes and that they are designed to test the performance of devices that may use bodily fluids other than breath (such as saliva) to determine the presence of alcohol.

NHTSA requested comments on these proposed Model Specifications.

Comments Received

The agency received twenty comments in response to the notice. Comments were received from manufacturers of screening devices and related equipment, persons representing sectors of the transportation industry subject to the DOT regulations (including rail, transit, motor carriers and pipelines) and substance abuse program administrators, an interested individual and a health professional.

General Comments

The comments, in general, were supportive of the agency's proposed Model Specifications. Some of the comments praised the notice for proposing to increase flexibility, stimulate development and reduce barriers and cost for those charged with implementing DOT's new alcohol testing rules.

A number of commenters raised concerns about the schedule NHTSA would following publishing the final Model Specifications. DOT's final rule becomes effective for large employers (in general, with 50 or more safety-sensitive employees) on January 1, 1995. The commenters, therefore, urged the agency to issue the Model Specifications and approve conforming devices prior to that date. Two commenters recommended that if final rules and product evaluations are not completed

within a specified period of time (one commenter suggested August 1 1994, another mid-1994), the effective date of DOT's final rule should be delayed.

In response to these comments, NHTSA has sought to publish the final Model Specifications as quickly as possible. As described further below, we intend to begin testing immediately, and hope to publish within 30 days from today's date a Conforming Products List (CPL) of screening devices that have been tested to date and conform to these Model Specifications. The CPL will be updated and published periodically, as further testing is completed.

A number of commenters raised issues that pertain to other notices that were published in the **Federal Register** on February 15, 1994, such as DOT's final rule (59 FR 7340) on Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) or the final rules and common preamble (59 FR 7302) on the Limitation on Alcohol Use by Transportation Workers. Others raised issues that are also outside the scope of NHTSA's notice and request for comments. For example, one respondent commented that all alcohol testing should be performed by law enforcement representatives. Another respondent urged the Department to permit testing to be conducted only using evidential breath testing devices. Other commenters suggested that the use of non-breath alcohol tests (which use blood, saliva or urine samples) as a condition for employment is an invasion of privacy and a violation of individual rights.

NHTSA's Model Specifications contain the performance criteria and methods for the testing of alcohol screening devices. It does not address whether such devices are permitted to be used to perform screening tests, who is authorized to administer such tests or who is subject to them. These issues are addressed instead in DOT's final rules.

Other commenters raised questions or concerns regarding the Model Specifications for Evidential Breath Testing Devices, last revised on September 17, 1993 (58 F.R. 48705), or the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), published on April 7, 1992 (57 F.R. 11772).

Issues such as these are outside the scope of the notice published in February proposing Model Specifications for alcohol screening devices, and therefore have not been addressed in this notice adopting Model Specifications.

Specific Comments on Model Specifications

No comments were received regarding some portions of the proposed Model Specifications. These portions have been adopted without change. For further discussion regarding these portions, interested persons should review the February notice. Portions of the proposed Model Specifications that generated comment, and the issues raised in the comments, are discussed below.

1. Purpose, Scope, Classification and Definitions

In its February 15, 1994 notice, NHTSA proposed to define an alcohol screening device as a device that is used to detect the presence of 0.020 or more BAC, and that indicates the test result by numerical read-out or by other means, such as by the use of lights or color changes. All comments addressing these aspects of the Model Specifications supported the definition. They have been adopted without change.

The notice proposed that the Model Specifications would provide that devices may measure any bodily fluid (including blood, breath or saliva), but that the output must be in blood alcohol concentration (BAC) units. It explains that NHTSA believes the relationship between BAC and the bodily fluid being measured be properly established so that a means for evaluating the device can be devised, and that NHTSA considers use of a one-to-one conversion factor between blood and saliva to be appropriate. NHTSA requested comments in the February 15 notice on the proposed use of a one-to-one conversion factor for saliva, and on what may constitute acceptable criteria for bodily fluids other than saliva, blood and breath.

All comments regarding the one-to-one conversion factor and the applicability of the proposed Model Specifications to blood, breath and saliva were supportive of NHTSA's proposal. These aspects of the Model Specifications have been adopted without change.

Comments were received from the manufacturer of an alcohol screening device that uses ocular vapor analysis. The type of analysis used by this device measures alcohol using vapors from the surface of the eye. The commenter requested that the model specifications include the ocular vapor analysis technique as an acceptable and recognized method.

The Model Specifications, as proposed in the agency's February 15 notice and as finally adopted in today's **Federal Register** notice, define an alcohol screening device as a device that may measure "any bodily fluid" for the purpose of detecting the presence of 0.020 or more BAC. This definition is clearly broad enough to include use of the ocular vapor analysis technology..

NHTSA did not include in its proposal, however, testing procedures for all conceivable types of screening technologies. Rather, it proposed testing procedures for the types of screening technologies currently most commonly available. The notice explained that the agency would modify and improve the Model Specifications as new data and test procedures become available, and that it would alter the test procedures, if necessary, to meet unique design features of specific devices. If the test procedures need to be altered to test the ocular vapor analysis technology, NHTSA would make such alterations. Any needed alterations would be published in the **Federal Register**.

One commenter, a manufacturer of alcohol breath testing devices, raised concerns about devices that are not capable of detecting ethyl alcohol and isopropyl alcohol. The commenter stated that if devices cannot identify all three of these alcohols, they will produce false negative alcohol readings.

The definition of alcohol included in the proposed Model Specifications permits alcohol screening devices to detect different types of alcohol (including ethyl alcohol, methyl alcohol and isopropyl alcohol), but does not require that devices must be capable of distinguishing between each type. To determine compliance with the Model Specifications, the agency proposed that it would conduct tests using ethanol.

NHTSA does not disagree that the potential for false negative results may exist should be a technology be employed in a screening device that is specific to ethanol only and an individual has consumed methyl or isopropyl alcohol. However, the agency is aware of no screening devices using such a technology. Rather, the screening devices available today on the market generally employ technologies that are not specific to any single type of alcohol, and, therefore, are capable of detecting (but not distinguishing between) ethanol and the other alcohols.

As a result, and since ethanol is the alcohol most often consumed, we believe that the probability of obtaining false negative results by screeners that conform to these Model Specifications is extremely low. The proposed definition has been adopted without change.

2. Statistical Accuracy

In its February 15 notice, NHTSA proposed to test alcohol screening devices at 0.008 and 0.032 BAC under normal laboratory conditions to determine their precision and accuracy at detecting the presence of 0.020 or more BAC (Test 1), and at 0.000 BAC to determine the performance of these devices when providing blank readings (Test 2).

The notice explained that the .008 and .032 BAC levels were selected based on criteria for precision and accuracy that are equivalent to those used for EBTs. The criteria require that devices perform at a level of accuracy within ±0.005 of 0.020 BAC (thereby establishing target valves within 0.015 and 0.025 BAC), and a level of precision which yields a standard deviation not greater than 0.0042. To achieve a confidence rate of approximately 95% in the results of these 20 tests, we proposed to establish measurement points at 1.73 standard deviations (or 0.007 BAC) below and above the lower and upper values, respectively (i.e., 0.015–0.007=0.008 BAC and 0.025+0.007=0.032 BAC).

One commenter expressed the opinion that the proposed method of testing does not truly reflect the accuracy standard of ±0.005 BAC with standard deviation not to exceed .0042 BAC. This commenter recommended that instruments should be tested instead at the .020 BAC level, that results should fall within the 0.15 and .025 BAC range, and that a deviation of not more than .0042 should be maintained. The commenter's response further stated that, to achieve a confidence rate of 95%, only 5% of the tests conducted should be outside the .015 to .025 BAC range.

The method proposed by this commenter would require that devices identify the precise BAC level detected by the instrument. The Model Specifications do not include such a requirement. Rather, they simply require that devices are capable of detecting the presence of alcoholic at the 0.020 or greater BAC level. To accommodate the use of non-numerical as well as numerical alcohol screening devices, the Model Specifications use two test points which are 1.73 times the maximum allowed standard deviation on either side of 0.020 ±0.005 BAC (0.008 and 0.032). The number of false positives and false negative allowed were obtained based on the use of Student's distribution (a small sample approximation to the normal distribution).

One commenter illustrated a range of error that would be permitted under the proposed Model Specifications, and suggested that the Model Specifications be amended to permit a smaller range of error. Another commenter, addressing the same concern, proposed that the Model Specifications be amended to provide for the adjustment of the test at .032. This commenter recommends that we conduct 20 tests at .025 with no more than one false negative result and 20 tests at .015 with no more than two false positives. NHTSA believes these proposals would require that screening devices perform at a higher level of precision than is required for EBTs. The procedures contained in the proposed Model Specifications have been adopted without change.

3. Test Methods

NHTSA proposed to use a Breath Alcohol Sample Simulator (BASS), non-alcoholic human breath, and a calibrating unit to test breath devices. For non-breath devices, the agency proposed to use preparations of bodily fluids or scientifically acceptable substitutes. For example, the agency proposed to use aqueous alcohol test solutions equivalent to blood or saliva on a one-to-one basis to test saliva devices.

One commenter, a manufacturer of a saliva device, expressed its view that there are no fluids that are scientifically acceptable equivalents to bodily fluids. The commenter asserted that aqueous alcohol test solutions lack the viscosity, solid content and inhibitors that are present in bodily fluids such as saliva, and recommended that the agency instead collect saliva specimens from individuals known to be alcohol-free. According to the commenter, the non-alcohol saliva pool could then be spiked with various alcohol solutions for device evaluation.

NHTSA disagrees with this respondent's comment. The agency has data finding that aqueous alcohol test solutions are acceptable substitutes for saliva-alcohol testing purposes.[1] In addition, while we agree that aqueous solutions and saliva do have different characteristics, we have no reason to believe that these difference would interfere with the agency's ability to test the capability of saliva screening devices to detect alcohol content. The final Model Specifications continue to provide that aqueous alcohol test solutions will be used.

Two commenters recommended that NHTSA use alcohol reference material 1828, obtained from the National Institute of Standards and Technology (NIST), to prepare all standard solutions. One of these commenters also suggested that, following preparation, these solutions should themselves be analyzed against a referee method (enzymatic or gas chromatography) which has been calibrated using NIST standards.

NHTSA does not plant to use NIST 1828 material in its standard solutions. However, the agency presently uses the material for the purpose for which it was intended, as a reference material for calibration purposes, and will continue to do so.

The agency proposed to conduct 40 trials under Test 1 (20 at .008 BAC and 20 at .032 BAC) and 20 trials under Test 2 (at .000 BAC). For reusable devices, these 60 trials would be conducted using a single unit. For disposable devices, these 60 trials would be conducted using 60 separate units.

NHTSA's notice explained that some alcohol screening devices indicate the presence of alcohol in a manner that is unambiguous and requires no interpretation, such as by the use of a light or numerical reading. For these devices, NHTSA proposed that Tests 1 and 2 (at .008, .032 and .000 BAC) would be performed by an investigator at the DOT Volpe National Transportation Systems Center (VNTSC). To conform with the Model Specifications, the notice stated that the device must perform with no positive results at .000 BAC, not more than one positive result at .008 BAC and not more than one non-positive result at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the device must perform with not more than one such result at .000 BAC.

NHTSA's notice explained that other devices indicate the presence of alcohol in a manner that requires interpretation and may involve some ambiguity, such as by the use of color changes. For these devices, NHTSA proposed that Tests 1 and 2 (at .008, .032 and .000 BAC) would be performed by ten individuals who have no knowledge of test BACs and qualify as test interpreters. VNTSC would select these individuals using manufacturer's restrictions, if any. These individuals would be asked to read the manufacturer's instructions for the interpretation of the device's read-out, and interpret the test results independently.

[1] Flores, A.L., Spicer, A. and Frank, J.F., "Laboratory Testing of a Saliva-Alcohol Test Device by Enzymatics, Inc.," Washington, D.C., U.S. Department of Transportation, National Highway Traffic Safety Administration, Technical Report No. DOT–HS 807 893, December 1992.

To conform with the Model Specifications, the notice proposed that the device must perform, with each interpreter, with no positive results at .000 BAC, not more than one positive result at .008 BAC and not more than one non-positive result at .032 BAC. If the device is capable to providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the notice proposed that the device must perform, with each interpreter, with not more than one such result at .000 BAC. These aspects of the Model Specifications have been adopted without change.

An organization that represents substance abuse program administrators suggested that, if practical, the ten individuals select to interpret the devices should have no medical training since it is likely that the persons who will be administering the tests in the field will have no such training. The agency plans to select individuals with varying backgrounds and experience. While we do not believe there is justification for imposing a restriction on the selection of individuals who have medical training, it is likely that few if any of the individuals selected will have such training.

A manufacturer of saliva screening devices suggested that the Model Specifications should provide for a familiarization period, to ensure that investigators and individuals who will be evaluating these devices are familiar with the manner in which the devices should operate.

The preamble to the proposed Model Specifications explained that individual evaluators will be asked to read the manufacturer's instructions before they perform their evaluations. These individuals will be provided sufficient time to become familiar with these instructions, and will also be given instructions for conducting the evaluations. Investigators will also provide themselves with sufficient time to read the manufacturer's instructions and become familiar with the devices they are testing, as well as the evaluation procedures.

NHTSA stated in the February 15 notice that, through the independent interpretation of ten individuals, it believed the Model Specifications would ensure that the results of tested devices are visible and will remain so for a reasonable period of time and area likely to be interpreted in a consistent manner. The notice indicated that the tests would require approximately two hours to run. The agency requested comments on these aspects of the proposed Model and Specifications.

The comments were supportive of these aspects of the proposed Model Specifications, except that two commenters objected to the requirement that screening results remain visible for two hours. One of the commenters considered this to be an unreasonable requirement, particularly when (according to the commenter) the primary basis for the requirement is the convenience of the testing facility that will be evaluating the device. The other commenter was concerned that this two-hour period could invalidate the results, since some devices require that the user read and record the test result within a specific period of time (such as two minutes).

Upon further consideration based on these comments, NHTSA has decided to modify the requirement that results must remain visible for two hours. It is not feasible, however, for the agency to eliminate the requirement altogether. In part to facilitate the evaluation of these devices, and also to be consistent with the DOT Alcohol Testing Procedures (49 CFR Part 40), which provide that the waiting period between screening and confirmation tests must be at least 15 minutes but should be no longer than 20 minutes, NHTSA will modify its testing methods so that the interpretation of results will be accomplished within 20 minutes of dosing. Accordingly, the results of disposable interpretive devices will need to remain visible for a period of only 20 minutes.

The notice explained that, to NHTSA's knowledge, no reusable devices currently use interpretive readings and the agency believes it is unlikely that manufacturers would begin to use such readings in reusable devices. Accordingly, NHTSA proposed that the Model Specifications would not include a methodology for testing reusable interpretive devices. We requested comments on this aspect of the proposed Model Specifications. The commenters that addressed this issue agreed with the agency's proposal.

For disposable devices that use interpretive readings, NHTSA proposed to combine Tests 1 and 2, and number the units and expose them to the three BAC levels using a methodology that would not reveal to the person interpreting the test the dosage received by any particular unit. NHTSA requested comments on this proposed methodology. No comments were received. The proposed methodology has been adopted without change.

The February notice proposed to test devices to determine whether acetone or, in the case of breath or saliva devices, cigarette smoke affects the functioning of the instruments. The notice also requested comments on whether devices should be tested for interference from other substances.

With regard to the test for acetone interference, one commenter agreed that there is a need for such a test. Another commenter strongly recommended that the test be deleted from the Model Specifications. The commenter argued that acetone is unlikely to interfere with the measurement of breath alcohol and, if persons have levels of acetone that are sufficiently high to cause interference, such persons should not be performing safety sensitive functions. In addition, the commenter stated that requiring devices to distinguish between alcohol and acetone would greatly increase instrument cost and restrict participation for certain instruments.

NHSTA has reconsidered its position on this issue, and decided that alcohol screening devices should not be required to distinguish between alcohol and acetone, particularly since the instruments used for confirmation testing are capable of distinguishing between these substances. Based on existing data,[2] we do not expect a high incidence of acetone interference and, in the unlikely event that a device indicates a positive result due to the presence of acetone, this will be detected in the confirmation test. The Model Specifications have therefore been amended to eliminate the acetone test.

With regard to cigarette smoke and other interfering substances, we received only one comment, which stated that non-interference from smoking, eating and drinking should not be a conformance requirement since these activities can be avoided before a test is performed. If the evaluation of cigarette smoke is retained in the Model Specifications, this commenter recommended that it be performed for information purposes only.

NHTSA expects the likelihood of cigarette smoke interference will be much greater than acetone interference, and has decided to retain the cigarette smoke test. As provided in the Model Specifications, the test will be performed in accordance with the manufacturer's instructions. Any waiting period specified in the manufacturer's instructions will be strictly observed. The test will be

[2] Flores, A.L. and Frank, J.F., "The Likelihood of Acetone Interference in Breath Alcohol Measurement," Washington, DC, U.S. Department of Transportation, National Highway Traffic Safety Administration, Technical Report No. DOT HS 806 922, 1985.

Frank, J.F. and Flores, A.L., "The Livelihood of Actone Interference in Breath Alcohol Measurement," Alcohol, Drugs, and Driving, 3 (2), 1–8, April-June 1987

performed within one minute after the person smokes the cigarette where no waiting period is specified in the manufacturer's instructions. NHTSA did not propose to conduct a test for interference from eating and drinking, and we have not added any such test in the final Model Specifications.

The commenter also suggested that, if the Model Specifications continue to include a cigarette smoke test, that the method used for conducting this test on saliva screening devices should be similar to that used for breath screening devices. NHTSA concurs that this comment, and has revised the Model Specifications to clarify its application to both saliva and breath devices.

The agency also proposes to conduct high (40°C) and low (10°C) ambient temperature and vibration tests for alcohol screening devices to determine their ability to function under a range of environmental conditions. NHTSA proposes that these tests would be performed by an investigator at VNTSC. Five trials would be conducted at .000 BAC under Test 3.2. Forty trials (including 20 at .008 and 20 at .032 BAC) would be conducted under each of these other tests.

One commenter, a manufacturer of a passive alcohol sensor, noted that the proposed temperature range for testing is more severe than that for EBT testers. This commenter is correct. The temperature range is more severe because it is anticipated that screening tests may be performed outside in widely varying temperature conditions. Tests performed with EBTs are generally performed indoors where temperatures are controlled. The proposed temperature range has been adopted without change.

Another commenter, a manufacturer of a saliva test device, suggested that the specimens for saliva testing should be held at body temperature (37°C) while performing the two ambient temperature evaluations "to stimulate real-life situations." NHTSA disagrees with this comment. When saliva tests are being conducted in the field, the temperature of the saliva will change soon after the sample is taken from the person's mouth. NHTSA therefore believes the procedures contained in its proposed Model Specifications more accurately simulate the conditions under which actual testing will be conducted. This portion of the Model Specifications has been adopted without change.

The manufacturer of an alcohol breath testing device commented that disposable devices, which cannot be checked for calibration on a periodic basis, should be evaluated throughout their useful life. This manufacturer also recommended that devices which require that results be checked through a visual inspection should be tested under a variety of light conditions, such as fluorescent, mercury vapor, sodium vapor and daylight.

NHTSA disagrees that the Model Specifications should provide for the evaluation of disposal devices throughout their useful life. As explained in the February 15 notice, manufacturers of alcohol screening devices must meet the requirements contained in FDA's Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and they must include labels on their devices that meet the requirements contained in FDA's Labeling regulations for devices used for medical purposes (21 CFR 809.10), even if the devices are not to be used for medical purposes.

The Labeling Instructions for Alcohol Screening Devices included as an Appendix to the February notice instructed, among other things, that the label "Provide the reagent's shelf life and opened expiration dating, if applicable:" In addition, manufacturers must determine shelf life and expiration dating in accordance with FDA's regulations on Good Manufacturing Practices.

NHTSA has asked users of alcohol screening devices to provide both acceptance and field performance data to the agency's Office of Alcohol and State Programs (OASP) when such data are available. As we explained in the February notice, if information gathered indicates that a device on the CPL is not performing in accordance with the Model Specifications, that a manufacturer is not complying with FDA's Good Manufacturing Practices, or that a device's label does not comply with FDA's Labeling regulations, an investigation would be conducted and appropriate measures would be taken. For these reasons, the Model Specifications have not been amended to provide for the evaluation of disposable devices throughout their useful life.

NHTSA accepts the recommendation that certain devices should be tested under a variety of light conditions. The Model Specifications have been amended to provide that interpretive devices which require that results be checked through a visual inspection should be tested under incandescent, mercury vapor, sodium vapor and daylight as well as fluorescent conditions.

To conform with the Model Specifications, the notice proposed that the device must perform with no positive results at each test performed at .000 BAC, not more than one positive result at each test performed at .008 BAC and not more than one non-positive result at each test performed at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the notice proposed that the device must perform with not more than one such result at .000 BAC. No comments were received regarding this aspect of the proposal. It has been adopted without change, except that the final Model Specifications clarify that there can be no more than one "can't tell" result for disposable interpretive devices.

4. FDA Involvement

When alcohol screening devices are used for medical purposes, the manufacturers of the devices are required to obtain marketing clearance from the Food and Drug Administration (FDA), in accordance with FDA regulations that address issues such as quality assurance in manufacturing, shelf-life and labeling. Currently, FDA does not assert jurisdiction (provide marketing clearance) for alcohol screening devices used for law enforcement purposes and workplace testing.

However, because of the nature of alcohol screening devices and the conditions under which they are to be used, NHTSA stated in its February 15 notice that it is important for manufacturers of these devices to conform with certain requirements, imposed by FDA on devices used for medical purposes, prior to the inclusion of the devices on NHTSA's CPL.

Accordingly, NHTSA proposed to require that each device submitted for testing under the Model Specifications be accompanied by a self-certification from the manufacturer, certifying that it meets the requirements contained in FDA's Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements contained in FDA's Labeling regulations for devices used for medical purposes (21 CFR Part 809.10), even if the devices are not to be used for medical purposes.

NHTSA received a number of comments regarding this aspect of its proposal. One commenter favored direct FDA regulation of all workplace alcohol testing products and, if necessary, FDA enforcement. This commenter encouraged DOT and NHTSA to continue their discussions with FDA. Another commenter agreed that the guidelines written in FDA's Good Manufacturing Practices regulation could be useful as a basis for labeling and manufacturing requirements, but

this and other commenters recommended that FDA not get involved. According to one commenter, "FDA is already overloaded, and long delays could result from their involvement in this project." Another commenter recommended that, "if an instrument is not to be used in the medical field . . . FDA [should] not assert jurisdiction."

By requiring a self-certification, NHTSA was not proposing to require that manufacturers obtain FDA marketing clearance, but simply that the manufacturers self-certify that they meet the above-referenced requirements. NHTSA stands by this aspect of its proposal.

For technical assistance or a copy of the Device Good Manufacturing Practices Manual for Medical Devices, manufacturers should contact FDA's Division of Small Manufacturers by calling toll free at 1–800–638–2041.

NHTSA's February notice included, as an Appendix, a proposed set of Labeling Instructions for Alcohol Screening Devices that had been prepared in consultation with FDA to assist manufacturers of alcohol screening devices in developing a label that conforms to 21 CFR Part 809.10. The labeling instructions addressed issues such as restrictions that may apply to operators of the device and conditions under which the device should or should not be operated.

One respondent commented on certain aspects of the labeling instructions. The commenter supported the inclusion of details on calibration, calibration frequency, and the manufacturer's name, address, and telephone and fax numbers, but disagreed that an "800" number is necessary. In addition, the commenter stated that frequency is subject to use, and some users will prefer to return a unit to the manufacturer rather than engage in its calibration.

For the convenience of users, many of whom will be conducting alcohol screening tests in the field, the Labeling Instructions for Alcohol Screening Devices, which are included as an Appendix to today's notice, continue to provide that manufacturers list an 800 number the user may contact for further information or technical assistance. With regard to the calibration of devices, the Labeling Instructions continue to provide that disposable devices are pre-calibrated, and need no additional calibration. They also continue to provide that reusable devices require calibration, and instruct that the labels on such devices provide information regarding how calibrations are to be conducted, instructions for calibration and recalibration and the criteria for acceptability of calibration.

These Model Specifications are not regulations. Organizations and agencies may adopt these Model Specifications and rely on NHTSA's test results or may conduct their own tests according to their own procedures and specifications. It should be noted, however, that transportation employers covered by 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, are required to use only alcohol testing devices that meet the criteria established by that regulation.

NHTSA intends to begin testing of alcohol screening devices immediately, and hopes to publish a CPL of devices that have been tested to date and conform to these Model Specifications within 30 days from today's date. The CPL will be updated and published periodically, as further testing is completed. Once the first CPL is published, DOT will develop and issue procedural rules for using approved alcohol screening devices in transportation workplaces, including provisions for how and where such devices can be used and the steps that must be taken to collect bodily fluids. Employers are reminded that these screening devices are not authorized for use under 49 CFR Part 40 until that regulation is amended.

Procedures

The procedures proposed in the February 15 notice have been adopted without change. Testing of products submitted by manufacturers to these Model Specifications will be conducted by the DOT Volpe National Transportation Systems Center (VNTSC), DTS–75, Kendall Square, Cambridge, MA 02142. Tests will be conducted semiannually, or as necessary. Manufacturers are required to apply to NHTSA for a test date by writing to the Office of Alcohol and State Programs (OASP), NTS–21, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Normally, at least 30 days will be required from the date of notification until the test can be scheduled.

One week prior to the scheduled initiation of the test program, manufacturers will be required to deliver their devices to VNTSC. If the devices are disposable, the manufacturer must deliver 300 such devices; if the devices are disposable, interpretive and require that results be checked through a visual inspection (and therefore must be tested under various light conditions), the manufacturer must deliver 600 such devices; if the devices are reusable, the manufacturer must submit only a single device. If a manufacturer of a reusable device wishes to submit a duplicate, backup instrument, it may do so. The manufacturer shall be responsible for ensuring that the devices operate properly and are packaged correctly. The manufacturer must also deliver the operator's manual (or instructions) and the maintenance manual (if any) normally supplied with the purchase of the device, as well as specifications and drawings which fully describe these devices. Proprietary information will be respected. (See 49 CFR Part 512, regarding the procedure by which NHTSA will consider claims of confidentiality.)

In addition, the manufacturer must submit a self-certification, certifying that the manufacturer meets the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements in FDA's Labeling regulations for devices used for medical purposes (21 CFR Part 809.10), even if the devices are not to be used for medical purposes. See the Appendix to this notice.

The manufacturer has the right to check its devices between the time of their arrival at VNTSC and the start of the tests, but will have no access to the devices during the tests. Any malfunction of a device which results in failure to complete any of the tests satisfactorily will result in a determination that the device does not conform to the Model Specifications. If a device is found not to conform, it may be resubmitted for the next testing series after appropriate corrections have been made.

NHTSA plans to begin testing of alcohol screening devices immediately to determine whether they comply with the performance criteria included in the Model Specifications.

A Conforming Products List (CPL) will be updated and published periodically. It will include a list of alcohol screening devices that were submitted with the proper certifications and found to meet or exceed the Model Specifications.

One commenter requested that manufacturers should be permitted to commercialize their products as soon as they receive notification from NHTSA that their product has been found to meet or exceed the Model Specifications, rather than wait until the CPL listing their device is published. NTSHA intends to notify manufacturers that their devices meet the Model Specifications, and manufacturers may

receive such notices and an evaluation report prior to the publication of a CPL listing their instrument. A decision about the point at which it would be appropriate for manufacturers to commercialize their instruments, however, is outside the scope of this notice.

NHTSA intends to modify and improve these Model Specifications as new data and test procedures become available and to alter the test procedures, if necessary, to meet unique design features of a specific device. For each such modification, NHTSA would provide notification in the **Federal Register** and would retest devices when necessary.

OASP is the point of contact for information about acceptance testing and field performance of devices. NHTSA requests that users of these devices provide both acceptance and field performance data to OASP when such data are available. Information from users will help NHTSA monitor whether alcohol screening devices are performing according to the NHTSA Model Specifications.

If information gathered indicates that a device on the CPL is not performing in accordance with the Model Specifications, NHTSA will direct VNTSC to conduct a special investigation. An investigation may include visits to users and additional tests of the device obtained from the open market. If the investigation indicates that the devices actually sold on the market are not meeting the Model Specifications, the manufacturer will be notified that the device may be removed from the list. In this event, the manufacturer will have 30 days from the date of notification to reply. Based on the VNTSC investigation and any data provided by the manufacturer, NHTSA will decide whether the device should remain on the list. If the device is removed from the list, the manufacturer will be permitted to resubmit an improved device to VNTSC for testing when it believes the problems causing its failure have been resolved. Upon resubmission, the manufacturer must submit a statement describing what has been done to overcome the problems which led to failure of the device.

If information gathered indicates that the manufacturer of a device on the CPL does not comply with the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes or that the device's label does not comply with the requirements in FDA's Labeling regulations for devices used for medical purposes, NHTSA will investigate the matter in consultation with FDA and will notify the manufacturer that the device may be removed from the list. The manufacturer will have 30 days from the date of notification to reply. Based on any data provided by the manufacturer and investigative findings, NHTSA will decide whether the device should remain on the list. If the device is removed from the list, the manufacturer will be permitted to resubmit a self-certification, certifying that the manufacturer complies with these FDA requirements when it believes the problems causing its non-compliance have been resolved. Upon resubmission, the manufacturer must submit a statement describing what has been done to overcome the problems which led to non-compliance.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

In accordance with the foregoing, the Model Specifications for performance testing of alcohol screening devices are set forth below.

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

Model Specifications for Alcohol Screening Devices

1. Purpose and Scope

These specifications establish performance criteria and methods for testing of alcohol screening devices. Alcohol screening devices use bodily fluids to detect the presence of 0.020 or more BAC with sufficient accuracy for screening purposes. These specifications are intended primarily for use in the conformance testing of alcohol screening devices.

2. Classification

2.1 Disposable Alcohol Screening Devices

Alcohol screening devices designed for a single use.

2.2 Reusable Alcohol Screening Devices

Alcohol screening devices designed to be reused.

3. Definitions.

3.1 Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

3.2 Alcohol Screening Device

A device that is used to detect the presence of 0.020 or more BAC. The device may measure any bodily fluid for this purpose, but shall provide output in BAC units. Test results may be indicated by numerical read-out or by other means, such as by the use of lights or color changes.

3.3 Blood alcohol concentration (BAC)

Grams alcohol per 100 milliliters of blood or grams alcohol per 210 liters of breath in accordance with the Uniform Vehicle Code, Section 11–903(a)(5) [3] (BrAC is often used to indicate that the measurement is a breath measurement); or grams alcohol per 100 milliliters of saliva.

3.4 Calibrating Unit

A device that produces an alcohol-in-air test sample of known concentration that meets the NHTSA Model Specifications for Calibrating Units (49 FR 48865).

3.5 Breath Alcohol Sample Simulator (BASS)

A device that provides an alcohol-in-air test sample with known and adjustable alcohol concentration profile, flow rate, and air composition at 34° centigrade. (See NBS Special Publication 480–41, July 1981 [4] for a description of a BASS unit suitable for use in the required testing.)

3.6 Bodily Fluid

Any bodily fluid capable of being used to estimate alcohol concentration, provided the relationship between such bodily fluid and BAC has been established according to scientifically acceptable standards. Such fluids include but are not limited to blood, exhaled deep lung breath and saliva.

3.7 Scientifically Acceptable Substitutes

Fluids that have been scientifically accepted as equivalent to bodily fluids for testing purposes, such as aqueous alcohol test solutions on a one-to-one basis for blood or saliva.

4. Test Methods and Requirements

Testing will be performed according to the instructions which normally accompany the submitted device and under the conditions specified in the tests below.

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[3] Available from the National Committee on Traffic Laws and Ordinances, 405 Church Street, Evanston IL 60201.

[4] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

4.1 Test 1. Precision and Accuracy

Perform 40 trials under normal laboratory conditions using fluorescent light, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use the BASS device for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

For disposable alcohol screening devices that indicate the presence of alcohol in a manner that requires interpretation, combine Tests 1 and 2, in accordance with 4.3 below.

For alcohol screening devices that indicate the presence of alcohol in a manner that does not require interpretation, perform the test using a VNTSC investigator. To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.2 Test 2. Blank Reading

Perform 20 trials under normal laboratory conditions using fluorescent light at 0.000 BAC. Use non-alcoholic human breath for breath devices and preparations of non-alcoholic bodily fluids or scientifically acceptable substitutes for non-breath devices.

For disposable alcohol screening devices that indicate the presence of alcohol in a manner that requires interpretation, combine Tests 1 and 2, in accordance with 4.3 below.

For alcohol screening devices that indicate the presence of alcohol in a manner that does not require interpretation, perform the test using a VNTSC investigator. To conform, no positive results. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, not more than one such result.

4.3 Methodology for Combining Tests 1 and 2 for Disposable Interpretive Devices

Perform the test under normal laboratory conditions using fluorescent light using ten individuals who qualify as test interpreters (according to the manufacturer's restrictions, if any) and who have no knowledge of test BACs. Ask each individual to read the manufacturer's instructions for interpretation of the device's read-out.

Label sixty devices from 1 to 60 and randomly separate them into three groups of twenty. Record the numbers in each group. Use two of the groups of devices for Test 1 and the remaining group for Test 2. Dose each group at the BAC levels specified in Tests 1 and 2. Order the sixty devices into a single set from 1 to 60 and ask each individual to independently interpret the results of these trials.

Ask each individual to record each result as being one of the following: "at .00 BAC"; "above .00 and below. 02 BAC"; "at or above .02 BAC"; or "can't tell". Dosing of devices and interpretation of results will be accomplished within a twenty minute period.

To conform, with each interpreter, no positive results at .000 BAC, not more than one positive result at .008 BAC, not more than one non-positive result at .032 BAC and not more than one "can't tell" result. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, with each interpreter, not more than one such result at .000 BAC.

4.4 Test 3. Light Conditions (only interpretive devices which require that results be checked through a visual inspection)

Perform Tests 1 and 2, in accordance with 4.3, under each of the following light conditions: incandescent light; mercury vapor light; sodium vapor light; and daylight.

Under each light condition, the device must meet the criteria established in 4.3: To conform, with each interpreter, no positive results at .000 BAC, not more than one positive result at .008 BAC, not more than one non-positive result at .032 BAC and not more than one "can't tell" result. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, with each interpreter, not more than one such result at .000 BAC.

4.5 Test 4. Cigarette smoke interference (only breath and saliva test devices)

Perform five trials at 0.000 BAC. Select an alcohol-free person who smokes cigarettes for this test. Ask the person selected to smoke approximately one half of a cigarette. Within one minute after smoking, or after a waiting period specified in the manufacturer's instructions, administer the alcohol screening device test according to the manufacturer's instructions. Then ask the person to smoke another inhalation and repeat the test to produce a total of five trials.

To conform, no positive results.

4.6 Temperature

Test at low and high ambient temperature.

4.6.1 Test 5.1 Low Ambient Temperature

Perform 40 trials at 10 °C, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.6.2 Test 5.2 High Ambient Temperature

Perform trials of 40 devices at 40 °C, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.7. Test 6. Vibration

Perform 40 trials, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

Mount the screening device on a shake table and vibrate the table in simple harmonic motion through each of its three major axes, as specified below. Sweep through each frequency range in 2.5 minutes, then reverse the sweep to the starting frequency in 2.5 minutes. The 40 disposable testers may be placed in a suitable box mounted on the shake table. Test after vibration.

Frequency (hertz)	Amplitude (inches, peak to peak)
10 to 30	0.30
30 to 60	0.15

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

Appendix

Labeling Instructions for Alcohol Screening Devices Intended Use

Provide the intended use including the specimen matrix (e.g. saliva, breath), the assay type (quantitative, semi-quantitative) the purpose of performing the assay and the individual designated to perform the assay.

e.g. This product is intended for the (quantitative, semiquantitative) determination of alcohol in—define matrix (for e.g., saliva, breath, sweat) to perform screening alcohol assays.

This product is recommended for use by individuals who have been trained in the administration of screening devices.

Description of Testing System

Provide the principles of the procedure for performing the alcohol screening assay.

e.g. This product uses alcohol dehydrogenase, infrared technology, etc. to perform the test.

Chemical Reaction Sequence

Describe the chemical reaction sequence, if applicable.

Reagents

List the concentration, strength, composition of the reactive ingredients.

List the non-reactive ingredients.

Reagent Preparation and Storage

Provide instructions for preparing the reagents, if appicable.

Provide instructions for storing the reagents, if applicable.

Provide any signs of deterioration of the reagents, if applicable.

Provide the reagent's shelf life and opened expiration dating, if applicable.

e.g. Unopened tests are stable until the date printed on the product container when stored at 22–28°C. Opened test must be used at once.

Provide a caution not to use the reagents beyond the expiration dating.

Precautions:

1. List any reagents that may be hazardous such as caustic compounds, sodium azide or other hazardous reagents and instructions for disposal, if applicable.

2. If visually read, warn the user the result should not be interpreted by readers who are color-blind or visually impaired.

3. Provide warning to user to treat all samples as potentially infective. Include instructions for handling and disposal of the sample.

Speciment Collection

Provide instructions for collecting and handling the sample.

Provide criteria for specimen rejection, if applicable.

Calibration

Disposable tests are pre-calibrated. No additional calibration is required.

Reusable (Instrumented) tests require calibration.

Provide information regarding how calibrations are to be conducted, if applicable, including the number and concentration of calibrators, and the frequency of calibration.

Provide instructions for calibration and recalibration.

Provide the criteria for acceptability of calibration.

Test Procedure (Disposable)

Provide adequate step-by-step instructions for performing the test.

If the test is disposable (non-instrumented) and involves a color reaction, include the time frame for which the test must be read and recorded.

e.g. Read within 15 minutes.

Test Procedure (Reusable/Instrumented)

Provide adequate step-by-step instruction for performing the test.

Provide the installation procedures and, if applicable, any special requirements.

Provide the space and ventilation requirements.

Provide the description of the required frequency of equipment maintenance and function checks.

Provide the instructions for any remedial action to be taken when the equipment performs outside of operating range.

Provide any operational precautions and limitations.

Provide instructions for the protection of equipment and instrumentation from fluctuations or interruptions in electrical current that could adversely affect test results and reports, if applicable.

Quality Control (QC)

Disposable Tests

If applicable, the function and stability of the test can be determined by examination of the procedural "built in" controls contained in the product. If these controls are not working, the test is invalid and must be repeated.

Disposable/Instrumented Devices

If external quality control materials are used, provide number, type, matrix and concentration of the QC materials.

Provide directions for performing quality control procedures.

Provide an adequate description of the remedial action to be taken when the QC results fail to meet the criteria for acceptability.

Provide directions for interpretation of the results of quality control samples.

Results

Describe how the user obtains the test results, from a colored bar, instrument read-out, printout, etc.

Describe the results in terms of blood alcohol concentration.

Describe what concentration indicates a positive result and what concentration indicates a nagative result.

Limitations

List the substances or factors that may interfere with the test and cause false results including technical or procedural errors.

Dynamic Range

Provide the operating range of the product.

Precision and Accuracy

Precision and Accuracy specifications are included in the National Highway Traffic Safety Administration's (NHTSA's) Model Specifications for Alochol Screening devices. Only devices that meet these model specificiations will be included on NHTSA's Conforming Products List for alcohol screening devices.

Specificity

List the substances that have been evaluated with your product that do or do not interfere at the concentration indicated.

References

Provide pertinent bibliography

Technical Assistance

List an 800 number the user may contact for further information or technical assistance.

[FR Doc. 94–18750 Filed 7–28–94 4:30 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 26, 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: 1545–0090.

Form Number: IRS Forms 1040–SS and 1040–PR.

Type of Review: Extension.

Title: U.S. Self-Employment Tax Return, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia-Puerto Rico.

Description: Forms 1040–SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040–PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under Internal Revenue Code (IRC) chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 54,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Form 1040–SS:	
Recordkeeping	7 hr., 19 min.
Learning about the law or the form.	23 min.
Preparing the form	2 hr., 32 min.
Copying, assembling, and sending the form to the IRS.	49 min.
Form 1040–PR:	
Recordkeeping	6 hr., 46 min.
Learning about the law or the form.	37 min.
Preparing the form	2 hr., 19 min.

Estimated Burden Hours Per Respondent/Recordkeeper—Continued

Copying, assembling, and sending the form to the IRS.	49 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 571,260 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571,1111 Constitution Avenue, N.W.,Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340,Office of Management and Budget, Room 10226, New Executive Office Building,Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–18695 Filed 8–1–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 25, 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.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0067.

Form Number: PD F 974.

Type of Review: Extension.

Title: Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments.

Description: PD F 974 is used by owners of United States securities to certify that the signature was forged to a request for payment or an assignment.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750 hours.

OMB Number: 1535–0101.

Form Number: PD F 0345.

Type of Review: Extension.

Title: Description of Registered Securities.

Description: This form collects information needed to describe registered securities for the purpose of identifying accounts and/or requesting a change of address for the mailing of interest due on the securities.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

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. 94–18696 Filed 8–1–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

July 25, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0239.

Form Number: IRS Form 5754.

Type of Review: Extension.

Title: Statement by Person(s) Receiving Gambling Winnings.

Description: Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.

Respondents: Individuals or households, State or local governments, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 306,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 61,200 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503,

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–18697 Filed 8–1–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 147
Tuesday, August 2, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 5, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–18857 Filed 7–29–94; 10:43 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 12, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–18858 Filed 7–29–94; 8:43 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 19, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–18859 Filed 7–29–94; 10:43 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 26, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–18860 Filed 7–29–94; 8:43 am]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, August 3, 1994, see times below.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

10:00 a.m.

1. Children's Sleepwear

The Commission will consider a possible notice of proposed rulemaking to amend the standard for flammability of children's sleepwear to exempt close fitting garments and garments intended for infants.

2:00 p.m.

2. FY 1996 Budget

The Commission will consider issues related to the Commission's budget for fiscal year 1996.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 27, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–18938 Filed 7–29–94; 3:06 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 11, 1994 and September 8, 1994 regular meetings of the Farm Credit Administration Board (Board) will not be held and that special meetings of the Board are scheduled for Monday, August 29, 1994 and Thursday, September 1, 1994 at 10:00 a.m. In addition, there will be a Board meeting concerning the Farm Credit System Building Association immediately following the September 1, 1994 special meeting of the Board. An agenda for these meetings will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 28, 1994.

Curtis M. Anderson,

Secretary.

[FR Doc. 94–18834 Filed 7–29–94; 9:42 am]

BILLING CODE 6705–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT ROAD

TIME AND DATE: 10:00 a.m., August 15, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 18, 1994, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of Arthur Andersen semiannual review.
5. Review of KPMG Peat Marwick audit report "Pension and Welfare Benefits Administration Review of U.S. Department of Treasury Operations Relating to the Thrift Savings Plan Investments in the Government Securities Fund."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 28, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–18813 Filed 7–29–94; 8:45 am]

BILLING CODE 6760–01–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 9, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th &

Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC–214, *Petition for Rulemaking—Removal of Prohibition Against Interlining by Motor Contract Carriers*

Finance Docket No. 32204. *Ozark Mountain Railroad—Construction Exemption*

Docket No. 41201, *Chicago and North Western Transportation Company Petition for Declaratory Order—Right of Independent Action as to Car Hire Rates and Rules*

Ex Parte No. 346 (Sub-No. 32), *Rail General Exemption Authority—Exemption of Carbon Dioxide*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–18746 Filed 7–28–94; 11:56 am]

BILLING CODE 7023–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 1, 8, 15, and 22, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 1

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.

Week of August 22—Tentative

Monday, August 22

2:00 p.m.

Briefing on Additional Changes to Part 100 Rulemaking and Proposed Update on Source Term (PUBLIC MEETING) (Contact: Leonard Soffer, 301–415–6574)

Tuesday, August 23

9:30 a.m.

Periodic Briefing on EEO Program (PUBLIC MEETING) (Contact: Vandy Miller, 301–415–7380)

11:30 a.m.

Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: July 29, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–18847 Filed 7–29–94; 10:28 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 147
Tuesday, August 2, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

Correction

In notice document 94-16293 beginning on page 34592, in the issue of Wednesday, July 6, 1994, make the following corrections:

1. On page 34593, in the third column, in the third paragraph, in the seventh line "113.15 cents" should read "113.25 cents".

2. On page 34594, in the table, in the fifth line from the bottom, under the heading "School breakfast program" the entries for "Hawaii" were omitted and should read as follows:

School breakfast program:	Non-severe need	Severe need
* * *	*	*
Hawaii:		
Paid	.2150	.2150
Reduced Price	1.8325	1.0475
Free	1.1325	1.3475

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-4686-4]

Designation of Areas for Air Quality Planning Purposes

Correction

In rule document 93-30966 beginning on page 67334 in the issue of Tuesday, December 21, 1993, make the following correction:

§ 81.306 [Corrected]

On page 67343, in § 81.306, in the table, in the "Date" columns "January 30, 1994" should read "January 20, 1994".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Air Docket No. A-90-42; FRL-4876-2]

Designations of Areas for Air Quality Planning Purposes; Amendments and Corrections

Correction

In rule document 94-9662 beginning on page 18967 in the issue of Thursday, April 21, 1994 is corrected to read as follows:

§ 81.333 [Corrected]

On page 18971, in § 81.333, in the table, in the "Date[1]" and "Date[2]" columns for Orange County, "[insert date of this rule[2]]" should read "4-21-94".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 200

[Docket No. R-94-1436; FR-F-05]

RIN 2501-AA23

HUD Procedure for the Implementation of Executive Order 11988; Revision of HUD Minimum Property Standards for One-and Two-Family Dwellings

Correction

In rule document 94-9606 beginning on page 19100, in the issue of Thursday, April 21, 1994, make the following correction:

§ 200.926d [Corrected]

On page 19112, in the second column, in the amendatory instruction for § 200.926d, in the fifth line, "(c)(4)IV," should read "(c)(4)(iv),".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 211, 216, 235, and 242

[INS No. 1429-92]

RIN 1115-AC53

Conditional Permanent Resident Regulations for Alien Entrepreneurs, Spouses, and Children

Correction

In rule document 94-12524 beginning on page 26587, in the issue of Monday, May 23, 1994, make the following correction:

On page 26589, in the second column, in the ninth line, after "other" insert "than".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-ANM-27]

Proposed Amendment to Class E Airspace; Lewiston, ID

Correction

In proposed rule document 94-13070 beginning on page 27514, in the issue of Friday, May 27, 1994, make the following corrections:

§ 71.1 [Corrected]

1. On page 27515, in the first column, in § 71.1, in *Paragraph 6005*, under the heading **ANM ID Lewiston E5, ID [Revised]**, in the first full paragraph, in the sixth line, "117°05′44″ W;" should read "117°04′44″ W;".

2. On the same page, in the same column, in the eighth line, "116°31′09″ W;" should read "116°32′09″ W;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 189

[Docket No. 27778; Notice No. 94-17]
RIN 2120-AE68

Use of Federal Aviation Administration Communications Systems

Correction

In proposed rule document 94-13912 beginning on page 29934, in the issue of Thursday, June 9, 1994, make the following correction:

On page 29934, in the third column, in the third full paragraph, in the fourth line from the bottom, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974; Deletion of Systems of Records Notices

Correction

In notice document 94-11320 appearing on page 24507 in the issue of Wednesday, May 11, 1994, make the following correction:

In the second column, under SUMMARY, in the third line from the bottom ".001" should read ".011".

BILLING CODE 1505-01-D

federal register

Tuesday
August 2, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Studies in Support of Special Populations: Geriatrics; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0138]

International Conference on Harmonisation; Guideline on Studies in Support of Special Populations: Geriatrics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Studies in Support of Special Populations: Geriatrics." The guideline was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to reflect sound scientific principles for testing drugs in geriatric populations. The guideline provides useful information for sponsors submitting applications to both the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Effective August 2, 1994. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Patrick J. Savino, Center for Drug Evaluation and Research (HFD-8), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1012.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on September 16, 1992, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Studies in Support of Special Populations: Geriatrics" should be made available for comment. Subsequently, the draft guideline which published in the **Federal Register** of April 16, 1993 (58 FR 21082), was made available for comment by the European Commission and the Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their consultation procedures. At a meeting held on June 24, 1993, the comments were analyzed and the guideline was revised as necessary.

With this notice, FDA is publishing in final form a guideline entitled "Studies in Support of Special Populations: Geriatrics." This guideline has been endorsed by all ICH sponsors. The guideline provides useful information to sponsors submitting applications to both CDER and CBER. The guideline addresses harmonization in relation to clinical testing programs for drugs intended for use in medicines for the geriatric population, which is expected to increase significantly in the near future in Europe, Japan, and the United States. The use of drugs in the geriatric population requires special consideration due to the frequent occurrence of underlying diseases, concomitant drug therapy, and the consequent risks of drug interaction. The recommendations of this guideline do not materially differ from the recommendations of a 1989 CDER guideline entitled "Guideline for the Study of Drugs Likely to be Used in the Elderly." Although the ICH harmonized guideline provides much useful information for sponsors submitting applications to CDER and CBER, the 1989 document contains background and additional commentary not present in the harmonized guideline. For this reason, FDA intends to provide both the ICH harmonized guideline and the 1989 document when information is requested on the study of new drugs in a geriatric population.

Guidelines are generally issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments will be periodically reviewed and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the final guideline follows:

Studies in Support of Special Populations: Geriatrics

I. Statement of Purpose

It is important to ensure that clinical testing programs are carried out according to harmonised guidelines based on agreed ethical and scientific principles so that the international development of valuable innovative drugs is achieved with maximum efficiency. Harmonisation in relation to medicines for geriatric populations is an important issue because the total population of the elderly will increase significantly in the coming years in Europe, Japan and the USA. The use of drugs in this population

requires special consideration due to the frequent occurrence of underlying diseases, concomitant drug therapy and the consequent risk of drug interaction.

II. General Principle

Drugs should be studied in all age groups, including the elderly, for which they will have significant utility. Patients entering clinical trials should be reasonably representative of the population that will be later treated by the drug.

III. Scope of Guideline

This guideline is directed principally toward new Molecular Entities that are likely to have significant use in the elderly, either because the disease intended to be treated is characteristically a disease of aging (e.g., Alzheimer's disease) or because the population to be treated is known to include substantial numbers of geriatric patients (e.g., hypertension). The guideline applies also to new formulations and new combinations of established medicinal products when there is specific reason to expect that conditions common in the elderly (e.g., renal or hepatic impairment, impaired cardiac function, concomitant illnesses or concomitant medications) are likely to be encountered and are not already dealt with in current labelling. It likewise applies when the new formulation or new combination is likely to alter the geriatric patient's response (with regard to either safety/tolerability or efficacy) compared with that of the non-geriatric patient in a way different from previous formulations. The guideline also applies to new uses that have significant potential applicability to the elderly.

It is recommended that exemptions from the guideline be determined in advance either by sponsors or, where feasible, by the sponsor and drug registration authorities, based, e.g., on estimates of the disease prevalence by age or through examination of the age distribution of usage for other drugs of the same class or drugs used for the same indication.

IV. Definition of the Population

The geriatric population is arbitrarily defined, for the purpose of this guideline, as comprising patients aged 65 years or older. It is important, however, to seek patients in the older age range, 75 and above, to the extent possible. Protocols should not ordinarily include arbitrary upper age cutoffs. It is also important not to exclude unnecessarily patients with concomitant illnesses; it is only by observing such patients that drug-disease interactions can be detected. The older the population likely to use the drug, the more important it is to include the very old.

V. Clinical Experience

Geriatric patients should be included in the Phase 3 database (and in Phase 2, at the sponsor's option) in meaningful numbers. The geriatric subpopulation should be represented sufficiently to permit the comparison of drug response in them to that of younger patients. For drugs used in diseases not unique to, but present in, the elderly, a minimum of 100 patients would usually allow detection of clinically important differences. For drugs to treat relatively uncommon diseases, smaller numbers of the elderly would be expected. Where the disease to be treated is characteristically associated with aging (e.g., Alzheimer's disease) it is expected that geriatric patients will constitute the major portion of the clinical database.

The overall database of the dossier should be examined for the presence of age-related differences, e.g., in adverse event rates, in effectiveness, and in dose-response. If these relatively crude overview analyses show important differences, further evaluation may be needed.

The geriatric data used in the overview can come either from the inclusion of elderly patients in all or most of the main Phase 3 or Phase 2/3 studies or from studies conducted exclusively in geriatric patients, at the sponsor's option. Inclusion of both groups in the same studies has the advantage of allowing direct comparisons of younger and older patients using data collected in similar ways. Such comparisons are more difficult when separate studies of young and old patients are used. Certain assessments, however, e.g., studies of cognitive function, require special planning and can be best accomplished in separate studies.

VI. Pharmacokinetic Studies

Most of the recognized important differences between younger and older patients have been pharmacokinetic differences, often related to impairment of excretory (renal or hepatic) function or to drug-drug interactions. It is important to determine whether or not the pharmacokinetic behavior of the drug in elderly subjects or patients is different from that in younger adults and to characterize the effects of influences, such as abnormal renal or hepatic function, that are more common in the elderly even though they can occur in any age group. Information regarding age-related differences in the pharmacokinetics of the drug can come, at the sponsor's option, either from a Pharmacokinetic Screen (as described subsequently) or from formal pharmacokinetic studies, in the elderly and in patients with excretory functional impairment.

It is recognized that for certain drugs and applications (e.g., some topically-applied agents, some proteins) technical limitations such as low systemic drug levels may preclude or limit exploration of age-related pharmacokinetic differences.

A. Formal Pharmacokinetic Studies

Formal PK studies can be done either in healthy geriatric subjects or in patient volunteers with the disease to be treated by the drug.

The initial PK study can be a pilot trial of limited size conducted under steady-state conditions to look for sizable differences between older and younger subjects or patients. A larger, single-dose PK study of sufficient size to permit statistical comparisons between geriatric and younger subjects' or patients' pharmacokinetic profiles is also acceptable.

In either case, if large (i.e., potentially medically important) age-related differences are found, the initial PK study may need to be followed by a multiple-dose PK study of sufficient size to permit statistical comparisons (geriatric vs. younger) at steady-state.

B. Pharmacokinetic Screening Approach

Sponsors may opt, instead of conducting a separate PK evaluation of the elderly, to utilize a Pharmacokinetic Screen in conjunction with the main Phase 3 (and Phase 2, if the sponsor wishes) clinical trials program. This screening procedure involves obtaining, under steady-state conditions, a small number (one or two) of drug blood level determinations at "trough" (i.e., just prior to the next dose) or other defined times from sufficient numbers of Phase 2/3 clinical trials patients, geriatric and younger, to detect age-associated differences in pharmacokinetic behavior, if they are present. It is important to record time of dosing prior to blood concentration measurements, and relation of dosing to meals, and to examine the influence of demographic and disease factors, such as gender renal function, presence of liver disease, gastrointestinal disease or heart disease, body size and composition, and concomitant illnesses.

Small differences are unlikely to be of medical importance. Where the screen detects large differences, formal pharmacokinetic studies may be indicated unless the screen's results are sufficiently informative.

The advantage of a Pharmacokinetic Screen is that it can assess the effects, not only of age itself, but also of other factors associated with age (altered body composition, other drugs, concomitant illness) and their interactions.

VII. Pharmacokinetics in Renally or Hepatically Impaired Patients

Renal impairment is an aging-associated finding that can also occur in younger patients. Therefore, it is a general principle, not specific to these guidelines, that drugs excreted (parent drug or active metabolites) significantly through renal mechanisms should be studied to define the effects of altered renal function on their pharmacokinetics. Such information is needed for drugs that are the subject of this guideline but it can be obtained in younger subjects with renal impairment.

Similarly, drugs subject to significant hepatic metabolism and/or excretion, or that have active metabolites, may pose special problems in the elderly. Pharmacokinetic studies should be carried out in hepatically-impaired young or elderly patient volunteers.

If a Pharmacokinetic Screen approach is chosen by the sponsor (Section VI, see above), and if patients with documented renal impairment or hepatic impairment (depending on the drug's elimination pattern) are included and the results indicate no medically important pharmacokinetic difference, that information may be sufficient to meet this Geriatric Guideline's purpose.

VIII. Pharmacodynamic/Dose Response Studies

The number of age-related pharmacodynamic differences (i.e., increased or decreased therapeutic response, or side

effects, at a given plasma concentration of drug) discovered to date is too small to necessitate dose response or other pharmacodynamic studies in geriatric patients as a routine requirement. Separate studies are, however, recommended in the following situations:

•Sedative/hypnotic agents and other psychoactive drugs or drugs with important CNS effects, such as sedating antihistamines

•Where subgroup comparisons (geriatric versus younger) in the Phase 2/3 clinical trials database indicate potentially medically significant age-associated differences in the drug's effectiveness or adverse reaction profile, not explainable by PK differences

IX. Drug-Drug Interaction Studies

Such interactions are of particular importance to geriatric patients, who are more likely to be using concomitant medications than younger patients, but of course are not limited to this age group. Therefore it is a general principle, not specific to these guidelines, that in cases where the therapeutic range (i.e., range of toxic to therapeutic doses) of the drug or likely concomitant drugs is narrow, and the likelihood of the concomitant therapy is great, that specific drug-drug interaction studies be considered. The studies needed must be determined case-by-case, but the following are ordinarily recommended:

•Digoxin and oral anticoagulant interaction studies, because so many drugs alter serum concentrations of these drugs, they are widely prescribed in the elderly, and they have narrow therapeutic ranges.

•For drugs that undergo extensive hepatic metabolism, determination of the effects of hepatic-enzyme inducers (e.g., phenobarbital) and inhibitors (e.g., cimetidine).

•For drugs metabolized by cytochrome P-450 enzymes, it is critical to examine the effects of known inhibitors, such as quinidine (for cytochrome P-450 2D6) or ketoconazole and macrolide antibiotics (for drugs metabolized by cytochrome P-450 3A4). There is a rapidly growing list of drugs that can interfere with other drugs that metabolize, and sponsors should remain aware of it.

•Interaction studies with other drugs that are likely to be used with the test drug (unless important interactions have been ruled out by a Pharmacokinetic Screen).

Dated: July 27, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-18726 Filed 8-1-94; 8:45 am]

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Tuesday
August 2, 1994

Part III

Department of Housing and Urban Development

24 CFR Parts 905 and 960

Public and Indian Housing Exemption From Eligibility Requirements for Police Officers and Security Personnel; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 960

[Docket No. R-94-1643; FR-2972-F-02]

RIN 2577-AA94

Public and Indian Housing Exemption From Eligibility Requirements for Police Officers and Security Personnel

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This regulation implements section 519 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) by amending 24 CFR parts 905 and 960 to permit public housing agencies (PHAs) and Indian housing authorities (IHAs) (hereinafter, both public housing agencies and Indian housing authorities will be referred to as HAs, unless a specific reference to a PHA or IHA is applicable) to allow police officers and other security personnel not otherwise eligible for occupancy to reside in public or Indian housing dwelling units under a plan that will increase security for housing residents while minimizing both the reduction of available public and Indian housing dwelling units for eligible families and the loss of income to HAs.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Regarding public housing: Edward Whipple, Director, Occupancy Division, Office of Assisted Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W. Room 4206, Washington D.C. 20410, telephone (202) 708-0744. A telecommunications device for speech and hearing impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

Regarding Indian housing: Dominic Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W. Room 4140, Washington D.C. 20410, telephone (202) 708-1015. A telecommunications device for speech and hearing impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0185.

I. Background—Proposed Rule

On June 7, 1993 (58 FR 32006), the Department published a proposed rule that would implement section 519 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) by amending existing regulations to permit public housing agencies (PHAs) and Indian housing authorities (IHAs) to allow police officers and other security personnel not otherwise eligible for occupancy to reside in public and Indian housing dwelling units under a plan that will increase security for housing residents while minimizing both the reduction of available public and Indian housing dwelling units for eligible families and the loss of income to housing agencies (HAs).

Under this final rule, eligibility for use of units as provided by section 519 of the NAHA requires that an HA submit a plan to the Department that identifies the total number of units under management by the HA; the specific housing developments, and the number of units they contain, where the HA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. This plan is required by §§ 905.308(c)(1)(ii) and 960.505(a)(2) of the rule. Since the Department intends that each plan will be reviewed and approved by the local HUD Field Office or Office of Native American Programs, §§ 905.308(c)(2) and 960.505(b) of the rule call for submission of the plan directly to these offices.

Section 519 of the NAHA requires that the Department notify each HA submitting a plan of HUD's approval or disapproval of the plan not later than thirty days after the Department receives the plan. This requirement is set forth in §§ 905.308(c)(3) and 960.505(c) of the rule. Plan approval by the Department constitutes granting of the exemption from eligibility requirements that would otherwise apply.

II. Public Comment

The Department received 11 comments on the proposed rule. The commenters consisted of housing agencies and one professional association. All commenters expressed general support for the Department's proposed implementation of section 519 of NAHA.

The main criticism of the proposed rule focused on loss of income due to the exclusion of units occupied by police officers from the Performance Funding System (PFS) formula. The proposed rule stated that dwelling units allocated to police officers in accordance with this subpart would be excluded from the total unit months available, as defined in 24 CFR 905.102 for IHAs and 24 CFR 990.102 for PHAs. For purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this rule is included in other income, as defined in §§ 905.102 and 990.102.

To make the most of its resources, the Department has consistently limited funding under the PFS to units that house low income families. Units used for other purposes, such as day care facilities or resident organization offices, are excluded from PFS. The Department currently permits the payment of operating subsidy for one non-dwelling unit per development that is used to promote economic self-sufficiency services or anti-drug programs. Anti-drug activities directly related to ridding developments of illegal drugs and drug-related activities include housing police and security officers. HA requests to allow consideration for the continued payment of operating subsidy for one unit per housing development used to support these activities may be submitted to the local HUD Field Office for review and approval. Operating subsidy for additional sites per housing development can only be approved by HUD Headquarters. This provision is added in §§ 905.308(f) and 960.511(b) of the rule.

Comments were also directed at the Allocation Table, which set forth a formula for determining number of units within each housing development for residency by police officers. The comments indicated that the table was too rigid and failed to take into consideration local conditions. Since the local HUD Field Office is responsible for final decision-making in this area, local public safety factors must be evaluated by Field Office staff in making decisions regarding unit allocation. An HA must certify, however, that any additional units proposed to be allocated for Officers are vacant units for which there are no Eligible Families. No resident may be moved from a unit to make it available for occupancy by an Officer under the plan.

The balance of comments concerned issues on HUD Field Office approval of HA rents, alternative lease arrangements, and police responsibilities in lieu of rental payment. These are addressed as follows:

One comment questioned why the local HUD Field Office should have the discretion to approve or deny the amount of rent to be paid by police officers. While the rule provides latitude to impose a "reasonable rent" on police officers, the Field Office is familiar with local market conditions and can make a prudent determination regarding rent to be charged. In addition, the Field Office has major oversight responsibility for the day-to-day operation of HAs, and should provide guidance in this area.

One comment questioned why a "memorandum of understanding" cannot be used in lieu of a lease since the agreement could be considered a special service contract between the HA and the Officer. The overall intent of the rule focuses on police visability in HA developments. Since police officers will occupy units operated and managed by an HA as residents, a formal lease should be utilized. It may, however, be modified to meet special needs of the HA and the police officer.

Several comments questioned the definition of "Reasonable Rent" as contained in the rule. As a substitute for rental payment, it was proposed that officers provide specific services equal to the value of the unit. This is not the intent of the rule. Reasonable rent may be a flat amount not related to an officer's income, but it must be consistent with the limited loss of income requirements of this part.

Finally, the terminology used in the proposed rule was that the rule implemented a "waiver" of the eligibility requirements. This rule implements a statutory waiver, but the term used is "exemption" from the eligibility requirements, in order to avoid administrative problems that may result because the Department follows additional processing requirements for actions, also called "waivers," that suspend non-statutory requirements on a case-by-case basis.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to exempting from the public and Indian housing admissibility criteria for certain police and security personnel. By its terms, the rule limits the number of units that would be subject to such exemptions, thereby limiting the economic impact on all PHAs and IHAs, including any that may be small entities.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made on the proposed rule in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Since the environmental provisions of this final rule are unchanged from those published in the proposed rule, the original Finding of No Significant Impact is still valid.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule will effect a minor exception to a previously existing scheme of federal assistance to programs run by state and local government, but it will not alter the existing division of responsibility among federal, state and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus the rule is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1702 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20473) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, the Department amends 24 CFR parts 905 and 960 as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 is revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a–1, 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee, and 3535(d).

2. 24 CFR part 905 is amended by adding a new § 905.308 to read as follows:

§ 905.308 Exemption from eligibility requirements for police officers and other security personnel.

(a) *Purpose and scope.* The purpose of this section is to permit the admission to Indian housing of police officers and other security personnel, who are not otherwise eligible for such housing under any other admission requirements or procedures, under a plan submitted by an Indian housing authority (HA) and approved by the Department, and to set forth standards and criteria for the approval of such plans. The Department's objective in granting the exemption allowed by this section is to permit long term residence in Indian housing developments by police officers and security personnel, whose visible presence is expected to serve as a deterrent to criminal activity in and around Indian housing.

(b) *Definitions.* For the purposes of this section:

Department means the U.S. Department of Housing and Urban Development (HUD). For purposes of plan submission and approval, Department refers to the local HUD Office of Native American Programs.

Eligible families means families that are eligible for residence in Indian

housing assisted under the United States Housing Act of 1937.

Officer means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this section, "Officer" may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

Plan means the written plan submitted by an HA to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in Indian housing developments and allow Officers, who are otherwise not eligible, to reside in Indian housing units. An HA may have only one plan in effect at any one time, which will govern exemptions under this section for all housing developments managed by that HA.

(c) *Exemption from eligibility requirements; plan submission; plan approval or disapproval.*

(1) *Conditions for exemption.* The Department may exempt Officers from the eligibility requirements for admission to Indian housing, provided that:

(i) The Officers would not be eligible, under any other admission requirements or procedures, for admission to the Indian housing development without such an exemption; and

(ii) The exemption is given under a properly submitted plan that satisfies the standards and criteria set forth in § 905.308(d) of this part and, accordingly, has been approved by the Department.

(2) *Plan submission.* A plan is properly submitted when it is received by the local HUD Office of Native American Programs with jurisdiction over the HA.

(3) *Notification of plan approval or disapproval.* The Department will notify an HA of the approval or disapproval of its plan within thirty days of its submission. Plan approval by the Department constitutes granting of the exemption for the purposes of this section.

(d) *Plan standards and criteria.*

(1) *Minimum requirements.* To be approved, a plan must satisfy the following requirements:

(i) The plan must identify the total number of units under management by the HA; the specific housing developments, and the number of units they contain, where the HA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. For each unit identified, the plan must state the amount of rent that the Officer will pay and facts and circumstances (such as, the rent that would ordinarily be charged for the unit, the HA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of that amount, as required under § 905.308(e)(i) of this part.

(ii) The plan must identify specifically the benefits to the community and to the HA that will result from the presence of Officers in each affected development.

(iii) The plan must describe the existing physical and social conditions in and around each affected development, providing specific evidence of criminal activity (such as, frequency of telephone calls to local police, number of arrests and types of offenses involved, and data on drug abuse in the community) in order to permit the Department to make an informed assessment of the level of need for increased security.

(iv) The plan must afford the Department a reasonable basis, which necessarily includes the certifications required under § 905.308(d)(2) of this part, for determining that the use by Officers of the identified dwelling units will:

(A) Increase security for other Indian housing residents;

(B) Result in a limited loss of income to the HA; and

(C) Not result in a significant reduction of units available for residence by Eligible Families.

(2) *Certifications by HA.* Only upon making the determination described in § 905.308(d)(1)(iv) of this part will the Department approve a plan. Further, the Department will not make this determination unless the plan contains a written statement, signed by an authorized officer or other agent of the HA, certifying that:

(i) The dwelling units proposed to be allocated to Officers are situated so as to place the Officers in close physical proximity to other residents;

(ii) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to Officers;

(iii) The dwelling units proposed to be allocated to Officers will be rented under a lease that contains the terms described in § 905.308(e) of this part; and

(iv) The number of dwelling units proposed to be allocated to Officers under the plan does not exceed the limits set forth in § 905.308(d)(3) of this part or, in the alternative, any units so allocated in excess of the applicable maximum number are vacant units for which there are no Eligible Families. This certification on the part of the HA satisfies the requirements of §§ 905.308(d)(1)(iv) (B) and (C) of this part.

(3) *Unit allocation table.* For purposes of the certification required by § 905.308(d)(2) of this part, the following table sets forth the maximum number of units to be allocated to Officers as a function of the total number of units under management by the HA:

UNIT ALLOCATION TABLE

Total units under management	Units to be allocated
500–999	5
1000–4999	10
5000–9999	15
10,000+	20

The maximum number of units to be allocated by HAs with less than 500 units under management will be determined by the Office of Native American Programs on a case by case basis.

(Approved by the Office of Management and Budget under OMB control number 2577–0185.)

(e) *Special rent requirements and other terms and conditions.* The HA shall lease units to Officers under a lease agreement, which must be submitted as a part of the plan, containing terms that provide as follows:

(1) *Reasonable rent.* The lease shall provide for a reasonable rent, which may be a flat amount not related to the Officer's income. The HA should attempt to establish a rent that will provide an incentive to Officers to reside in the units but that is also consistent with the limited loss of income requirement of § 905.308(d)(1)(iv)(B) of this part. As required in § 905.308(d)(1)(i) of this part, the plan must state facts and circumstances (such as, the rent that would ordinarily be charged for the unit, the HA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated

benefits of the Officer's presence) that demonstrate the reasonableness of the rent amount.

(2) *Responsibility for damage and overall condition.* The Officer shall be responsible for physical damage to the interior of the leased unit, hallway and entrance, if any, and exterior area bordering the unit. The lease also shall require the Officer to maintain the overall condition of the leased unit, including control of litter in the area of the development immediately around the unit.

(3) *Responsibility for normal facility management.* The lease shall impose on the HA responsibility for routine facility management relating to the leased unit, including ongoing maintenance and repair of equipment, trash collection and similar areas of responsibility.

(4) *Continued employment.* The lease shall provide that the Officer's right of occupancy is dependent on the continuation of employment as an Officer. The lease also shall provide that the Officer will move out of the leased unit within a reasonably prompt time, to be established by the lease, after termination of employment as an Officer.

(5) *Prohibition on subletting.* The lease shall prohibit the Officer from subletting the unit, and provide that the unit must be the Officer's primary residence.

(f) *Applicability of the annual contributions contract; effect on the performance funding system.*

(1) *Annual contributions contract.* Except to the extent that an exemption from eligibility requirements is provided under § 905.308(c) of this part, Indian housing units occupied by Officers in accordance with a plan submitted and approved under this section will be subject to the terms and conditions of the annual contributions contract (ACC) between the HA and the United States of America. This section does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this section.

(2) *Performance funding system.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in subpart J of this part, dwelling units allocated to Officers in accordance with this section are excluded from the total unit months available, as defined in § 905.102 of this part. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this section is included in other income, as defined in § 905.102 of this part. HAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An HA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office of Native American Programs.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

3. The authority citation for 24 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437a–1, 1437c, 1437d, 1437n, 3535(d).

4. 24 CFR part 960 is amended by adding a new subpart E to read as follows:

* * * * *

Subpart E—Exemption From Eligibility Requirements for Police Officers and Other Security Personnel

Sec.

960.501 Purpose and scope.
960.503 Definitions.
960.505 Exemption from eligibility requirements; plan submission; plan approval or disapproval.
960.507 Plan standards and criteria.
960.509 Special rent requirements and other terms and conditions.
960.511 Applicability of the annual contributions contract; effect on the Performance Funding System.

Subpart E—Exemption From Eligibility Requirements for Police Officers and Other Security Personnel

§ 960.501 Purpose and scope.

The purpose of this subpart is to permit the admission to public housing of police officers and other security personnel, who are not otherwise eligible for such housing under any other admission requirements or procedures, under a plan submitted by a public housing agency (HA) and approved by the Department, and to set forth standards and criteria for the approval of such plans. The Department's objective in granting the exemption allowed by this subpart is to permit long term residence in public housing developments by police officers and security personnel, whose visible presence is expected to serve as a deterrent to criminal activity in and around public housing.

§ 960.503 Definitions.

Department means the U.S. Department of Housing and Urban Development (HUD). For purposes of plan submission and approval, Department refers to the local HUD Field Office.

Eligible families means families that are eligible for residence in public housing assisted under the United States Housing Act of 1937.

Officer means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this subpart, "Officer" may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

Plan means the written plan submitted by a public housing agency (PHA) to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in public housing and allow Officers, who are otherwise not eligible, to reside in public housing units. An HA may have only one plan in effect at any one time, which will govern exemptions under this subpart for all public housing managed by that HA.

§ 960.505 Exemption from eligibility requirements; plan submission; plan approval or disapproval.

(a) *Conditions for exemption.* The Department may exempt Officers from the eligibility requirements for admission to public housing, provided that:

(1) The Officers would not be eligible, under any other admission requirements or procedures, for admission to the public housing development without such an exemption; and

(2) The exemption is given under a properly submitted plan that satisfies the standards and criteria set forth in § 960.507 of this part and, accordingly, has been approved by the Department.

(b) *Plan submission.* A plan is properly submitted when it is received by the local HUD Field Office with jurisdiction over the HA.

(c) *Notification of plan approval or disapproval.* The Department will notify an HA of the approval or disapproval of its plan within thirty days of its submission. Plan approval by the Department constitutes granting of the exemption for the purposes of this subpart.

§ 960.507 Plan standards and criteria.

(a) *Minimum requirements.* To be approved, a plan must satisfy the following requirements:

(1) The plan must identify the total number of units under management by

the HA; the specific housing developments, and the number of units they contain, where the HA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. For each unit identified, the plan must state the amount of rent that the Officer will pay and facts and circumstances (such as, the rent that would ordinarily be charged for the unit, the HA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of that amount, as required under § 960.509(a) of this subpart.

(2) The plan must identify specifically the benefits to the community and to the HA that will result from the presence of Officers in each affected development.

(3) The plan must describe the existing physical and social conditions in and around each affected development, providing specific evidence of criminal activity (such as, frequency of telephone calls to local police, number of arrests and types of offenses involved, and data on drug abuse in the community) in order to permit the Department to make an informed assessment of the level of need for increased security.

(4) The plan must afford the Department a reasonable basis, which necessarily includes the certifications required under § 960.507(b) of this part, for determining that the use by Officers of the identified dwelling units will:

(i) Increase security for other public housing residents;

(ii) Result in a limited loss of income to the HA; and

(iii) Not result in a significant reduction of units available for residence by Eligible Families.

(b) *Certifications by HA.* Only upon making the determination described in § 960.507(a)(4) of this part will the Department approve a plan. Further, the Department will not make such a determination unless the plan contains a written statement, signed by an authorized officer or other agent of the HA, certifying that:

(1) The dwelling units proposed to be allocated to Officers are situated so as to place the Officers in close physical proximity to other residents;

(2) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to Officers;

(3) The dwelling units proposed to be allocated to Officers will be rented under a lease that contains the terms described in § 960.509 of this part; and

(4) The number of dwelling units proposed to be allocated to Officers under the plan does not exceed the limits set forth in § 960.507(c) of this part or, in the alternative, any units so allocated in excess of the applicable maximum number are vacant units for which there are no Eligible Families. This certification on the part of the HA satisfies the requirements of §§ 960.507(a)(4)(ii) and (iii) of this part.

(c) *Unit allocation table.* For purposes of the certification required by § 960.507(b)(4) of this part, the following table sets forth the maximum number of units to be allocated to Officers as a function of the total number of units under management by the HA:

UNIT ALLOCATION TABLE

Total units under management	Units to be allocated
500–999	5
1000–4999	10
5000–9999	15
10,000+	20

The maximum number of units to be allocated by HAs with less than 500 units under management will be determined by the Field Office on a case by case basis.

(Approved by the Office of Management and Budget under OMB control number 2577–0185.)

§ 960.509 Special rent requirements and other terms and conditions.

The HA shall lease units to Officers under a lease agreement that is consistent with the requirements of this section and 24 CFR part 966. The requirements of this section shall take precedence if there is any inconsistency between them and 24 CFR part 966.

(a) *Reasonable rent.* The lease shall provide for a reasonable rent, which may be a flat amount not related to the Officer's income. The HA should attempt to establish a rent that will provide an incentive to Officers to reside in the units but that is also consistent with the limited loss of income requirement of § 960.507(a)(4)(ii) of this part. As required in § 960.507(a)(1) of this part, the plan must state facts and circumstances (such as, the rent that would ordinarily be charged for the unit, the HA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of the rent amount.

(b) *Continued employment.* The lease shall provide that the Officer's right of occupancy is dependent on the continuation of the employment that qualified the Officer for residency in the development under the plan. The lease also shall provide that the Officer will move out of the leased unit within a reasonably prompt time, to be established by the lease, after termination of employment.

§ 960.511 Applicability of the annual contributions contract; effect on the Performance Funding System.

(a) *Annual contributions contract.* Except to the extent that eligibility requirements are exempted under § 960.505 of this part, public housing units occupied by Officers in accordance with a plan submitted and approved under this subpart will be subject to the terms and conditions of the annual contributions contract (ACC) between the HA and the United States of America. This subpart does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this subpart.

(b) *Performance funding system.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in part 990, subpart A of this chapter, dwelling units allocated to Officers in accordance with this subpart are excluded from the total unit months available, as defined in § 990.102 of this chapter. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this subpart is included in other income, as defined in § 990.102 of this chapter. HAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An HA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office.

Date: July 20, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–18692 Filed 8–1–94; 8:45 am]

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federal register

Tuesday
August 2, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Regulations Prohibiting Taking of Free Ranging Wolves and Wolverines on Alaska National Wildlife Refuges on the Same Day the Trapper or Hunter Is Airborne; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC16

Regulations Prohibiting Taking of Free Ranging Wolves and Wolverines on Alaska National Wildlife Refuges on the Same Day the Trapper or Hunter Is Airborne

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prohibits trappers and hunters from shooting free ranging wolves and wolverines in national wildlife refuges (refuges) in Alaska on the same day in which the person is airborne, except that trappers may use firearms to dispatch wolves or wolverines that are legally trapped or snared on the same day in which flying occurred. The prohibition does not apply to trappers and hunters transported on regularly scheduled commercial flights between public airports. Hunting and trapping will continue to be allowed on Alaska refuges pursuant to applicable, non-conflicting State of Alaska (State) and Federal laws and regulations, as specifically authorized by the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. Aircraft access to and within Alaska refuges for sport or subsistence hunting, trapping, fishing and other traditional activities, and for travel to and from villages and homesites will continue to be allowed subject to reasonable regulations to protect refuge resources and ensure that uses are compatible with refuge purposes.

EFFECTIVE DATE: September 1, 1994.

ADDRESSES: U.S. Fish and Wildlife Service, Refuges and Wildlife, 1011 East Tudor Road, Anchorage, AK 99503–6199.

FOR FURTHER INFORMATION CONTACT: Refer all questions to Tony Booth at the address listed under the heading **ADDRESSES:** Telephone 907–786–3384.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge Administration Act of 1966 (Pub. L. 89–669; 16 U.S.C. 668dd–668ee) provides guidelines and directives for the use of the National Wildlife Refuge System and authorizes the Secretary of the Interior to allow uses within any area of the refuge system provided "such uses are compatible with the major purposes for which such areas were established."

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96–487) which established new, and added to existing, national wildlife refuges in Alaska. Sections 302 and 303 of ANILCA established purposes for which each refuge shall be managed. Section 304 of ANILCA prohibits the Secretary, subject to valid existing rights, from permitting any use for any purpose unless such use or purpose is compatible with the purposes of the refuge. Section 304 also requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that activities carried out under any use granted under any authority are so compatible. Section 1110 of ANILCA directs the Secretary to permit use of airplanes on Alaska refuges for traditional activities and that such access shall be subject to reasonable regulation to protect the natural and other values of the refuge. The intent of Congress to allow hunting and trapping on Alaska refuges is reflected in the special regulations for Alaska National Wildlife Refuges contained in Title 50, Part 36 of the Code of Federal Regulations (CFR).

In 1992, after many years of controversy, the State prohibited the land and shoot method of taking wolves by making it illegal to shoot a wolf until 3:00 a.m. on the day following the day the hunter or trapper was airborne (i.e., "same-day-airborne" prohibition). Prohibition of taking wildlife during the same-day-airborne allows adequate access to wildlife resources but prevents abuses that could result from hunters or trappers being able to spot and drive or track wildlife from the air and then land and immediately shoot the animal. However, in July 1993, the Alaska Board of Game (Board) reconsidered the same-day-airborne prohibition and adopted a new regulation that allows trappers to shoot wolves and certain other furbearers the same-day-airborne. The new State trapping regulation is more restrictive than the pre-1992 land and shoot allowances in that it requires the trapper to be at least 300 feet from the airplane before shooting the furbearer. As of October 1, 1993, any person who purchases a trapping license can shoot free ranging wolves same-day-airborne if at least 300 feet from the airplane. State hunting regulations continue to prohibit hunters from shooting wolves and wolverines until 3:00 a.m. on the day after the hunter flew.

In response to the State's regulation, the Service published a proposed rule in the **Federal Register** on December 22, 1993, which is intended to accomplish the following:

1. Prohibit same-day-airborne taking of wolves and wolverines with firearms except that trappers could use firearms to dispatch legally caught wolves or wolverines in a trap or snare on the same-day-airborne, and this prohibition would not apply to people transported on regularly scheduled commercial airlines between public airports;
2. Satisfy legal mandates to provide for hunting and trapping on Alaska refuges and adequately provide for aircraft access to refuge resources;
3. Maintain compatibility between hunting and trapping and legislative purposes, the mission of the National Wildlife Refuge System, and established Service policies; and
4. Provide more effective enforcement of hunting and trapping laws and regulations.

The proposed rule had a 60-day public comment period and public hearings were held in Anchorage and Fairbanks, Alaska.

Summary of Public Comments

Twenty-four persons presented oral comments at public hearings in Anchorage and Fairbanks, Alaska. The Service also received approximately 2100 letters and cards from the public commenting specifically on the proposed rule. The Service also received several hundred letters that do not specifically address the proposed rule, but express concerns related to same-day-airborne or land and shoot taking of wolves. The Service also considered comments received from the Subsistence Regional Advisory Councils and the administrative record of those Council meetings where the issue of same-day-airborne taking of wolves was addressed. After considering all public comments, the Service has decided to proceed with this final rule and found no compelling reason to change the regulatory language from that provided in the proposed rule.

Analysis of Public Comments

(a) Opinions of the Alaska Public not Seriously Considered

Several commenters, who objected to the proposed regulation, expressed their belief that the Service ignores opinions of Alaska residents and inappropriately relies on "Lower 48" opinions.

The Service considered all public opinions and views on the proposed rule and did not disregard opinions of Alaskan residents. In fact, the Service provided special attention to comments and concerns received from Alaskans. Comments from Alaskan residents were mixed, but the majority of Alaskans apparently do not support same-day-

airborne shooting of wolves. A 1992 public opinion survey of Alaskans (by Dittman Research Corporation) indicated that 66 percent of the survey participants felt that the public should not be allowed to shoot wolves that are located with use of aircraft. The proposed rule received strong support from several individuals and organizations associated with the Alaska tourism industry who objected to allowing same-day-airborne shooting of wolves and noted that it portrays a bad image of Alaskans.

(b) Support of the Proposed Regulations or Stronger or Broader Provisions to Extend Prohibition to Other Areas or Other Species

The Service received over 2100 public comments in direct response to the proposed rule. The Service and the Department of Interior also received, and continue to receive, several hundred other letters expressing opposition to same-day-airborne taking of wolves and requesting action to prohibit such activities. The overwhelming majority of the comments supported the proposed regulation. Numerous commenters also stated their preference for stronger or broader regulations against same-day-airborne methods of taking wildlife. Many people advocated elimination of all hunting and trapping of wolves and many others advocated extending the applicability of same-day-airborne shooting prohibitions to other species and/or other areas.

Adoption of this final rule does not foreclose additional regulatory measures by the Service to address same-day-airborne shooting of wildlife in areas outside the National Wildlife Refuge System. The Service has the authority to take such action pursuant to the Airborne Hunting Act if warranted. The Service acknowledges some of the justification or rationale for prohibiting same-day-airborne take of wolves and wolverines would apply to other wildlife species as well. In fact, the Service strongly considered extending the same-day-airborne prohibitions to other game and furbearer species. However, in order to minimize the preemptive effect of this regulation on traditional State management authorities and responsibilities, the Service limited applicability to the species most subjected or most vulnerable to the problems associated with same-day-airborne take. Wolves and wolverines receive relatively high interest and demand by hunters and trappers who use airplanes in Alaska, from both a recreational standpoint as a game species and from an economic standpoint as furbearers that generally bring a good price for their furs. Other species not already protected by State same-day-airborne regulations are far less vulnerable to abuse of same-day-airborne methods and/or less desirable to hunters and trappers who use airplanes. Therefore, the Service decided that there was not sufficient justification to include other species.

Several commenters who supported the proposed rule requested emergency closure actions to immediately eliminate such activities on refuges. Emergency closure authority is generally limited to more immediate threats or problems. The same-day-airborne shooting of wolves involves long-term and chronic problems, but poses no immediate threat to wolf populations or other Alaska refuge resources.

(c) Non-Compliance With Access Provisions of Section 1110 of ANILCA

Several commenters expressed concern that the proposed rule violates access provisions in Section 1110 of ANILCA and applicable regulations (43 CFR 36.11) and that the Service did not comply with administrative procedures for restricting access. Section 1110 of ANILCA permits use of airplanes on Alaska refuges for traditional activities (subject to reasonable regulations to protect natural and other values) and provides that such access may only be closed by the Service following a determination that such access is detrimental to refuge resource values.

The regulation does not restrict aircraft access to or within national wildlife refuges. Aircraft access to and within Alaska refuges for hunting, trapping, fishing and other traditional activities will continue to be allowed. It provides reasonable restriction against shooting free ranging wolves and wolverines immediately after a person has flown in an aircraft, as necessary to alleviate law enforcement problems and protect values associated with ethical and fair chase standards. These regulations are not solely dependent on a determination that same-day-airborne hunting or trapping is detrimental to wolf populations. Even if construed as an access restriction, the Service believes the same-day-airborne prohibition is a reasonable regulation needed to protect natural and other values of Alaska refuges. The Service reviewed the administrative procedures related to the promulgation of these regulations and determined the process used does fulfill the legal public participation and closure requirements (50 CFR 36.42) related to the restriction of an otherwise allowed activity.

(d) Legal Authority to Regulate the Taking of Fish and Wildlife

The most prevalent objection to the proposed rule involved the Service's authority to regulate methods and means of harvesting resident game species. The State of Alaska and many Alaskans argued the sole authority to regulate hunting and trapping of resident wildlife in Alaska rests with the State. As such, they claimed the proposed rule constitutes an unauthorized and unwarranted extension of Federal jurisdiction that intrudes into the State's responsibilities to manage resident fish and wildlife. Associated arguments were presented that the proposed regulations violate Section 1314 of ANILCA by attempting to regulate harvest methods and contradicts Department of the Interior policy concerning State and Federal relationships, and the Master Memorandum of Understanding between the Alaska Department of Fish and Game and the Service.

Our review found that the regulation is in compliance with Section 1314 of ANILCA and there is ample legal precedent supporting the Service's authority to regulate uses on national wildlife refuges as needed to ensure compatibility with refuge purposes and legal mandates, and to protect refuge resources and other values. Section 1314 of ANILCA does not diminish this authority.

The Service remains committed to administering our mandates and responsibilities in a way that avoids unnecessary interference with the State of Alaska's ability to manage resident wildlife. However, the Service feels the regulation is needed because the State's revised regulation authorizing same-day-airborne shooting of wolves allows, and even invites, excessive reliance on aircraft to pursue and take wolves, which inevitably results in abuse and violations of the Airborne Hunting Act and exacerbates enforcement problems. The significant diversion of resource management funds needed to reasonably ensure compliance with the Airborne Hunting Act and other applicable laws and regulations, when State regulations allow same-day-airborne shooting of wolves, contravenes the Refuge Recreation Act. Though airplanes serve an important role as a vehicle for access in Alaska, it is evident from public comments received that most of the American public objects to the heavy and direct reliance on aircraft to locate and take wolves, and strongly supports prohibition of such activities on refuge lands. The Service repeatedly advised

the State of our concerns and initiated promulgation of these regulations only after the State failed to adequately address Service concerns.

(e) The Proposed Rule Is Not Based on a Biological Problem

Many commenters stated that there is not a biological basis for the regulations since wolf and wolverine populations in Alaska are healthy; these species are managed by the State to ensure continued viability of populations; Service concerns about impacts to the species are speculative; and there is no data to indicate that same-day-airborne shooting of wolves constitutes a threat to wolf populations in Alaska.

The need for this regulation is not based on immediate threats to wolf or wolverine populations on Alaskan refuges. The Service does not expect a significant increase in the legal harvest of wolves to result from the State regulatory allowance for same-day-airborne shooting of wolves. Only a very small portion of Alaskans participate in or benefit from whatever same-day-airborne wolf hunting and trapping opportunities the State allows. The Service is more concerned about the associated enforcement problems that will provide additional incentive and opportunity for illegal harvests and ethical problems. Furthermore, there is potential for localized impacts on refuge wolf populations, if trappers or hunters are allowed and it becomes more popular to shoot wolves the same-day-airborne.

State officials indicated that same-day-airborne shooting of wolves is not intended to manage or control wolf populations, but only to provide harvest opportunity. Thus there is no biological or resource management need to allow such activities. In deciding to proceed with this regulation, the Service found, after consideration of all substantive public comment, that all problems associated with same-day-airborne shooting of wolves far outweigh the limited benefits or additional opportunity it provides, particularly when there is no biological or management need to continue such practices.

(f) Law Enforcement Concerns and Justification are Speculative and Misleading

Several commenters expressed their belief that the Service's concerns related to law enforcement problems were unfounded or exaggerated and that the regulations would mislead or confuse hunters who are trying to comply with State regulations.

The Service's law enforcement concerns and justifications are based on professional opinions and extensive experiences of Service law enforcement agents in Alaska. Testimony provided by defendants during cases involving prosecution for violations of the Airborne Hunting Act corroborate the Service's law enforcement concerns.

In addition, the Service's law enforcement concerns and justifications for the proposed rule were reinforced by comments received from some Alaskan residents who have personally witnessed or observed that same-day-airborne take commonly entails abusive and illegal practices of chasing, herding and harassing wolves with airplanes. Some wolf hunters and aircraft owners/operators indicated that it is all but impossible or rare to take wolves same-day-airborne without violating the Airborne Hunting Act. Some commenters made the point that the only effective means to take wolves same-day-airborne is to drive a wolf to exhaustion and/or to a place where a hunter can safely land and shoot it.

(g) Ethics and Fair Chase for Hunting Do Not Apply to Trapping

Some commenters stated same-day-airborne taking of wolves is done under a State trapping license and, therefore, the practice does not conflict with Service policy in the Refuge Manual or other fair chase principles and ethics associated with sport hunting.

Based on the overwhelming majority of comments received, this belief is not shared by the large majority of the public, including most other sportsmen. The Service does not believe that it should ignore ethical and fair chase considerations that strongly affect public perceptions of hunting and trapping on refuges. To disregard or fail to consider and respond to ethical considerations of fair chase and other perceptions and views shared by the majority of the general public may ultimately jeopardize the future of hunting and trapping opportunities on national wildlife refuges.

Alaska regulations allow trappers to shoot wolves and other furbearers with firearms or any other legal weapon as a lawful method of trapping. Thus, a person can shoot wolves with a trapping license as well as with a hunting license. The Service disagrees with the argument that possession of a trapping license exempts a person from all ethical obligations and standards of fair chase, particularly when anyone can purchase a trapping license to shoot wolves.

(h) Inconsistent With Federal Government's Legal Obligation to Accommodate Subsistence Uses

Several commenters expressed views that the regulations would limit subsistence activities or reduce traditional trapping opportunities and are not in compliance with Section 811 of ANILCA requiring that subsistence users have reasonable access to subsistence resources.

The regulations apply to general or sport harvest of wolves and wolverines. Federal subsistence regulations already prohibit same-day-airborne take of wolves and wolverines for subsistence purposes. Access is not restricted, as already discussed.

The Service received contradictory comments and views from Alaskan residents on the need and legitimacy of same-day-airborne shooting of wolves as customary and traditional subsistence activity. The State and some Alaskan residents, including some rural Alaskans, contend that same-day-airborne or land and shoot take of wolves is a traditional and legitimate subsistence activity that should be allowed to continue on Alaska refuges. Other Alaskan residents contend it is not a legitimate subsistence activity, but rather a sport or recreational activity for urban hunters and trappers.

(i) Potential Economic Effects on Individual Trappers

Several commenters stated that the regulation could have a significant economic impact on individual trappers dependent on this customary and traditional practice. The loss of opportunity for some trappers to take a few or an occasional wolf while same-day-airborne could mean a substantial reduction in seasonal gross value of the individual trapper's income.

The potential for such impacts is likely minimal but difficult to ascertain in light of contradictory public responses. The Service received few comments from individuals who claimed that the regulation would significantly impact them economically Some individuals experienced in wolf hunting and trapping contend that, because the opportunity to shoot wolves same-day-airborne is very limited, few wolves are taken by such methods. Other individuals who have hunted and trapped wolves indicated that shooting wolves same-day-airborne should be allowed because it constitutes the most or only effective means of trapping wolves. However, there is no compelling evidence that individuals are likely to suffer significant economic hardship over loss of limited

opportunities to legally shoot wolves same-day-airborne.

(j) Relationship Between the Prohibition of Same-Day-Airborne Taking and the Purposes, Missions and Policies of the National Wildlife Refuge System in Alaska

Some commenters questioned or disputed whether there was any legitimate relationship between the prohibition of same-day-airborne shooting of wolves and wolverines and the legislative purposes or missions and policies applicable to Alaska refuges.

In addition to the legislative purposes of each refuge, there are various other applicable legislative mandates, missions and policies which guide or must be considered in management of Alaska refuges. Collectively, our legal mandates and mission and policy guidance direct management emphasis on Alaska refuges at conserving, protecting and enhancing fish and wildlife resources in their natural diversity to meet a broad spectrum of public needs and benefits.

In this case, the Service carefully evaluated the implications of allowing same-day-airborne shooting of wolves on Alaska refuges. Though it poses no immediate biological threat, there is no biological or management need for allowing same-day-airborne shooting of wolves and very few people benefit from the additional opportunities it provides. The Service balanced the limited benefits of allowing same-day-airborne shooting of wolves against the associated law enforcement and ethical problems, and the increased law enforcement costs of allowing this activity. The Service ultimately concluded that prohibition of same-day-airborne shooting of wolves and wolverines would serve to collectively benefit or further the legal mandates, purposes, missions and policies applicable to management of the national wildlife refuge system in Alaska. Applicable Service policies concerning ethical standards and fair chase were discussed in the proposed rule document.

(k) Undermines or Interferes With State's Ability to Control or Manage Wolves and Affected Prey Species

Some commenters argued that the same-day-airborne prohibition takes away or undermines an effective management tool of the State to control wolf populations to benefit game species.

State officials have asserted that same-day-airborne allowances are intended only to provide a reasonable harvest opportunity for trappers, and are not intended for predator control or management purposes. It is our evaluation that the Service's same-day-airborne prohibition will not undermine or interfere with State wolf management or control programs.

(l) Unwarranted Restriction of Opportunity To Continue Traditional Use

Some commenters argued that same-day-airborne or even land and shoot methods of taking wolves in Alaska constitute traditional uses that Congress intended to protect under provisions of ANILCA. As such, our proposed regulation would eliminate legitimate traditional hunting and trapping activities and access needed in remote roadless areas and therefore violates the Congressional intent of ANILCA. On the other hand, some commenters stated the view that excessive and direct reliance on aircraft for taking wolves should not be used or allowed as replacement for the traditional hunting and trapping skills and activities that Congress intended to protect in Alaska.

The ANILCA provides for the continuation of hunting and trapping opportunities as legitimate traditional uses of refuge lands in Alaska, and specifically allows use of aircraft for access to and within refuges for such traditional uses, subject to reasonable regulations and compatibility with refuge purposes. The proposed rule does not compromise either of these directives. It does not close refuges to hunting or trapping, nor does it preclude or restrict aircraft access for these and other traditional activities. ANILCA does not direct the Service to ensure use of aircraft for land and shoot or related methods of same-day-airborne shooting of wolves and other wildlife. There is no clear indication, nor is it reasonable to presume, that Congress intended to allow such activities on public lands, particularly when they invite or result in chronic violations of Federal laws and policies.

(m) Same-Day-Airborne Methods Provide the Most or Only Effective Alternative Means of Taking Wolves in Alaska

Several commenters who indicated experience in trapping and hunting wolves expressed the concern that same-day-airborne shooting opportunities provide the only effective means or the most effective alternative to taking wolves with traps and snares in the vast and remote roadless areas of Alaska. A few commenters argued that same-day-airborne or even land and shoot methods offer more humane and more selective means of taking wolves. Traps and snares take non-target species while same-day-airborne methods are more selective to the target species.

The Service considered and weighed such potential advantages of allowing same-day-airborne shooting wolves and wolverines against the problems and consequences and found the problems outweigh the benefits.

Evaluation of public comments on the benefits and effectiveness of same-day-airborne take of wolves was complicated by the apparent contradiction or inconsistency in responses from people purportedly experienced in such methods. Some commenters argued that same-day-airborne shooting is needed to maintain an effective and selective method of taking wolves. Other experienced wolf hunters and/or trappers argued that it should be allowed by virtue of its very limited effectiveness. They contended that same-day-airborne shooting of wolves, particularly with the State's new requirement to be 300 feet from the airplane, involves very difficult methods that require considerable skill and offer very limited opportunities to be successful. It results in a very limited increase in harvest. Still other responses from some individuals knowledgeable or experienced in same-day-airborne shooting activities reinforce the Service's concerns that it allows or invites abuse and violations of the Airborne Hunting Act and should be prohibited.

(n) Advantages and Impacts of Using Aircraft Exaggerated

Some commenters disagreed with statements in the proposed rule concerning the advantage of using aircraft to detect and kill wildlife, contending that the Service exaggerated the advantages and impacts of using aircraft for taking wolves.

As discussed above, there is significant inconsistency in public comments on the effectiveness and impacts of same-day-airborne shooting of wolves, even among those individuals experienced in such activities. The Service recognizes that opportunities and advantages to hunters or trappers who shoot wolves on the same-day-airborne, as well as the impacts to wolf populations, are generally limited when such activities are accomplished in compliance with the Airborne Hunting Act. Unfortunately, same-day-airborne allowances create significant enforcement problems and provide greater opportunity and advantage to violators.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Environmental Considerations

This rulemaking is categorically excluded under 40 Code of Federal Regulations 1508.4 from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) as an activity directly related to the enforcement of fish and wildlife laws and as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rulemaking would have no significant effect on such entities. Public comment revealed that trappers who use aircraft for access rarely take free ranging wolves while working their traplines after landing.

List of Subjects in 50 CFR Part 36

Aircraft, Alaska, Alaska National Wildlife Refuge System, Hunting, Trapping, Wildlife, Wildlife refuges.

Accordingly, Part 36 of Chapter 1 of Title 50 of the Code of Federal Regulations is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

2. Section 36.32 is amended by adding paragraph (c)(1)(iv) to read as follows:

§ 36.32 Taking of fish and wildlife.

* * * * *

(c) * * *

(1) * * *

(iv) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking a wolf or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred, except that a trapper may use a firearm or any other weapon to dispatch a legally caught wolf or wolverine in a trap or snare on the same day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

* * * * *

Dated: July 18, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–18774 Filed 8–1–94; 8:45 am]

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