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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Regulations for the 1994 and Subsequent Crop Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Common Crop Insurance Regulations. The number of years a policy does not earn a premium without policy termination is changed from one year to three years. The intended effect of this amendment is to allow a producer to rotate crops without policy cancellation. The arbitration procedures are amended to apply to all disagreements on factual determinations and be in accordance with the rules of the American Arbitration Association. Currently, the arbitration procedures apply only to disagreement on production to be counted. The intended effect of this amendment is to broaden the applicability of arbitration procedures to other possible disagreements under such policies.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1999.

A summary of this rule has been submitted to the Office of Management and Budget (OMB) to be determined if it meets the requirements of a "significant regulation" as defined by Executive Order 12866.

Executive Order 12612, Federalism. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 through 612) these regulations will not have a significant impact on a substantial number of small entities. The regulatory revision is limited to reinsured companies and their agents and crop producers insured under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

The Office of General Counsel has certified to OMB that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Following publication of this rule as proposed, the public was given 60 days in which to submit comments, data, and opinions. No comments were received, accordingly, this rule is hereby issued as final.

List of Subjects in 7 CFR Part 457

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations, (7 CFR part 457) as follows:

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 457.8 is amended by revising subsection 2.(e) of the Common Crop Insurance Policy to read as follows:

§ 457.8 The application and policy.

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

(e) Your Policy will terminate if no premium is earned for 3 consecutive years.

* * * * *

3. Section 457.8 is amended by revising section 17 of the Common Crop Insurance Policy to read as follows.

§ 457.8 The application and policy.

* * * * *

17. Arbitration

If you and we fail to agree on any factual determination, disagreement will be resolved, in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by the Federal Crop Insurance Corporation (FCIC) must be resolved through the FCIC appeal regulation at 7 CFR part 400, subpart J.

* * * * *

Done in Washington, DC, on August 15 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–20380 Filed 8–18–94; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 92 and 98a

[DoD Directive 7050.6]

Military Whistleblower Protection

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 843 of Public Law 102–190, "National Defense Authorization Act for Fiscal Years 1992–1993," December 5, 1991. It expands military whistleblower protection to those who make disclosures to an audit, inspection, investigation or law enforcement organization, as well as to an Inspector General or a Member of Congress. This rule also specifies that reprisal for whistleblowing is punishable under the Uniform Code of Military Justice and removes 32 CFR part 98a.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Campbell, (703) 604–8507.

SUPPLEMENTARY INFORMATION: Due to an administrative oversight the final rule was not previously published.

It has been certified that this rule is not a significant regulation action. The rule does 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 this Executive Order.

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because this rule does not exert a significant economic impact on a substantial number of small entities. This certification is made based on the fact that the rule merely modifies the current regulation to ensure that policy and procedures with regard to military whistleblower protection conform with the requirements under 10 U.S.C. 1034. These procedures involve reporting and investigating allegations of reprisal for protected disclosures made by military members of the armed forces to appropriate authorities.

It has been certified that 32 CFR parts 92 and 98a do not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Parts 92 and 98a

Administrative practice and procedure; Investigations; Military personnel; Whistleblowing.

1. Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 98a is removed.

PART 98a—[REMOVED]

2. 32 CFR Part 92 is added to read as follows:

PART 92—MILITARY WHISTLEBLOWER PROTECTION

Sec.
92.1 Purpose.
92.2 Applicability and scope.
92.3 Definitions.
92.4 Policy.
92.5 Responsibilities.
92.6 Procedures.

Authority: 10 U.S.C. 892, 1552, and 1553.

§ 92.1 Purpose.

(a) This part:

(1) Updates policy, responsibilities, and procedures, in accordance with the "National Defense Authorization Act for Fiscal Years 1992–1993 and of 1989," (Pub. L. 102–190, Section 843 and Pub. L. 100–456, Section 846).

(2) Provides protection against reprisal for members of the Armed Forces for making or preparing a lawful communication to a Member of the Congress, an Inspector General (IG), or any member of a DoD audit, inspection, investigation, or law enforcement organization.

(3) Provides procedures for investigating allegations of reprisal against members of the Armed Forces for making or preparing a protected disclosure, as defined in § 92.3(c).

(b) Updates responsibilities and authorities for such protection and updates operating procedures in § 92.6.

§ 92.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments (including their National Guard and Reserve components), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities, including nonappropriated fund activities (hereafter referred to collectively as "the DoD Components"). The Term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) All DoD personnel.

§ 92.3 Definitions.

(a) *Audit, inspection, investigation, and law enforcement organizations.* The law enforcement organizations at any command level in any of the DoD Components, the Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Investigative Service, the Air Force Office of Special Investigations, the U.S. Army Audit Agency, the Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency.

(b) *Board for Correction of Military Records (BCMR).* Any board empowered under 10 U.S.C. 1552 to recommend correction of military records to the Secretary of the Military Department concerned.

(c) *Corrective action.* Any action deemed necessary to make the complainant whole; changes in Agency regulations or practices; administrative or disciplinary action against offending personnel; or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.

(d) *Inspector General (IG).* The IG, DoD, and a military or civilian employee assigned or detailed under DoD Component regulations to serve as an IG at any command level in one of the DoD Components.

(e) *Member of the Congress.* Besides a Representative or Senator, includes any Delegate or Resident Commissioner to the Congress.

(f) *Member or Member of the Armed Forces.* All Regular and Reserve component officers (commissioned and warrant) and enlisted members of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when operating as part of the Department of the Navy) on active duty (AD), and Reserve component officers (commissioned and warrant) and enlisted members whether on AD, Full-Time National Guard Duty, Inactive Duty for Training, or not in any duty or training status. That definition includes professors and cadets of the Military Service academies and officers and enlisted members of the National Guard.

(g) *Personnel action.* Any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career. Such actions include a

promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; and any other significant change in duties or responsibilities inconsistent with the military member's rank.

(h) *Protected disclosure.* A lawful communication to a member of Congress, an IG, or any member of a DoD audit, inspection, investigation, or law enforcement organization in which a military member makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(i) *Reprisal.* Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a military member for making or preparing a protected disclosure.

§ 92.4 Policy.

It is DoD policy that:

(a) No person shall restrict a member of the Armed Forces from lawfully communicating with a Member of the Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

(b) Members of the Armed Forces shall be free from reprisal for making or preparing lawful communications to a Member of the Congress, an IG, or a member of a DoD audit, inspection investigation, or law enforcement organization.

(c) No employee or member of the Armed Forces may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing a lawful communication to a Member of the Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

(d) Any violation of paragraph (c) of this section by a person subject to 10 U.S.C. Chapter 47 (the Uniform Code of Military Justice) is punishable in accordance with the provisions of § 92.5(c)(1). Any violation of paragraph (c) of this section by a civilian employee is punishable under regulations governing disciplinary or adverse actions.

(e) Allegations of reprisal against members of the Armed Forces for making or preparing a protected disclosure shall be investigated and resolved in accordance with this part.

§ 92.5 Responsibilities.

(a) The Inspector General of the Department of Defense shall:

(1) Expeditiously initiate an investigation of any allegation submitted to the IG, DoD, by a member of the Armed Forces that a personnel action has been taken, withheld, or threatened in reprisal for making or preparing a protected disclosure. The IG, DoD, may request the IG of the DoD Component to conduct the investigation. No investigation is required when such allegation is submitted more than 60 days after a member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the allegations contained in the protected disclosure if such an investigation has not already been started. No investigation is required if the information that a member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete an investigation of an allegation of reprisal for making or preparing a protected disclosure and issue a report within 90 days of the receipt of that allegation. If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the member or the former member making an allegation of the reasons why that report will not be submitted within that time, and when that report will be submitted.

(4) Prepare a report of the results of an investigation. That report shall include a thorough review of the facts and circumstances about an allegation, the relevant documents acquired during that investigation, and summaries of interviews conducted.

(5) Submit a copy of an investigative report to the USD(P&R) and to a member or a former member making the allegation not later than 30 days after the completion of the investigation. A copy of that report issued to the member may exclude any information not otherwise available to him or her under 32 CFR part 285.

(6) At the request of a Board for Correction of Military Records (BCMR), submit a copy of that investigative report to the BCMR.

(7) At the request of a BCMR, gather further evidence and issue a further report to the BCMR.

(8) After the final action in any military reprisal complaint filed with the IG, DoD, when possible, interview the person who made the allegation to determine the views of that person on the disposition of the matter.

(9) Review and determine the adequacy of DoD Component IG investigations of allegations of reprisal against a member of the Armed Forces for making or preparing a protected disclosure conducted at the request of the IG, DoD. If such investigation is found inadequate, initiate a follow-up investigation to correct those inadequacies or ensure that the DoD Component corrects them.

(b) The Under Secretary of Defense for Personnel and Readiness shall:

(1) Review and process, under the standards and procedures in § 92.6 requests from members or former members of the Armed Forces for review of final decisions of a Secretary of a Military Department on applications for correction of military records decided in accordance with § 92.6.

(2) Notify the IG, DoD, of decisions made by the Secretary of Defense on requests for review of a final decision of a Secretary of a Military Department on an application for correction of military records submitted in accordance with § 92.6(c)(1).

(3) Have access to all research, reports, investigations, audits, reviews, documents, papers, or any other material necessary to carry out the responsibilities assigned to the USD(P&R) by this part.

(4) If necessary, obtain for review and request the Secretaries of the Military Departments to comment on, evidence considered by a BCMR in cases in which the Secretary of Defense is requested to reconsider the final decision of the Secretary concerned.

(c) The Secretaries of the Military Departments shall:

(1) Implement a regulation that provides that a violation of the prohibition against taking, withholding, or threatening to take or withhold a personnel action in reprisal for making or preparing a lawful communication by a person subject to 10 U.S.C. Chapter 47 (the Uniform Code of Military Justice) is punishable as a violation of 10 U.S.C. 892 (Article 92 of the Uniform Code of Military Justice). The implementing regulation shall also provide that such a violation by a DoD civilian employee is punishable under regulations governing disciplinary or adverse action.

(2) On receipt of a report of investigation from the IG, DoD, that concludes that a member suffered reprisal, and when implementation of the recommendations requires action by a BCMR, advise that member that assistance in preparing an application to

the BCMR may be sought from the legal office supporting the member's command.

(3) Ensure that the Military Department IG:

(i) On receipt of a member's allegation of reprisal for making or preparing a protected disclosure, expeditiously investigates that allegation. No investigation is required when such allegation is submitted more than 60 days after a member became aware of that personnel action that is the subject of the allegation.

(ii) At the request of the IG, DoD, investigates cases arising in the DoD Component.

(iii) For those investigations conducted at the request of the IG, DoD, within 90 days of the receipt of an allegation, provides the IG, DoD, with an investigative report containing a thorough review of the facts and the circumstances about the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted.

(iv) For all other investigations of alleged reprisal against a member for making or preparing a protected disclosure, on completion of the investigation, informs the member in writing of the results of the investigation. This may be accomplished by providing the member a thorough summary of the investigative report or a copy of the investigative report, edited as necessary under 32 CFR part 285. The information provided to the member must contain a summary of the material evidence and an analysis of that evidence that supports the determination of whether reprisal occurred. Regardless of the form of communication, the information provided must be in sufficient detail to allow the member to pursue the issue further.

(v) At the request of a BCMR, submits a copy of that investigative report to the BCMR.

(vi) At the request of a BCMR, gathers further evidence and issues a further report to the BCMR.

(4) Ensure that the BCMR:

(i) In accordance with 10 U.S.C. 1552, determines whether to resolve an application for the correction of records, made by a member or a former member of the Armed Forces who has filed a timely complaint, alleging a personnel action was taken in reprisal for making or preparing a lawful communication. That may include the receipt of oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the BCMR's discretion. When the BCMR decides to resolve such application, it shall:

(A) Review the report of any investigation into the member's allegation of reprisal conducted by the IG, DoD, or the IG of a DoD Component.

(B) As deemed necessary, request that the IG, DoD, or the IG of the DoD Component originally investigating the allegation gathers further evidence.

(ii) In such cases, if it elects to hold an administrative hearing, allows the member to be represented by a judge advocate (JA) if all of the following conditions exist:

(A) The IG investigation finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for a member of the Armed Forces making or preparing a protected disclosure.

(B) The Judge Advocate General concerned determines that the case is unusually complex or otherwise requires JA assistance to ensure proper presentation of the legal issues in the case.

(C) The member is not represented by outside counsel chosen by that member.

(iii) If it elects to hold an administrative hearing, ensures that the member may examine witnesses through depositions, serve interrogatories, and request the production of evidence, including evidence in an IG investigatory record not included in the report released to that member.

(iv) If it determines that a personnel action was taken in reprisal for a member or a former member of the Armed Forces making or preparing a lawful communication, makes a determination on the appropriateness of administrative or disciplinary action against the individual or indviduals who committed the action and, if deemed appropriate by the BCMR, forwards its recommendation in the matter to be the Secretary concerned.

(5) Within 180 days of its receipt, issue a final decision on an application for the correction of military records from a member or a former member of the Armed Forces alleging reprisal for making or preparing a lawful communication. When the final decision does not grant the full relief requested by the member, advise that member that within 90 days he or she may request the Secretary of Defense to reconsider the decision in accordance with the procedures described in § 92.6(c).

(6) When reprisal is found, take appropriate corrective action, including the correction of the records of the member, in accordance with 10 U.S.C. 1552 and 1553.

(7) Ensure that administrative or disciplinary action, if appropriate, is taken against individuals found to have taken reprisal against a member of the Armed Forces for making or preparing a lawful communication.

(8) Notify the IG, DoD, and the Military Department IG of a decision on an application for the correction of military records received from a member or former member of the Armed Forces alleging reprisal for making or preparing a lawful communication and of any disciplinary action taken.

(d) The Heads of the DoD Components shall:

(1) Based on an IG investigative report, take appropriate corrective action.

(2) Publicize the content of this Directive to ensure that military and other DoD personnel fully understand its scope and application.

§ 92.6 Procedures.

(a) Any member of the Armed Forces who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing a lawful communication, may file a complaint with the DoD Hotline under 32 CFR part 98. Such a complaint may be filed by telephone (800) 424–9098 or (202) 693–5080, or by letter addressed to the following: Department of Defense Hotline, 400 Army Navy Drive, Arlington, Virginia 22202–2884.

(b) Nothing in this part precludes a member of the Armed Forces from filing a complaint of reprisal for making or preparing a lawful communication within their Military Department. If the member elects to file the complaint within his or her Department, he or she should contact a local IG or JA for information concerning the procedures for filing such a complaint. Members who file complaints of reprisal for making or preparing a lawful communication within their Military Department should be advised that the provisions of Pub. L. 102–190, Section 843, and Pub. L. 100–456, Section 846 only apply to reprisal complaints filed with the IG, DoD.

(c) A member or former member of the Armed forces who has filed an application for the correction of military records under Pub. L. 100–456 alleging reprisal for making or preparing a protected disclosure may request review by the Secretary of Defense of the final decision of the Secretary of a Military Department concerned on such application. The following procedures apply to requests for review by the Secretary of Defense:

(1) *Content of request.* The request for review must be in writing and include the member's name, address, and telephone number; copies of the application to the BCMR and the final decision of the Secretary of the Military Department concerned on such application; and a statement the specific reasons why that member is not satisfied with the decision of the Secretary concerned.

(i) Requests based on factual allegations or evidence not previously presented to the cognizant BCMR shall not be considered.

(ii) New allegations or evidence must be submitted directly to the BCMR for reconsideration under procedures established by the BCMR.

(2) *Review by the Secretary of Defense.* The Secretary of Defense shall review the allegations submitted by a member or a former member of the Armed Forces requesting review and other records deemed appropriate and necessary by the Secretary of Defense for deciding, in his or her sole discretion, whether to uphold or reverse the decision of the Secretary concerned. The decision of the Secretary of Defense is final.

(3) *Time limits.* The request for review of the final decision of the Secretary of the Military Department concerned must be filed within 90 days of receipt of the decision by a member or former member of the Armed Forces.

(4) *Address.* Requests for review by the Secretary of Defense must be submitted to the following: Under Secretary of Defense (Personnel and Readiness), Attention: Director, Legal Policy, Room 4C763, The Pentagon, Washington, DC 20301–4000.

Dated: August 15, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20425 Filed 8–18–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

32 CFR Part 552

Restriction of Training Areas on the Installation of Fort Benjamin Harrison, IN

AGENCY: U.S. Army Soldier Support Center, Fort Benjamin Harrison, DOD.

ACTION: Final rule.

SUMMARY: This rule adopts as final the regulations contained in 32 CFR Part 552, subpart K, Restriction of Training Areas on Fort Benjamin Harrison, Indiana, which were published in the **Federal Register** as an interim rule on July 6, 1994. This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized vehicles, on the Army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.143 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison. Paragraph numbering has been changed to permit flexibility in paragraph numbering in Part 552.

DATES: This final rule is effective August 19, 1994.

ADDRESSES: Commander, Soldier Support Center, ATTN: Directorate of Information Management, Fort Benjamin Harrison, Indiana 46216–5151.

FOR FURTHER INFORMATION CONTACT: Cheri Armstrong, (317) 542–4909.

SUPPLEMENTARY INFORMATION: U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandria, VA 22331–0302.

Executive Order 12291

This final rule has been classified as nonmajor.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This proposed rule does not have a significant impact on small entities.

Paperwork Reduction Act

This final rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552

Government employees, Military personnel.

Accordingly, subpart K to 32 CFR part 552, is added to read as follows:

PART 552—[AMENDED]

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

Sec.

552.140 Purpose.
552.141 Applicability.
552.142 References.
552.143 Definitions.
552.144 Procedures.
552.145 Violations.

Authority: 16 U.S.C. 470; 1531–1543; 18 U.S.C. 1382; 50 U.S.C. 797.

§ 552.140 Purpose.

(a) This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized, on the army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison, Indiana.

(b) These restrictions are established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve the combat readiness of the U.S. Armed Forces. Training conditions exist within these areas which could be dangerous to unauthorized persons entering these areas.

(c) In addition, these restrictions have been established to prevent property damage, threatening of endangered flora and fauna in the areas, and to prevent the harassment of protected species such as the Blue Heron and the Indiana Bat by any person or persons.

§ 552.141 Applicability.

The restrictions outlined in this subpart apply to all individuals, with the exception of soldiers and Army civilian employees and authorized contractors, who may enter the restricted areas in the performance of their official duties.

§ 552.142 References.

Required and related publications are listed below. U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandria, VA 22331–0302.

a. 16 U.S.C. 1531–1543.
b. 16 U.S.C. 470.
c. Title 18, U.S.C. 1382.
d. Internal Security Act of 1950, section 21 (50 U.S.C. 797).
e. Army Regulation 420–74.
f. 10 U.S.C. 801–940.
g. Article 92, Uniform Code of Military Justice.

§ 552.143 Definitions.

(a) For purpose of this subpart, restricted areas on the installation of Fort Benjamin Harrison, Indiana area defined as training areas A thru J, to include the gold course. A map defining these areas is located in the Directorate

of Plans, Training, and Mobilization, Security, Plans and Operations Division, Training Branch, Building 600, Room B, Fort Benjamin Harrison, Indiana.

(b) Unauthorized motor and non-motorized vehicles are defined as any wheeled or tracked vehicle. This may include, but not limited to, bicycles, ATV, snow mobiles, motor cycles, automobiles, trucks, etc.

§ 552.144 Procedures.

(a) Except for the soldiers, Army civilians and authorized contractors who enter the restricted areas in the performance of their official duties, entry of unauthorized vehicles is prohibited for any purpose whatsoever without the advanced consent of the Commander, United States Army Soldier Support Center (USASSC), Fort Benjamin Harrison, Indiana, or his/her authorized representative.

(b) Any person or group of persons desiring advanced consent shall, in writing, submit a request to the following address: HQ, USASSC and Fort Benjamin Harrison, ATTN: Public Affairs Office, Building 600, Fort Benjamin Harrison, Indiana 46216–5040.

§ 552.145 Violations.

(a) Any person/persons entering or remaining on any training area as defined in § 552.134 without the advance consent of the Commander, USASSC, or his authorized representative, shall be subject to the penalties prescribed by § 552.133 of this subpart, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined for not more than $500.00 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5,000.00 or imprisonment for not more than 1 year as provided in § 552.133(d) of this subpart.

(c) In addition, violation of this subpart by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801–940) is a violation of Article 92 of the Uniform Code of Military Justice.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–20388 Filed 8–18–94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–94–026]

RIN 2115–AE46

Special Local Regulation; We Love Erie Days Fireworks, Lake Erie, Erie Harbor, Erie, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the We Love Erie Days Fireworks display. This event will be held on Lake Erie, Erie Harbor, Erie, PA on August 21, 1994. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event. This regulation will restrict general navigation on Lake Erie, Erie Harbor, Erie, PA.

EFFECTIVE DATE: This regulation is effective from 9 p.m. (EDST) until 11 p.m. (EDST) on August 21, 1994.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until July 15, 1994, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Scott J. Smith, Lieutenant Junior Grade, U.S. Coast Guard, Project Officer, Aids to Navigation & Waterways Management Branch and Karen E. Lloyd, Lieutenant, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The We Love Erie Days Fireworks display will be conducted on Lake Erie, Erie Harbor, Erie, PA on August 21, 1994. This regulation will restrict general navigation on Lake Erie, Erie Harbor, in a 300 foot circular zone, surrounding the Erie Sand and Gravel Pier. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA).

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of 33 CFR Part 165.

Federalism Implications

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A temporary § 100.35–T09026 is added to read as follows:

§ 100.35–T09026 We Love Erie Days Fireworks, Lake Erie, Erie Harbor, Erie, PA.

(a) *Regulated area.* That portion of Lake Erie, Erie Harbor, in a 300 foot circular zone, surrounding the Erie Sand and Gravel Pier, located in position 42°08′16″ North Latitude and 080°05′40″ West Longitude.

(b) *Special local regulation.* This regulation restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol commander.* (1) The Coast guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section will be effective from 9 p.m. (EDST) until 11 p.m. (EDST) on August 21, 1994 unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA).

Dated: August 9, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 94–20366 Filed 8–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–94–024]

RIN 2115–AE47

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Galveston County Navigation District No. 1, the Coast Guard is changing the regulation governing the operation of the bascule span Pelican Island Causeway Bridge across the Gulf Intracoastal Waterway, mile 356.1 at Galveston, Texas. The draw will no longer be closed to navigation on Saturday from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m. and 4:15 p.m. to 5:15 p.m. but will open on demand. The draw will continue to be closed to navigation during those hours Monday thru Fridays, except Federal holidays.

EFFECTIVE DATE: This regulation becomes effective on September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. John Wachter, Project Officer and Lieutenant Elisa Holland, Project Attorney.

Background and Purpose

Upon request by the bridge owner, the closure hours of this bridge are being changed to create a better balance between the needs of vehicular traffic and the needs of navigational traffic. Vehicular traffic across the bridge on Saturdays has decreased while navigational traffic has remained the same. The closure of the draw is no longer necessary on Saturdays. This change in the closure hours of the bridge is less restrictive on navigational traffic and will not significantly affect vehicular traffic. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. § 553(b)(B) that notice and public procedure on the notice are unnecessary.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule will have little impact on either vehicular or navigational traffic. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations in considering of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.977 is revised to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The draw of the Pelican Island Causeway bridge, mile 356.1 across Galveston Channel at Galveston, shall open on signal; except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

Dated: August 3, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–20365 Filed 8–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC 94–004]

RIN 2115–AA97

Safety Zone Regulations; Cape Fear River and Northeast Cape Fear River, NC

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is establishing a permanent safety zone in the Cape Fear and Northeast Cape Fear Rivers. A request for comments from the public is also being solicited. The safety zone is needed to protect the public, vessels, and property from risks and hazards associated with the transportation of certain hazardous materials while transiting the Cape Fear and Northeast Cape Fear Rivers. Entry into this zone is prohibited during vessel transit and cargo transfer operations unless authorized by the Captain of the Port.

DATES: This regulation is effective on August 19, 1994. Comments must be received on or before October 18, 1994.

ADDRESSES: Comments should be mailed to the Commanding Officer, U.S. Coast Guard Marine Safety Office, 272 North Front Street, Wilmington, North Carolina 28401–3907. The comments and other materials referenced in this notice will be available for inspection and copying at the U. S. Coast Guard Marine Safety Office, Suite 500, 272 North Front Street, Wilmington, North Carolina 28401–3907. Normal business hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG K.J. DeLooff, c/o U.S. Coast Guard Captain of the Port, Suite 500, 272 N. Front Street, Wilmington, NC 28401–30907, Phone: (910) 343–4895.

SUPPLEMENTARY INFORMATION:

Request For Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice and the specific section of the rule to which their comments apply, and give reasons for each comment. This rule may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this rule. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG K.J. DeLooff, project officer for the Captain of the Port, Wilmington, NC, and LT M.L. Lombardi, project attorney, Fifth Coast Guard District Legal Office.

Background and Purpose

The Cape Fear and Northeast Cape Fear Rivers carry commercial and public vessels laden with increasing of amounts hazardous materials. The area is also experiencing rapid growth in the recreational vessel, barge, and other maritime traffic. The hazards of the materials transported range from fire and explosion to public health hazards. These materials, essential to the military, and to the petrochemical and textile industries are routinely transported in a safe manner. However, maritime traffic which could interfere with the safe movement of a vessel carrying hazardous materials would create a condition of unacceptable risk to the maritime community.

The shipping channel within the rivers is normally only 400 feet wide and maneuvering room for a deep draft vessel is limited. Additionally, most of the facilities which handle these materials are about 30 miles upstream from the mouth of the river.

The safety zone will be enacted by a Broadcast Notice to Mariners prior to the vessel's arrival into the river and will be terminated by another broadcast.

Maritime traffic will not be significantly impacted because of the small percentage of vessels needing this safety zone, and the limited duration of the zone, typically less than three hours during transit and only for initial hookups and cargo operations. Other piloted commercial traffic would not normally be affected because meeting situations between two piloted vessels are not normally scheduled by the pilots. Other commercial traffic not under a pilot's control would be regulated and safe passage would be arranged by the vessel identified in the safety zone, Coast Guard enforcement personnel, and the non-piloted commercial vessel's master. Recreational vessels would be directed to the safe limits of the river out of the zone while the vessel passed and would be able to resume normal operation when the vessel identified in the safety zone has passed.

The actual dates this safety zone would be in effect are not known at this time, but the public will be given notice through a Broadcast Notice to Mariners when the Captain of the Port Wilmington invokes the safety zone.

This safety zone is needed to protect the public from the hazards associated with the passage of these vessels as well as the movement of other maritime traffic around these vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule consistent with section 2.B.2.c of Commandant Instruction M16475.1B (National Environmental Protection Act), and actions to protect the public safety have been determined to be categorically excluded from further environmental documentation.

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.530 is added, to read as follows:

§ 165.530 Safety Zone: Cape Fear and Northeast Cape Fear Rivers, NC.

(a) *Location.* The following area is a moving safety zone during the specified conditions: The waters of the Cape Fear and Northeast Cape Fear Rivers for 500 yards ahead and astern, and 75 yards abeam of a vessel carrying hazardous materials when designated by the Captain of the Port Wilmington, North Carolina.

(b) *General Information.* (1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina, can be contacted at telephone number (910) 343–4895. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing this safety zone.

(3) The Marine Safety Office Wilmington will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded hazardous materials vessels via a marine broadcast Notice to Mariners.

(c) *Regulation.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: August 5, 1994.

T.L. Rice,

Captain, U.S. Coast Guard, Captain of the Port Wilmington, NC.

[FR Doc. 94–20190 Filed 8–18–94; 8:45 am]

BILLING CODE 4910–14–M

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–20–1–5732a; FRL–5016–8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This action will become effective on October 18, 1994, unless adverse or critical comments are received by September 19, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T–AP), Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

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

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, P.E., Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emissions of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, the EPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments", in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Texas submitted a SIP revision to the EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following three PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

The Region used section 507 of the CAA when reviewing the State submittal for approvability. The SIP revision, discussed in detail in the Technical Support Document, is briefly outlined below.

II. Analysis

A. Procedural Background

The State of Texas has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. The Texas Clean Air Act (TCAA), TEXAS HEALTH AND SAFETY CODE ANN. (Vernon 1992), § 382.0365, "Small Business Stationary Source Assistance Program", enacted by the Texas 1991 legislative session and effective September 1991, provides authority for the State to establish a PROGRAM (SIP Appendix A). Included in § 382.0365 of the TCAA are provisions establishing an SBAP, establishing the SBAP's duties and responsibilities, creating a State ombudsman, creating a CAP, establishing membership of the CAP, and establishing CAP duties. In addition, the State of Texas has the legal authority necessary to implement the control strategies for the PROGRAM in compliance with the CAA and the EPA requirements under the provisions of the TCAA, §§ 382.0365(f) and 382.017. The Texas Small Business Ombudsman, Small Business Advocate's Office, is located at the central offices of the Texas Natural Resource Conservation Commission (TNRCC), Office of Air Quality, [formerly the Texas Air Control Board (TACB)], in Austin, Texas.

The State conducted public hearings on September 2, 3, 8, 9, and 10, 1992, to consider public comments on the proposed PROGRAM, which will amend the Texas SIP to add a revision entitled, "Revisions to the State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Texas Air Control Board". The proposed SIP revision was formally adopted November 6, 1992, by the TACB. The Texas PROGRAM was submitted to the EPA by the Governor of Texas on November 13, 1992 (received November 16, 1992) as a revision to the Texas SIP. It was initially reviewed for completeness and was determined complete on January 15, 1993. The submittal was then reviewed for approvability by the EPA Region 6 and EPA Headquarters.

On September 1, 1993, the TACB merged with the Texas Water Commission to form the TNRCC and is now called the Office of Air Quality within the TNRCC. The merger did not abrogate, void, or rescind any rules, regulations, Orders, permits, or any other action previously taken by the former TACB.

B. Plan Requirements

1. Small Business Assistance Program

The first PROGRAM element is the establishment of a SBAP to provide technical and compliance assistance to small businesses.

The State has met the first PROGRAM element by committing in its narrative SIP revision, under subsection I.A.3.c), entitled "Establishment of a Small Business Assistance Program (SBAP)", to establish a SBAP in the TACB, Program Development Division. In order to establish this PROGRAM element, § 382.0365(a) and (b) of the TCAA were enacted and provide the legal authority requiring for establishment of the SBAP with responsibilities consistent with the six requirements in title V of the Federal CAA. The SBAP will provide sufficient services to small businesses through the development, collection, and dissemination of information to small businesses on matters of (1) Determining applicable requirements under the CAA and permit issuance; (2) the rights and obligations of small businesses under the CAA; (3) compliance methods and acceptable control technologies; (4) pollution prevention and accidental release prevention and detection; and (5) audit programs. (Details are presented in the EPA's Technical Support Document and the State's submittal.)

a. The Texas SBAP is charged with the following duties:

(i) Conducting independent evaluations of all aspects of the SBAP to determine program effectiveness and continuously improving the program design;

(ii) Reviewing and providing comments and recommendations to the Ombudsman's Office, the CAP, EPA, the State, and the local air pollution control authorities regarding the development and implementation of regulations that impact small businesses;

(iii) Facilitating and promoting the early participation of small businesses in the development of new or modified regulations and policies that impact small businesses;

(iv) Assisting in providing to other State and local authorities, associations, educational institutions, environmental groups, and the general public information regarding the applicability of the requirements of the CAA to small businesses;

(v) Actively promoting and assisting in the dissemination of information (i.e., upcoming regulations, control technologies, etc.) to small businesses and other interested parties;

(vi) Participating in and sponsoring meetings and conferences with State/local air pollution control authorities, industry groups, and small business representatives;

(vii) Periodically surveying small businesses and other customers of the SBAP to determine if the work and services provided by the SBAP to trade associations and small business representatives are adequate;

(viii) Operating a telephone hot line to provide technical and compliance help on individual source problems;

(ix) Referring small businesses to the appropriate technical specialists in the community where they may obtain information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(x) Arranging for and assisting in the preparation of guideline documents to ensure that the technical and compliance information is available and is readily understandable by the layperson;

(xi) Working with trade associations and small businesses to bring about voluntary compliance with regulations under the TCAA and the CAA;

(xii) Interfacing with regional and State offices of the Small Business Administration, Department of Commerce, and/or other State and Federal agencies that may have programs to financially assist small businesses in need of funds to comply with environmental regulations and develop information so that it is readily available to the small business community;

(xiii) Interfacing with private sector financial institutions to assist small businesses in locating sources of funds to comply with State/local air pollution control requirements; and

(xiv) Conducting studies to evaluate the impacts of the TCAA and the CAA on the State's economy, local economies, and small businesses, and

supporting similar studies conducted by the Ombudsman's Office. Additional details of the Texas SBAP are presented below.

b. Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

The State has met this requirement. The SBAP will provide a system for developing, collecting, and coordinating information on compliance methods and technologies. Data bases and experts in different areas will provide definitive guidance information.

The SBAP will include:

(i) Methods for disseminating technical and compliance information to small businesses: The SBAP will act as an information clearinghouse by referring small businesses to State technical experts, specifically trained to handle specific questions relevant to achieving compliance with the CAA. The State has installed and is operating a toll-free telephone hot line to respond to inquires from small businesses. Services provided by the SBAP are to be publicized through an electronic bulletin board, association newsletters, industry groups, trade associations, and community roundtables. The flow of information includes two types of components: A proactive component and a reactive component. The proactive component involves adequate communication with and information outreach to small businesses in the form of easily discernable information which specifically details their obligations under the CAA. The reactive component involves the establishment of a clearinghouse for handling incoming inquiries from small businesses regarding methods for achieving compliance with air pollution control requirements under the CAA. A more detailed description of the SBAP elements follows.

(ii) Information dissemination methods available to qualified small businesses are as follows:

(A) An electronic bulletin board will be available 24 hours a day, seven days a week to provide guidance on applicable rules and regulations, a calendar of events, a listing of public hearings and workshops, and a menu of directories that include Federal, State, and private environmental hot lines and technology centers. The electronic bulletin board will also provide a mechanism that allows users to evaluate the system and provide anonymous comments on the program and information provided; the user can make suggestions. Application forms, instructions, brochures, and other technical and compliance information can be requested through the electronic bulletin board. Up-to-date State and Federal regulations for all media will be available with search capability for review and selection by qualified small businesses. The electronic bulletin board is available via computer modem (phone line) directly on the small business site or at a variety of locations within the State.

(B) The SBAP will mail, upon request, information outlining the rights of small businesses and how those rights can be exercised.

(C) Personal visits to small businesses may be made by the SBAP personnel.

(D) Public service announcements by mass media methods such as newspapers, radio, and television are available. Videos are also available upon request.

(E) Area seminars will be conducted by the TACB on a periodic basis, including seminars at the central Austin, Texas office.

(F) A toll-free hot line to receive technical and compliance information will be implemented through the SBAP office.

(G) A clearinghouse will be established that will handle incoming inquiries from small businesses. Access to the electronic bulletin board, facsimile machine, printer, and other information tools will be available to staff to respond to the inquiries. Walk-in service will be provided, as well as electronic, written, and telephone contacts. All information developed by the SBAP will be available through the clearinghouse, as well as any appropriate reference materials needed to comply.

c. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

The State has met this requirement. The SBAP will assist small business stationary sources on methods of pollution prevention and accidental release prevention and detection, including information concerning different technologies, process changes, products, and methods of operation that help reduce air pollution. Technical personnel from the TACB will be available to provide pertinent information from the regional offices or from the Austin office. Circumstances and specific emissions will dictate the required procedure to be followed by the small business stationary sources. Mechanisms to provide assistance will include the following:

(i) The SBAP will coordinate information relating to pollution prevention and accidental release prevention and detection with all Federal, State, and local agencies with environmental jurisdictions;

(ii) The SBAP clearinghouse and electronic bulletin board will include information on pollution prevention, accidental release prevention, and detection; and

(iii) A directory of contacts will be developed and made available of technical experts in the areas of pollution prevention, accidental release prevention, detection, and familiarity with pollution prevention technologies and alternatives to reduce pollution.

d. The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

The State has met this requirement. The State has committed to establish a small business stationary source compliance assistance program for determining applicable requirements and permit issuance, including the following:

(i) Industry-specific information packets will be developed and made available to small businesses and staff that include information on rules, regulations, permit requirements, testing, recordkeeping, and compliance information, as well as self-audit procedures and pollution prevention methods.

(ii) Inspectors will be provided training on how to educate small business owners on conducting self-inspections and understanding the compliance requirements they must meet; and

(iii) Whenever a new policy or rule is promulgated, workshops will be conducted to inform and educate the specific small business community on appropriate compliance methods and procedures.

e. The fourth requirement is to develop adequate mechanisms to assure

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act.

The State has met this requirement. The State has committed to provide methods for notifying small business stationary sources on a timely basis of their rights under the CAA, including the following:

(i) The SBAP will develop a data base that includes all small business stationary sources and associations, and will coordinate with appropriate agency staff to notify affected sources of potential changes or rules that affect them;

(ii) Formal public notification procedures will be developed and implemented agencywide that ensure timely notice of small businesses of their rights and obligations under the CAA; and

(iii) The SBAP will work with trade associations, local agencies, educational facilities, and community leaders to establish environmental partnerships to bring about voluntary compliance with regulations under the CAA through participation and educational activities.

f. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act.

The State has met this requirement. Methods that are identified in paragraph II.B.1.b.(ii) above (concerning the first requirement) shall be utilized by the State to inform small business stationary sources of their obligations under the CAA, including a program for referring sources to qualified auditors or for the State to provide for audits of the operations of such sources to determine if they are within the rules of the CAA. The audit program will be established no later than November 15, 1994.

g. The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State has met this requirement. The State will:

(i) Provide a system for collecting and coordinating information on compliance methods and technologies. Data bases and experts in different areas will provide definitive guidance information.

(ii) Develop procedures to respond to requests from small business stationary sources for modification of any work practice or technical methods of compliance, schedule of milestones for implementing such work practice, or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of the CAA.

(iii) Establish approved procedures to provide review of requests from small businesses for modification of work practice or technical methods of compliance based on financial and technological capability.

The SBAP core portion of the PROGRAM will be staffed with 18 positions. Hiring of all staff positions to support the Texas SBAP will be completed by mid-1994. Most of the assistance provided to small businesses will be managed by this group of staff members with assistance and input from the Small Business Advocate's (Ombudsman's) Office. Subsection I.A.3.c) of the SIP, entitled "Establishment of a Small Business Assistance Program (SBAP)", describes the details of the SBAP, which meet the six requirements set forth in section 507(a), and stated above. Furthermore, § 382.0365 of the TCAA requires the establishment of the SBAP and requires the TNRCC to implement this core portion of the PROGRAM in accordance with the CAA and the EPA requirements.

2. Ombudsman

The second PROGRAM element is the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process. Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources.

The State has met this requirement by hiring the Ombudsman on February 17, 1992. The Ombudsman reports directly to the TNRCC Commissioners (previously to the TACB) and is not within the chain of command of the State agency itself. Thus, the Ombudsman is separate from the air quality regulatory branch of the State agency, and therefore can be an independent advocate for small businesses. The office is located at the central offices of the TNRCC, Office of Air Quality (previously the TACB) at 12124 Park 35 Circle, Austin, Texas 78753. The office is currently partially staffed and operational, and has been since October 1992. The Small Business Advocate's (Ombudsman's) Office will ultimately be staffed with 11 positions by mid-1994, and the Office is responsible for administering the Ombudsman element of this PROGRAM. The TCAA, § 382.0365(b)(3) provides the legal authority for establishment of the Small Business Ombudsman. The Ombudsman has the authority to request information from other State agencies that assist small businesses and has the ability to testify before the Legislature.

a. It shall be the responsibility of the State office to represent small business stationary sources that require assistance in air pollution matters.

b. The Ombudsman's Office has an adequate staff that includes appropriate personnel to assist in all phases of air pollution control. Specific staffing plans are presented in Appendix C of the SIP.

c. The Ombudsman's Office has been and will be provided adequate funding to maintain the office.

d. The Ombudsman's Office is charged with the following duties:

(i) Conducting independent evaluations of all aspects of the SBAP;

(ii) Reviewing and providing comments and recommendations to the EPA, the State, and the local air pollution control authorities regarding the development and implementation of regulations that impact small businesses;

(iii) Facilitating and promoting the participation of small businesses in the development of new regulations that impact small businesses;

(iv) Assisting in providing to higher authorities and the public information regarding the applicability of the requirements of the CAA to small businesses;

(v) Aiding in the dissemination of information (i.e., upcoming regulations, control technologies, etc.) to small businesses and other interested parties;

(vi) Participating in and sponsoring meetings and conferences with State/local air pollution control authorities, industry groups, and small business representatives;

(vii) Periodically reviewing the work and services provided by the SBAP with trade associations and small business representatives;

(viii) Operating a telephone hot line to provide help on individual source problems and grievances;

(ix) Referring small businesses to the appropriate specialists in the SBAP where they may obtain information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(x) Arranging for and assisting in the preparation of guideline documents by the SBAP to ensure that the language is readily understandable by the layperson;

(xi) Working with trade associations and small businesses to bring about voluntary compliance with regulations under the CAA;

(xii) Interfacing with regional and State offices of the Small Business Administration, the Department of Commerce, and/or other State and Federal agencies that may have programs to financially assist small businesses in need of funds to comply with environmental regulations;

(xiii) Interfacing with private sector financial institutions to assist small businesses in locating sources of funds to comply with State/local air pollution control requirements; and

(xiv) Conducting studies to evaluate the impacts of the CAA on the State's economy, local economies, and small businesses. Copies of studies will be available upon request to the Ombudsman's Office.

Thus, it shall be the responsibility of the Small Business Advocate's Office to monitor the PROGRAM. The Office shall:

(A) Since February 1992, serve as ombudsman for small businesses in accordance with the Federal mandate of section 507 of the 1990 CAA; and

(B) Work with the SBAP to develop programs and provide assistance to small businesses in all areas, as necessary.

Sufficient resources will be provided to the State Advocate's Office to enable it to discharge its responsibilities effectively. Provisions have been made to provide the Ombudsman with direct access to the government agencies and officials necessary to ensure that the concerns of small businesses will be heard. Further, the Ombudsman is vested with sufficient authority to identify and propose solutions to small business problems as they relate to the implementation of the CAA. The narrative SIP revision, subsection I.A.3.a) entitled "Designation of a State Office to Serve as Ombudsman for Small Businesses", describes the details of the Ombudsman element of the PROGRAM. Section 382.0365 of the TCAA requires the establishment of the Ombudsman and requires the TNRCC to implement this element in accordance with the CAA and the EPA requirements.

3. Compliance Advisory Panel (CAP)

The third PROGRAM element is the creation of a CAP to determine and report on the overall effectiveness of the SBAP. Section 507(e) requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The State has met this requirement by committing to appoint members to the Panel by November 1994. Section 382.0365 of the TCAA creates the State Compliance Advisory Panel with responsibilities consistent with the requirements in title V of the Federal CAA and specifies the panel's make-up, qualifications, and duties. Adequate support sources and sufficient resources to conduct business will be provided to the Panel by the Ombudsman. The TNRCC, Office of Air Quality (formerly the TACB), will assist in the formation of the seven-member CAP.

Although section 507 of the CAA requires selection by the majority and minority leadership of the House and Senate, the EPA believes that, given the makeup of the State's legislature, as required by the State's constitution, Texas' selection complies with section 507 of the CAA. Texas has a bicameral legislature. There are constitutional provisions providing for leadership of the Senate and House in the Office of the Lieutenant Governor (President of the Senate) and in the Office of the Speaker of the House. However, there are no positions in the Texas legislature which equate to majority and minority leaders, as in the national Congress. In accordance with section 507(e) of the Federal CAA, § 382.0365(c) of the Texas Health and Safety Code provides for the composition of the CAP. Pursuant to § 382.0365(c), both the Lieutenant Governor and the Speaker of the House, who are the equivalent Texas entities for purposes of legislative selection of CAP members, shall each select two members. It is the EPA's position that this appointment mechanism complies with the legislative intent of section 507(e). Appendix D of the SIP revision submittal discusses the State's constitutional/statutory legislative process for all appointment procedures. Minority leadership is represented in the appointments made by the Lieutenant Governor and the Speaker of the House, since the Lieutenant Governor is elected State-wide, and the Speaker is elected by the entire House. The EPA believes that the process for designation of CAP members by the two legislative leaders meets the intent of section 507(e).

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions;

(2) To periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2];

(3) To review and assure that information for small business stationary sources is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

The State has met these requirements (A) by enacting the State law creating the CAP and providing it with the enumerated responsibilities, and (B) by committing to appoint members to the Panel by November 1994.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Texas has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is described in the State's narrative SIP revision, subsection I.A.4. entitled "Source Eligibility".

[2] Section 507(e)(1)(B) of the CAA requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The State of Texas has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State has also provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public hearing, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Texas for establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

The State of Texas has submitted a SIP revision for establishing each of the required PROGRAM elements required by section 507 of the CAA. The EPA has reviewed this revision to the Texas SIP and is approving it as submitted because the State's PROGRAM meets the requirements of section 507 of the CAA. The SIP includes a schedule of implementation, which commits the State to have all three principal PROGRAM elements fully implemented by November 15, 1994. SIP schedule implementation milestones are being tracked and monitored by the Region as part of the State's normal PROGRAM review. Currently, Texas has partially staffed and initiated the SBAP, designated and partially staffed the State Office to serve as Small Business Ombudsman, and created a CAP (and appointed five of its seven members). The CAP's initial meeting will be held by November 15, 1994. The State is implementing a model program with most elements in place well ahead of the EPA deadline of November 15, 1994 to have a fully operational program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, EPA has published a simultaneous proposed rule in this Federal Register. This direct final action will be effective October 18, 1994, unless adverse or critical comments are received by September 19, 1994. If the EPA receives such comments, this action will be withdrawn, and all public comments received will be addressed in a subsequent final rule that is based on the proposed rule (please see the brief proposed rule published in this issue of the **Federal Register**). The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 18, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 1, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(85) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(85) The State is required to implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) as specified in the plan revision submitted by the Governor on November 13, 1992. This plan submittal, as adopted by the Texas Air Control Board (TACB) on November 6, 1992, was developed in accordance with section 507 of the Clean Air Act (CAA).

(i) Incorporation by reference.

(A) Texas Clean Air Act (TCAA), TEXAS HEALTH AND SAFETY CODE ANN. (Vernon 1992), § 382.0365, "Small Business Stationary Source Assistance Program", enacted by the Texas 1991 legislative session and effective September 1, 1991. Included in TCAA, § 382.0365, are provisions establishing a small business assistance program

(SBAP), an Ombudsman, and a Compliance Advisory Panel (CAP); establishing membership of the CAP; and addressing the responsibilities and duties of the SBAP, Ombudsman, and the CAP.

(B) TACB Order No. 92–22, as adopted by the TACB on November 6, 1992.

(C) Appendix C, "Schedule of Implementation", appended to the narrative SIP Revision entitled, "Revisions to the State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Texas Air Control Board; November 1992".

(ii) Additional material.

(A) Narrative SIP Revision entitled, "Revisions to the State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Texas Air Control Board; November 1992".

(B) TACB certification letter dated November 10, 1992, and signed by William R. Campbell, Executive Director, TACB.

(C) Legal opinion letter dated October 15, 1992 from Kirk P. Watson, Chairman, TACB, to Mr. B.J. Wynne, III, Regional Administrator, EPA Region 6, regarding the composition of the Small Business Compliance Advisory Panel for Texas.

3. Section 52.2307 is added to read as follows:

§ 52.2307 Small business assistance program.

The Governor of Texas submitted on November 13, 1992 a plan revision to develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to the EPA on the program's effectiveness.

[FR Doc. 94–20345 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI46–01–6590; FRL–5050–3]

Withdrawal of Approval of Implementation Plan Item; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency withdraws the conditional approval of the State of Wisconsin's committal State Implementation Plan (SIP) for oxides of nitrogen (NO_X) reasonably available control technology (RACT) issued on February 1, 1994. Approval of this committal allowed the State to delay submitting NO_X RACT rules until February 1, 1995. On May 6, 1994, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) rejected EPA's construction of the conditional approval provision to allow for committal SIPs. In light of this decision EPA issued notices of failure to submit NO_X RACT SIPs to all States that had merely submitted committal NO_X RACT SIPs. Therefore, both to comply with the Court's decision and in the interest of equity with other States, EPA believes it is necessary to make this withdrawal effective upon publication so that EPA may then immediately issue a finding of failure to submit to the State of Wisconsin.

DATES: This final rule will be effective August 19, 1994.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the SIP revision request and the EPA's analysis are available for inspection at the following address: (It is recommended that you telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION

I. Background

On February 1, 1994, EPA issued a final conditional approval of a committal SIP submitted by the State of Wisconsin. By this committal SIP, the State committed to adopt for the Milwaukee, Kewaunee, Manitowoc, and Sheboygan nonattainment areas reasonably available control technology (RACT) for stationary sources of oxides of nitrogen (NO_X) emissions. The committal SIP consisted of a commitment of the State to adopt such rules and a schedule for adoption. The State submitted this committal SIP pursuant to an interpretation of the EPA that such commitments could be considered for conditional approval under section 110(k)(4) of the Act. *See* Memorandum, dated July 22, 1992, from Michael H. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled "Guidelines for State Implementation Plans Due November 15, 1992" (hereafter "Shapiro Memorandum"); Nitrogen Oxide Supplement to the General Preamble, 57 FR 55620 (November 25, 1992).

On October 9, 1992, the Natural Resources Defense Council (NRDC) challenged EPA's committal SIP policy as set forth in the Shapiro Memorandum. *NRDC* v. *EPA*, No. 92–1535 (D.C. Cir.). Furthermore, on December 4, 1992, NRDC challenged EPA's committal SIP policy with respect to NO_X RACT submittals, as that policy was articulated in the NO_X Supplement to the General Preamble. *NRDC* v. *EPA*, No. 92–1630 (D.C. Cir.). NRDC sought to consolidate these cases, along with a third case challenging EPA's committal SIP policy for inspection and maintenance (I/M) SIP submittals. The Court denied NRDC's motions to consolidate the cases, but set all three cases for oral argument on the same date.

The three cases were argued before the Court of Appeals for the D.C. Circuit on March 3, 1994. On March 8, 1994, the Court issued an Order with respect to the I/M challenge, finding that EPA's committal SIP policy "is contrary to law." The Court issued an Amended Order on April 22, 1994, but did not change this fundamental decision in the Amended Order. On May 6, 1994 the Court issued its full opinion as to all three cases. In that opinion, the Court reiterated its rejection of EPA's construction of the conditional approval provision to allow for committal SIPs. *See NRDC* v. *EPA*, No. 1535, slip op. at 16 (D.C. Cir., May 6, 1994).

II. Action

Because the Court has clearly rejected EPA's use of the committal SIPs policy to extend statutory deadlines, EPA is withdrawing its conditional approval of Wisconsin's NO_X RACT committal SIP.

Furthermore, EPA is using the good cause exception of the Administrative Procedure Act to take such action without providing an opportunity for notice and comment because the Court has clearly articulated that such a conditional approval is contrary to law. 5 U.S.C. 553(b)(B). Notice and opportunity for comment are unnecessary because the Court directly addressed the use of conditional approval for NO_X RACT committal SIPs in its opinion and explicitly rejected such a use. Therefore, any comments would not be sufficient to rebut this legal interpretation of the Court, and EPA would be obligated to take final action withdrawing the conditional approval. Furthermore, because the Court has so clearly articulated that such action was contrary to law, it is not in the public interest to prolong the process by providing notice and an opportunity for comment.

In addition, EPA also believes that it is proper to invoke the good cause exception for making an action effective earlier than 30 days after publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(3). Prompted by the Court's order, by July 8, 1994, EPA issued notices of failure to submit NO_X RACT SIPs to all States that had merely submitted committal NO_X RACT SIPs. Because EPA conditionally approved of Wisconsin's NO_X RACT committal SIP and such conditional approval was still effective on July 8, 1994, EPA did not issue such a finding to the State of Wisconsin. The State of Wisconsin, however, should not be put in a more favorable position than other States merely because EPA had not yet taken final action on the other States' committal SIPs. Therefore, both to comply with the Court's decision and in the interest of equity, EPA believes it is necessary to make this withdrawal effective upon publication so that EPA may then immediately issue a finding of failure to submit to the State of Wisconsin.

III. Summary and Conclusion

EPA is taking final action to withdraw the conditional approval of Wisconsin's NO_X RACT committal SIP. This action will be effective immediately upon publication of this action in the **Federal Register**.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 25, 1994.

Robert Springer,

Acting Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Subpart YY is amended by removing section 52.2569.

3. Section 52.2585 is amended by removing and reserving paragraph (c).

[FR Doc. 94–19845 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 52 and 81

[NH4–1–6411; A–1–FRL–5007–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Approval of PM_{10} State Implementation Plan (SIP) Revisions and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. These revisions were submitted in response to EPA's promulgation of new ambient air quality standards. The intended effect of this action is to approve revised National Ambient Air quality Standards (NAAQS) for particulate matter based on PM_{10} and other associated regulatory changes. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This Final rule will become effective October 18, 1994, unless notice is received on or before September 19, 1994, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203.

Copies of the documents relevant to this action are available for public inspection during normal business

hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air Docket 6102 U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 565–3229.

SUPPLEMENTARY INFORMATION: On July 13, 1989, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of changes to New Hampshire's Air Quality Rules. New Hampshire also requests redesignation of two municipalities from nonattainment for total suspended particulate (TSP) to unclassifiable.

Background

On July 1, 1987 (52 FR 24634) EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter which was based upon the measurement of particles having a mean aerodynamic diameter of 10 microns or less (PM_{10}). The revised standards replace TSP with PM_{10} as the standard for ambient air quality. States were required to make revisions to their SIPs to reflect this change. EPA classified certain areas of the United States as Group I or Group II for PM_{10} (52 FR 29383). Areas not so classified are Group III areas. The State of New Hampshire is a Group III area. In the case of a Group III area, EPA expects the State's current air pollution control requirements are sufficient to attain and maintain the PM_{10} standards. In such cases, the State need only submit revisions to its current SIP which adopt the new PM_{10} standard and make other minor adjustments.

New Hampshire Submittal

On July 13, 1989, New Hampshire submitted formal SIP revisions. These SIP revisions change two sections of New Hampshire's air quality rules. Env-A 303 of the New Hampshire Code of Administrative Rules refers to ambient air quality standards. New Hampshire's submittal adopts the NAAQS for PM_{10} as the criteria pollutant for particulate matter for primary and secondary air quality standards and deletes the now obsolete TSP NAAQS. New Hampshire also revised Env-A 1001, Open-Air Burning, to remove a reference to TSP. New Hampshire's submittal also requests that the cities of Berlin and Manchester be redesignated from nonattainment to unclassifiable for TSP. This change is consistent with and encouraged by the final rulemaking of July 1, 1987 (52 FR 24682), because it eliminates the need for TSP to be monitored in addition to PM_{10}. Both areas are expected to meet applicable PM_{10} standards.

Review of the New Hampshire Submittal

EPA reviewed the New Hampshire Submittal to determine if it meets the requirements of the Clean Air Act, EPA regulations, and applicable policies. The submittal meets the requirements found in the July 1, 1987, **Federal Register** (52 FR 24672), and EPA policy contained in the *PM_{10} SIP Development Guideline* (EPA–450/2–86–001), dated June 1987, with a supplement dated July 1988.

The State of New Hampshire held a public hearing on the proposed changes on March 16, 1989. There were no public comments. On April 21, 1989, the amendments to rule Env-A 303, were approved by the Joint Legislative Committee on Administrative Rules at a public hearing, and received final adoption by the Air Resources Division, Department of Environmental Services. On May 24, 1989, the amendment to rule Env-A 1001 received the same approval. New Hampshire's submittal clearly defines PM_{10} and sets primary and secondary National Ambient Air Quality Standards (NAAQS) for PM_{10} defined in accordance with appendix K of 40 CFR part 50.

Legal authority to enforce these rules is contained in New Hampshire Law RSA 125–C:4. The State does not plan to delegate authority to any local agencies.

New Hampshire's submittal calls for a network of ten (10) PM_{10} monitoring sites. This network replaces the TSP network.

Changes in New Hampshire's Rules

New Hampshire's SIP revisions amend two rules: Env-A 303 and Env-A 1001. Env-A 303, specifically section Env-A 303.01, defines primary and secondary ambient air standards. New Hampshire's revisions define primary and secondary standards for particulate matter, consisting of PM_{10}, measured at an annual arithmetic mean of 50 μg/m3, and a maximum average 24 hour concentration of 150 μg/m3, which may be exceeded on a number of days equal or less than an average of one per year as determined in accordance with Appendix K of 40 CFR Part 50. Env-A 1001 specifies when open-air burning will be permitted or prohibited. The only change proposed would replace the phrase "Total Suspended Particles (TSP)", with the word "particulates". The revised rule forbids open burning in areas designated nonattainment for particulates.

Redesignation of TSP Nonattainment Areas

EPA's final rulemaking of July 1, 1987 (52 FR 24682) promulgating the PM_{10} standard encourages states to request the redesignation of TSP nonattainment areas as unclassifiable for TSP at the time they submit their PM_{10} SIP revisions. This is permissible because TSP is no longer the indicator for the particulate matter NAAQS. An area designation (i.e., unclassifiable) must be maintained until the PM_{10} increment takes effect because section 163 PSD increments depend on the existence of section 107 designations. New Hampshire has requested the redesignation of Berlin and Manchester from nonattainment to unclassifiable for TSP. The entire State of New Hampshire was originally classified as Group III (52 FR 29383); therefore it is permissible to redesignate these areas as unclassifiable for TSP.

Clean Air Act Amendments of 1990

The Agency has reviewed this SIP Revision for conformance with the provisions of the Clean Air Act Amendments of 1990. EPA has determined that this action conforms with those requirements irrespective of the fact that the State Submittal preceded the date of enactment. Group III PM_{10} areas which did not show a violation of the NAAQS for PM_{10} are now designated as unclassifiable for PM_{10} under section 107(d)(4)(B)(iii).

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on October 18, 1994.

Final Action

EPA is approving revisions to Env–A 303.01 and Env–A 1001 as New Hampshire's Group III PM_{10} SIP; and

EPA is approving the State's request to redesignate Berlin and Manchester from nonattainment to unclassifiable for TSP.

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

Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The US EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

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

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. Although New Hampshire submitted this request prior to November 15, 1990, the Agency has determined that this action conforms with those requirements. The revisions strengthen the requirements in the New Hampshire SIP and conform to all of EPA's current regulations.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 10, 1994.

Patrica L. Meaney,

Acting Regional Administrator, Region I.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(40) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on July 6, 1989.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated July 6, 1989 submitting revisions to the New Hampshire State Implementation Plan.

(B) Revisions to New Hampshire's Rule Env-A 303.01 entitled "Particulate Matter," effective April 21, 1989.

(C) Revisions to New Hampshire's Rule Env–A 1001.02 entitled "permissible Open Burning," effective May 26, 1989.

3. In § 52.1525 the table is amended by adding new entries to existing state citations for "particulate matter" and "open air burning" to read as follows:

§ 52.1525 EPA-Approved New Hampshire State regulations.

* * * * *

TABLE 52.1525.—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
Particulate matter	Env-A 303	4/21/89	August 19, 1994.	[FR citation from published date].	(c)(40)	303.01 303.015
Open-Air Burning	Env-A 1001	5/19/89	August 19,1994.	FR citation from published date].	(c)(40)	1001.02

[1] These regulations are applicable statewide unless otherwise noted in the Comments section.

[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Enr-A.

Subpart C—New Hampshire

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.330 is amended by revising the attainment status designation table for TSP to read as follows:

§ 81.330 New Hampshire.

New Hampshire-TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standard
Metro Keene				X
Metro Manchester			X	
Remainder of New Hampshire's Portion of So. N.H.M.V. AQCR 121.				X
Central NH Interstate AQCR 149.				X
Metro Berlin			X	
Remainder of New Hampshire's portion of Androscoggin Valley Interstate ACQR 107.				X

* * * * *

[FR Doc. 94–20255 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 749

[OPPTS–61018A; FRL–4867–3]

RIN 2070–AC57

Prohibition of Hexavalent Chromium-Based Water Treatment Chemicals in Comfort Cooling Towers; Amendment To Limit the Scope of the Export Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR part 749, subpart D, which prohibits, under section 6 of the Toxic Substances Control Act (TSCA), the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and the distribution of such chemicals in commerce for use in comfort cooling towers. Today's action amends 40 CFR 749.68 to clarify that only hexavalent chromium chemicals that can be used for water treatment are the subjects of this regulation, not other hexavalent chromium chemicals. This amendment limits the scope of export notifications currently required for hexavalent chromium chemicals under TSCA section 12(b), the TSCA Export Notification Rule (40 CFR part 707), and § 749.68. No changes to the prohibitions or labeling requirements of the hexavalent chromium rule are intended by this amendment. As amended, § 749.68 does not trigger the section 12(b) export notification requirements for exports of hexavalent chromium products such as certain paints, dyes, pigments, coatings, electroplating and conversion coating products, and other products containing hexavalent chromium that cannot be used to treat water.

DATES: This rule shall become effective on September 19, 1994. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time (or standard time) on September 2, 1994.

FOR FURTHER INFORMATION CONTACT: Geraldine Gardner, Office of Enforcement and Compliance Assurance (2245), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–8858.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1993 (58 FR 63148), EPA proposed an amendment to 40 CFR part 749, subpart D, which prohibits the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCTs) and the distribution of such chemicals in commerce for use in CCTs. The regulatory text of today's amendment is identical to the regulatory text of the proposed amendment. Comments received on the proposed amendment are addressed in Unit V of this preamble. Today's amendment modifies 40 CFR 749.68 to clarify that only Cr^{+6} chemicals that can be used for water treatment are the subjects of the regulation, not other Cr^{+6} chemicals. This change limits the scope of TSCA section 12(b) export notifications currently required for Cr^{+6} chemicals.

I. Authority

This amendment is being promulgated pursuant to TSCA sections 6 (15 U.S.C. 2605) and 12(b) (15 U.S.C. 2611(b)). Section 6 of TSCA authorizes EPA to impose regulatory controls if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents or will present an unreasonable risk of injury to human health or the environment. Under this authority, EPA issued a final rule in the **Federal Register** of January 3, 1990 (55 FR 222), that prohibits the use of Cr^{+6}-based water treatment chemicals in CCTs and the distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCTs (40 part CFR 749, subpart D). The rule also requires persons who distribute in commerce Cr^{+6}-based water treatment chemicals to label the containers of the chemicals.

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which: (1) The submission of data is required under TSCA section 4 (15 U.S.C. 2603) or 5(b) (15 U.S.C. 2604(b)); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5 or 6 (15 U.S.C. 2605); or (4) relief has been granted under section 5 or 7 (15 U.S.C. 2606) to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section

12(b) of TSCA requires EPA to furnish the government of the importing country with: notice of the availability of data received pursuant to action under section 4 or 5(b), or notice of such rule, order, action, or relief under section 5, 6, or 7. EPA promulgated a rule setting forth the export notification requirements of TSCA section 12(b) under 40 CFR part 707, subpart D. EPA amended the export notification rule to limit notifications triggered by TSCA section 4 actions on July 27, 1993 (58 FR 40238).

II. Background

Because the Cr^{+6} rule was promulgated under TSCA section 6, export notification requirements under section 12(b) are triggered. Currently, all Cr^{+6} chemicals are subject to section 12(b) because the term "Cr^{+6} chemicals" is presently defined in § 749.68(d)(10) as "any combination of chemical substances containing hexavalent chromium and includes hexavalent chromium-based water treatment chemicals." Thus, for example, the export of paint containing a Cr^{+6} chemical that cannot be used for water treatment would currently trigger the section 12(b) notification requirements.

In the preamble to the final Cr^{+6} rule, EPA stated that pursuant to TSCA section 12(b) and 40 CFR part 707, subpart D, persons who export or intend to export Cr^{+6} chemicals are required to notify EPA of those activities. EPA indicated that export notification would be required for all Cr^{+6} exports "because the substance subject to the rule is Cr^{+6}" and that it did not believe that the requirement should be narrowed, as a practical matter, because of the difficulty in determining the end use of the Cr^{+6} at the time of export. EPA also anticipated that the burden of the notification requirements that would be triggered by the export of Cr^{+6} for uses not regulated by the rule would be minimal.

After promulgation of the final Cr^{+6} rule, the Chrome Coalition filed a Petition for Review with the United States Court of Appeals, District of Columbia Circuit dated April 17, 1990 (*Chrome Coalition v. U.S. Environmental Protection Agency*, No. 90–1138). In the petition, the Chrome Coalition argued that because EPA failed to set forth its interpretation of TSCA section 12(b) in the proposed rule, the public was unable to comment on that interpretation. Additionally, they argued that EPA's interpretation of section 12(b) is too broad in the context of the Cr^{+6} rule, and imposes an unnecessary burden on any business that exports products containing Cr^{+6}, even when the products cannot be used in water treatment. As a part of the settlement reached with the Chrome Coalition on December 15, 1992, EPA agreed to promulgate a rule that addressed the concerns raised by the Coalition. The Settlement Agreement was filed with the United States Court of Appeals, District of Columbia Circuit on January 7, 1993.

In light of the Chrome Coalition's Petition, EPA reevaluated the need to broadly require export notification for all Cr^{+6} chemicals and proposed to modify the rule to clarify it on November 30, 1993 (58 FR 63148).

III. Summary of this Final Rule

EPA is amending the Cr^{+6} rule solely to clarify the scope of coverage of the rule, thereby limiting the scope of the required section 12(b) notifications. This rule will require notification under 40 CFR part 707, subpart D, for the export or intended export of Cr^{+6} chemicals that can be used for water treatment. EPA is listing in § 749.68 certain specific Cr^{+6} chemicals that the Agency believes can be used to treat water. This is not meant to be a complete listing of all Cr^{+6} chemicals that can be used to treat water, but rather a listing of examples. The export of any Cr^{+6} chemicals alone, or in combination with other chemical substances when the mixture can be used to treat water cooling systems, will trigger the TSCA section 12(b) export notification requirements.

Under existing language of the Cr^{+6} rule, TSCA section 12(b) export notification is required for all Cr^{+6} compounds, if they are exported alone, or in combination with other substances, even if the exported product cannot be used to treat water. With today's amendment, exporters of hexavalent chromium products such as paints, dyes, pigments, electroplating and conversion coating products, and other substances containing Cr^{+6} that cannot be used to treat water will not need to report the export to EPA under TSCA section 12(b). To accomplish this, EPA is amending the subject of the Cr^{+6} rule, certain definitions, and other appropriate provisions, as discussed below.

IV. Discussion of this Final Rule

Exports of certain Cr^{+6} chemicals (e.g., in such products as paints, dyes, pigments, electroplating and conversion coating products) may now be triggering TSCA section 12(b) export notifications in more cases than are necessary to reasonably carry out the purposes of TSCA section 12(b) and the section 6 Cr^{+6} rule. EPA believes the current burden associated with exporters providing notification for exports of Cr^{+6} chemicals that cannot be used for water treatment to be substantial, without providing any appreciable reduction in the risk addressed in the Cr^{+6} rule. In addition, the benefits to countries receiving these notifications are thought to be minimal. This amendment modifies § 749.68 to clarify that only Cr^{+6} chemicals that can be used to treat water are the subjects of the Cr^{+6} rule. Because the amended regulation will address the risk concerns identified as the basis for the existing Cr^{+6} rule, but at a lower cost, EPA finds that the amended rule will continue to protect human health and the environment against unreasonable risk of injury. Moreover, this change, EPA believes, will provide to importing countries information more reflective of EPA's concerns and will further Congress' intent, pursuant to TSCA section 2(c) (15 U.S.C. 2601 (c)) that EPA administer TSCA "in a reasonable and prudent manner."

This change is supported by the TSCA section 6 Cr^{+6} rulemaking effort. The supporting documentation used by EPA to promulgate the Cr^{+6} rule focused on data regarding Cr^{+6} emissions from CCTs (55 FR 222 at 224). A background document, "Chromium Emissions from Comfort Cooling Towers - Background Information for Proposed Standards" (EPA-450/3-87-010a), March 1, 1988 (OPTS 61012) described EPA's regulatory alternatives and expected impacts. The information-gathering, analysis, and rulemaking were used solely to support a TSCA section 6 determination regarding Cr^{+6}-based water treatment chemicals and not all possible Cr^{+6} mixtures and products. Therefore, EPA believes that this amendment is consistent with the originally intended scope and coverage of the TSCA section 6 regulations.

The revised regulatory language clarifies that the chemicals subject to the rule are any Cr^{+6} chemicals that can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water. As stated above, the intended effect of this change is to reduce the scope of the TSCA section 12(b) export notifications that are triggered by § 749.68.

Currently, the section heading of § 749.68 reads "Hexavalent chromium chemicals in comfort cooling towers." EPA believes that a more appropriate focus and heading for the rule is "Hexavalent chromium-based water treatment chemicals in cooling systems," and is therefore implementing

this change. Also, because the term "hexavalent chromium chemicals" in the current § 749.68(d)(10) will no longer be used, the definition is dropped.

As discussed above, the TSCA section 12(b) export notification requirements are triggered by the export of certain chemical substances or mixtures that are the subjects of certain actions under TSCA, including Cr^{+6} because of the section 6 Cr^{+6} rule. Currently, § 749.68(a) states:

(a) *Chemical substance subject to this section.* Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), is subject to this section.

Today, § 749.68(a) is amended to state:

(a) *Chemicals subject to this section.* Hexavalent chromium-based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No. 13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

By instituting this amendment in conjunction with the other changes discussed herein, especially those at § 749.68(d)(11) (see below), EPA intends that only Cr^{+6} compounds which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water, would be subject to the rule and thus the section 12(b) export notification requirements.

Related to this change, EPA is amending certain language in § 749.68(b), entitled "Purpose," and § 749.68(c), entitled "Applicability," to reflect the changed focus of the rule from Cr^{+6} to Cr^{+6}-based water treatment chemicals. Refer to § 749.68(b) and (c) of the regulatory text for the revised language.

EPA is also adding a chemical definition of Cr^{+6} in § 749.68(d)(10) to clarify the revised subject of the rule. The definition of Cr^{+6} is now "the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry."

Another key change is a revised definition of "hexavalent chromium-based water treatment chemicals." The current definition in § 749.68(d)(11) states that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water." (emphasis added). The amended definition states that "hexavalent chromium-based water treatment chemicals means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be *used* to treat water." (emphasis added). This change is intended to require export notification for the export of chemicals that *can be used* to treat water, whether or not they are actually used to treat water. EPA believes that exporters will not always know the actual end use of the Cr^{+6} product. However, EPA believes that exporters are likely to know potential end uses or how Cr^{+6} can be used. Additionally, to help exporters identify which Cr^{+6} compounds can be used, either alone, or in combination with other chemicals to treat water, the Agency is listing examples of such compounds. This change is not intended to have any effect on the current labeling requirements or the prohibitions of the Cr^{+6} rule.

In order that the labeling requirements will not be affected by the changes being made today, EPA is changing the language of § 749.68(g). Currently, the labeling requirement at § 749.68(g) states:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after February 20, 1990, shall affix a label. . .

As the current definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium, alone or in combination with other water treatment chemicals, used to treat water," (emphasis added) labeling is required only for hexavalent chromium-based water treatment chemicals used to treat water. As stated above, the new definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium which can be used to treat water. . ." (emphasis added). Without changing § 749.68(g), this new definition would have the effect of expanding the labeling requirements to require labeling of any hexavalent chromium, either alone or in combination with other chemicals, that can be used to treat water, where the mixture can be used to treat water. However, as the intent of this amendment is not to change the scope of the labeling requirements, the phrase "for use in cooling systems" is being added to § 749.68(g). This section now reads:

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label. . .

EPA believes this change, along with the other modifications, will have the effect of maintaining the current labeling requirements.

All of the changes are meant to reduce the scope of TSCA section 12(b) export notifications without affecting the prohibitions and labeling requirements in the current rule. With today's amendment, EPA intends that exporters of paints, dyes, pigments, electroplating and conversion coating products, and other products containing Cr^{+6} that cannot be used to treat water will not report the export to EPA under TSCA section 12(b). To accomplish this, EPA is amending certain definitions and other appropriate provisions of the Cr^{+6} rule as discussed above. EPA believes that today's rule will reduce the burden on the regulated community in cases where export notification provides little or no benefit to importing countries.

Today's rule is consistent with other Agency efforts to improve the utility of these notices for receiving governments, and to optimize the ability of EPA to process more efficiently export notices it receives annually and respond to requests from foreign governments for additional information on chemicals and export notices. For example, on July 21, 1981 (46 FR 37608), in its notice on "Asbestos Export Notification," EPA clarified the reporting responsibilities of persons exporting asbestos or mixtures containing asbestos by defining which types of asbestos require export notification. As another example, on July 27, 1993 (58 FR 40238), in a **Federal Register** document entitled "Export Notification Requirement; Change to Reporting Requirements; Final Rule," EPA issued a rule that changed the current annual notification requirements for exporters of chemical substances and mixtures subject to TSCA section 4 test rules or consent orders to a one-time (instead of annual) export notification per chemical per importing country.

EPA believes that such actions, and today's action, will enhance other governments' ability to thoughtfully consider notices received under TSCA section 12(b) and react appropriately to chemicals being imported by focusing export notifications on a more defined set of chemicals that EPA has identified for regulatory action. As EPA stated in the preamble to the final export

notification rule, "[t]he intended focus of the notice to foreign governments is the chemical substance or mixture and what EPA has done or found out about it. . . ." (45 FR 82844, December 16, 1980). Since the primary purpose of TSCA section 12(b) export notification is to alert and inform other governments of hazards that may be associated with a chemical substance or mixture, it is important that the export notification requirements are implemented in a manner that efficiently conveys EPA's concerns. EPA believes that today's amendment will increase the efficiency of the operation of the section 12(b) requirement as applied to the Cr^{+6} rule by eliminating the current export notifications associated with the export of Cr^{+6} chemicals that cannot be used to treat water.

V. Significant Comments on the Proposed Rule

One commenter requested that EPA expressly mention electroplating and conversion coating products among the examples of products excluded from the TSCA section 12(b) notification requirement. Based on a technical evaluation of this request, in appropriate sections of the preamble of this final rule, EPA is adding electroplating and conversion coating products as examples of products excluded from the export notification requirement because these products containing hexavalent chromium cannot be used to treat water. However, EPA does not intend that the listing of specific examples should exclude any other products that cannot be used to treat water.

A second comment was that EPA revise the definition of "hexavalent chromium-based water treatment chemicals" to encompass only hexavalent chromium "intended" for use in treating water, not that which "can be" so used. EPA considered the option of substituting hexavalent chromium "intended" for use in treating water for the proposed "can be used" in the definition of "hexavalent chromium-based water treatment chemicals," but has decided against such substitution. EPA believes it could be extremely difficult to determine the exporter's intent regarding use of an exported product. It is difficult to determine the "intent" of a manufacturer in exporting a substance or mixture. However, even if the intent of the exporter could be determined as not including water treatment uses, once the substance or mixture is imported into the foreign country, it could be used for a water treatment purpose not withstanding the intent of the exporter. Retaining the "can be used" definition helps to ensure that foreign countries receive notice of the import of substances or mixtures that could be of concern.

Another comment suggested adopting a de minimis and impurity exclusion for the export of section 12(b) substances. EPA currently requires export notification for any section 12(b) substance present in mixtures, excluding articles other than PCB articles, at any concentration and regardless of whether it is intentionally present in the mixture or is present as an impurity. The suggestion made by the commenter is outside the scope of this rulemaking. However, as stated in the preamble to a final amendment made to the export notification rule in the **Federal Register** of July 27, 1993 (58 FR 40238), EPA may examine additional approaches modifying the section 12(b) export notification program in the future.

Finally, one commenter requested that EPA publish a formal 12(b) list in the Code of Federal Regulations (CFR), which would include effective and sunset (termination) dates. Because section 12(b) export notification is required only for substances that are the subject of certain regulatory actions taken under TSCA section 4, 5, 6, or 7, EPA believes the notice associated with publication of these underlying actions in the **Federal Register** is sufficient for purposes of section 12(b). Moreover, the notices initiating these underlying actions generally include a specific discussion of obligations triggered under 12(b). Section 12(b) of TSCA requires no additional rulemaking, separate from the underlying actions, to trigger the export notification requirements. For final rules and orders, effective dates for the 12(b) requirements are the same as the effective dates of the underlying actions. In cases where the proposed actions prompt the section 12(b) export notifications, the requirement to submit export notifications begins 30 days after publication of the proposal in the **Federal Register**. See 40 CFR 707.65(b). Sunset dates (i.e., dates that certain requirements terminate) for purpose of TSCA section 12(b) apply only where the underlying requirement prompting the export notifications are TSCA section 4 or 5(b) actions. As stated in the preamble to the TSCA section 12(b) Export Notification Rule amendments in the **Federal Register** of July 27, 1993 (58 FR 40238), these sunset dates coincide with the expiration of the test data reimbursement period as defined at 40 CFR 790.3. In the near future, EPA plans to issue a **Federal Register** notice listing test data reimbursement period expiration dates for certain TSCA section 4 substances.

As recognized by the commenter, EPA currently makes available an informal list of substances subject to section 12(b) export notification that is updated on or about a quarterly basis. Although inadvertent omission from this section 12(b) list does not excuse non-compliance with the statutory requirements of section 12(b), EPA believes it does serve as a valuable compliance aid. In light of the above, EPA believes that publication of the section 12(b) list in the CFR is not warranted at the present time.

VI. Confidentiality

A person may assert a claim of confidentiality for any information, submitted to EPA in connection with this rule. Any claim of confidentiality must accompany the information so claimed when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VII. Economic Impact

In a support document entitled Economic Analysis of the Amendment to the TSCA Section 6 Rule for Hexavalent Chromium, dated April 1994, EPA has evaluated potential changes in costs to the Cr^{+6} rule that would be associated with these amendments. The total savings to industry and EPA associated with this amendment are estimated to be $5,400 to $16,300 per year. EPA's complete economic analysis is available in the public record for this rule (OPPTS-61018).

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS 61018A). The record includes basic information considered by EPA in developing this rule. EPA has supplemented the record with all written comments and additional information as it was received. In addition to the proposed rule (58 FR 63148, November 30, 1993) and comments received on the proposal, the record now includes the following:

(1) "Prohibitions of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Final Rule," 55 FR 222, January 3, 1990.

(2) Chrome Coalition. re: Petition - Chrome Coalition v. United States Environmental Protection Agency, No. 90–1138, April 17, 1990.

(3) Chrome Coalition. re: Settlement Agreement No. 90–1138, December 15, 1992.

(4) "Asbestos Export Notification." 46 FR 37608, July 21, 1981.

(5) "Export Notification Requirements; Proposed Change to Reporting Requirements." 54 FR 29524, July 12, 1989.

(6) "Chemical Imports and Exports; Notification of Export." 45 FR 82844, December 16, 1980.

(7)"Export Notification Requirement; Change to Reporting Requirements; Final Rule." 58 FR 40238, July 27, 1993.

(8) U.S. EPA OPPTS, EETD. Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium, May 1993.

(9) U.S. EPA OPPTS, EETD. Economic Analysis of the Amendment to the TSCA Section 6 Rule for Hexavalent Chromium, April 1994.

(10) U.S. EPA, Burton, D.S. Letter to Collier, Shannon, Rill Scott, February 7, 1994.

(11) U.S. EPA, Telephone communication with General Chemical Corporation, March 17, 1994.

A public version of this record is available for public inspection and copying at the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA headquarters, 401 M St., SW., Rm. NE–B607, Washington, DC 20460.

IX. 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, it has been 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 does not have a significant impact on a substantial number of small businesses. This rule actually decreases the reporting burden for small businesses that export Cr^{+6} chemicals that cannot be used for water treatment, which are currently subject to the reporting requirements of TSCA section 12(b). This rule would not add any economic burden to small businesses. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, subpart D under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and has assigned OMB control number 2060–0193 to that collection activity. In addition, OMB has also approved the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, subpart D under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2070–0030 to that activity.

The changes in this rule are not expected to impact the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, subpart D, and EPA does not expect to change the burden estimates approved by OMB under OMB control number 2060–0193. However, since the rule amends the applicability of the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, subpart D, EPA expects to change the burden estimates approved under OMB control number 2070–0030, and upon the signature of this final rule, will submit an information correction worksheet.

The rule will reduce the number of export notices required from the public by approximately 237 submissions per year. Public reporting burden for the collection of information under 40 CFR part 707, "Chemical Imports and Exports," is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this rule by approximately 119 to 356 hours per year.

List of Subjects in 40 CFR Part 749

Environmental protection, Chemicals, Chromium, Cooling systems, Cooling towers, Export notification, Hazardous substances, Hexavalent chromium-based water treatment chemicals, Imports, Labeling, Recordkeeping and reporting requirements.

Dated: August 12, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 749 is amended as follows:

PART 749—[AMENDED]

1. The authority citation for part 749 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607.

2. In § 749.68, by revising the section heading, paragraphs (a), (b), (c), (d)(10), (d)(11), and (g)(1) to read as follows:

§ 749.68 Hexavalent chromium-based water treatment chemicals in cooling systems.

(a) *Chemicals subject to this section.* Hexavalent chromium-based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No.13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium-based water

treatment chemicals to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and to distribution in commerce of hexavalent chromium-based water treatment chemicals for use in cooling systems.

(d) * * *

(10) Hexavalent chromium means the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry.

(11) Hexavalent chromium-based water treatment chemicals means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water.

* * * * *

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label or keep affixed an existing label in accordance with this paragraph, to each container of the chemicals. The label shall consist of the following language:

WARNING: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal Law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

* * * * *

[FR Doc. 94–20440 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the address of the Office of the Field Solicitor in Knoxville, Tennessee, for regular U.S. mail service, listed in 43 CFR 4.1109(a).

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Telephone 703–235–3750.

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and a change of address which has previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Therefore, under authority of the Secretary of the Interior contained in 5 U.S.C. 301, § 4.1109(a) in Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is amended as follows:

PART 4—[AMENDED]

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority citation for Part 4, Subpart L, continues to read:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1109 is amended by changing the address listed in paragraph (a) for the Office of the Field Solicitor in Knoxville, Tennessee, for regular U.S. mail service, to read as follows:

§ 4.1109 Service.

(a) * * *

East of the Mississippi River—

* * * * *

Regular U.S. Mail: 530 S. Gay Street, Room 308, Knoxville, Tennessee 37902.

* * * * *

Dated: August 1, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 94–20391 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–79–M

Fish and Wildlife Service

50 CFR Part 24

RIN 1018–AC36

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Gulfport, MS, Portland, OR, and Vancouver, WA, as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports will facilitate trade and the enforcement of the Act and CITES.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street NW., (MS 420 C ARLSQ), Washington, DC 20240, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants that are listed as endangered or threatened in 50 CFR 17.12 or in the

appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in section 24.12(a) of the regulations. Certain other USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(e) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.)

In a March 24, 1994, **Federal Register** notice (59 FR 13921), the Service proposed that the USDA ports at Gulfport, MS, Portland, OR, and Vancouver, WA, be listed as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Act or listed under CITES.

Comments Submitted

The Service's March 24, 1994, notice invited the submission of written comments regarding the proposal for a 60-day comment period ending on May 23, 1994. One comment was received by that date, from a lumber company. The commenter fully supported the proposed rule.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service's March 24, 1994, notice invited public hearing requests, which were required to be received by the Service on or before May 9, 1994. No such requests were received.

Treasury Department Approval To Designate Proposed Ports

Section 9(f)(1) of the Act also provides, in part, that:

"For the purpose of facilitating enforcement of this chapter and reducing costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations."

Approval from the Secretary of the Treasury was obtained in accordance with these provisions.

Therefore, based on the rationale set forth in the proposed rule, the Service is adopting the provisions of the proposal as a final rule.

Effective Date

The effect of this rule is to grant an exemption from 16 U.S.C. 1538(f), which generally prohibits importation of wildlife and plants except at such ports as may be designated. Accordingly, it may be given immediate effect under 5 U.S.C. 553(d)(1), which permits a rule that "grants or recognizes an exemption or relieves a restriction" to be given immediate effect.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

The Service believes that establishing the USDA ports at Gulfport, MS, Portland, OR, and Vancouver, WA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened under the Act or listed under CITES will have a positive economic impact. These ports are major ports of entry for logs and lumber, but they had not been designated as ports for the importation of logs and lumber from listed trees (prior to the effective date of this rule). Presently, importers wishing to import logs and lumber from listed trees into a U.S. port on the Gulf of Mexico can use only Mobile, AL, New Orleans, LA, and Houston and Brownsville, TX. Importers wishing to import logs and lumber from listed trees into a port in the northwestern United States have only the port of Seattle, WA. Adding Gulfport, MS, Portland, OR, and Vancouver, WA, to the list of designated ports for the importation of logs and lumber from trees listed as endangered or threatened under the Act or listed under CITES will result in a savings in time and transportation costs for importers of logs and lumber.

Under these circumstances, the Service has determined that this action will not have a significant economic effect on a substantial number of small entities, as described in the Regulatory Flexibility Act (5 U.S.C. 601).

National Environmental Policy Act

The Service has determined that this final rule adding designated ports under authority of the Endangered Species Act of 1973 for the importation of plants is not a major Federal action which will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Paperwork Reduction Act

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

List of Subjects in 50 CFR Part 24

Endangered and threatened species, exports, harbors, imports and plants.

Accordingly, we are amending 50 CFR part 24 as follows:

PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

§ 24.12 [Amended]

2. In § 24.12, paragraph (e) is amended by adding the words "Gulfport, Mississippi;" after "Baltimore, Maryland;", by adding the words "Portland, Oregon;" after "Wilmington and Morehead City, North Carolina;", and by removing the words "and Norfolk, Virginia," and adding the words "Norfolk, Virginia; and Vancouver, Washington," in their place.

Dated: July 18, 1994.

George T. Frampton,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 94–20407 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 081194F]

Pacific Halibut Fisheries

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

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: Area 4C: August 5, 1994, through December 31, 1994; Area 2A: August 4, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; William W. Stelle, Jr., telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 14

Area 4C Closed to Halibut Fishing

Landings from the August 3–4 fishing period in Area 4C totaled 34,000 lb (15.42 metric tons (mt)). This brings the season total to 715,000 lb (324.32 mt), slightly exceeding the 700,000 lb (317.51 mt) catch limit. Area 4C is now closed to halibut fishing for the remainder of 1994.

Area 2A Commercial Halibut Fishery Closed

The IPHC estimates that the Area 2A catch limit of 178,500 lb (80.96 mt) was reached after the August 3 fishing period. Therefore, Area 2A is closed to commercial halibut fishing for the remainder of 1994.

Area 2B Canadian Commercial Fishery Update

Canadian halibut landings from Area 2B total 7.4 million lb ((3,356.61 mt) through August 8, leaving 2.6 million lb (1,179.35 mt) of the catch limit to be caught. The fishery will continue until all individual vessel quotas have been filled, or November 15, whichever is earlier.

Dated: August 15, 1994.

David S. Crestin,

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

[FR Doc. 94–20385 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 081594B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

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

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 15, 1994, until 12 noon, A.l.t., September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

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

An emergency interim rule (59 FR 6222, February 10, 1994) and subsequent extension of effective date (59 FR 24965, May 13, 1994) apportioned the Pacific halibut prohibited species catch (PSC) limit for trawl gear into bycatch allowances and seasonal apportionments thereof among fishery categories. In accordance with § 672.20(f)(3)(iii), the shallow-water species fishery that is defined at § 672.20(f)(3)(ii)(A) was apportioned 200 metric tons of Pacific halibut PSC for the third season, the period June 30, 1994, through September 30, 1994.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(iv), that vessels participating in the trawl shallow-water species fishery in the GOA have caught the third seasonal bycatch allowance of Pacific halibut PSC apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, except directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species." This closure is effective from 12 noon, A.l.t., August 15, 1994, through 12 noon, A.l.t., September 30, 1994.

Classification

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

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

Dated: August 15, 1994.

David S. Crestin,

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

[FR Doc. 94–20374 Filed 8–15–94; 4:48 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 081294C]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 1994 total allowable catch of Pacific cod to be harvested.

DATES: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. 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.

The Director, Alaska Region, NMFS, has determined that vessels using trawl gear will not be able to harvest 8,000 metric tons of Pacific cod allocated to those vessels under § 675.20(a)(2)(iv)(A). Therefore, in accordance with § 675.20(a)(2)(iv)(B) NMFS is reallocating the projected unused amount to vessels using hook-and-line or pot gear.

Classification

This action is taken under 50 CFR 675.20, and is exempt from OMB review under E.O. 12866.

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

Dated: August 16, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–20462 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 160
Friday, August 19, 1994

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

RIN 0575–AA88

Construction and Repair

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Planning and Performing Site Development Work regulation. This proposal is consistent with Section 716 of the Housing and Community Development Act of 1992 which amended Section 535 of the Housing Act of 1949 to allow the Secretary to accept subdivisions that have been approved by local, county or State agencies. FmHA will no longer review or approve subdivisions, but will review individual sites for the program. This action is consistent with similar actions being proposed or enacted by HUD and VA. A good site approval authority will allow FmHA to bring into the program many low cost homes in subdivisions that have already been developed. Many of these were not previously reached because the seller would not, or could not afford to furnish FmHA all the required data for a total subdivision approval.

To assure that lower income people, particularly minorities and single women head-of-households, are afforded quality sites, subdivisions must meet the community standards and the sites must meet FmHA's site underwriting criteria. Environmental reviews will be required on a site by site basis and cumulative effects will be addressed when indicated.

DATES: Comments should be received on or before October 18, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection at the above address during regular work hours.

FOR FURTHER INFORMATION CONTACT: Billy Chapman, Senior Loan Specialist, Farmers Home Administration, USDA, Room 5334–S, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 720–1485.

SUPPLEMENTARY INFORMATION:

Classification

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

Regulatory Flexibility Act

Bob Nash, Under Secretary, Small Community and Rural Development, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing of section 502 loans and individual applicant eligibility for the program.

Paperwork Reduction Act

The information collection or recordkeeping requirements contained in this regulation will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 10 minutes 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. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA Ag Box 0743, Washington, DC 20250.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Program Affected

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance: 10.410, Low Income Housing Loans.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in Section 2 of the EO.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize the net benefits to society and minimize costs imposed by those regulations.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient

alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this proposal.

Discussion

FmHA stands alone as the only Federal Agency that requires approval of a complete subdivision prior to insuring or guaranteeing a loan for a home within the subdivision. Developers, builders, realtors and applicants for the programs have frequently complained that there is too much "red tape" before an eligible applicant can receive an FmHA loan within a well developed subdivision. Most counties and communities now have adequate subdivision reviews, and FmHA's subdivision approval is not needed to assure quality sites but is duplication of efforts.

This action permits the better use of existing developments and decreases the environmental impact because not as many new developments will be needed to meet the demand for lots that will meet the Agency's requirements. It fits into existing growth patterns and places more authority with the local people.

FmHA is committed to quality sites for its programs and therefore, proposes close scrutiny of the site. The new site criteria incorporates many of the prior subdivision requirements and makes them part of the site underwriting criteria. This action provides for better sites, without requiring the cumbersome subdivision review and approval process. It also provides the loan applicant with assurance of a quality water supply and property served by publicly owned and maintained roads. The proposal provides for an orderly request for review and systematic process of reviewing the site.

This proposed regulation omits the detailed internal agency administrative instruction used by the field offices to administer the program. In the past, FmHA program regulations and FmHA Instructions have been identical. The Agency has adopted a policy of publishing regulations which set forth anything which confers a benefit or imposes an obligation on the public or which is necessary for the public to understand their responsibilities. The Agency does not intend to publish a regulation that omits or evades issues which are subject to public comment or would be of interest to the public. Any substantive changes in the regulation will continue to be published in the **Federal Register**. Each FmHA field office has a copy of the FmHA Instruction and a copy is available upon request to FmHA.

Conforming changes will be made in other FmHA regulations at the final rule stage.

List of Subjects in 7 CFR Part 1924

Housing standards, Low and moderate income housing, Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Planning and Performing Site Development Work

2. Sections 1924.101 through 1924.150 of Subpart C of part 1924, are revised and exhibit A is removed to read as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart C—Planning and Performing Site Development Work

§ 1924.101 Purpose.

This subpart establishes the basic Agency policies for planning and performing site development work. It also provides the procedures and guidelines for preparing site development plans consistent with Federal laws, regulations and Executive Orders.

§ 1924.102 General policy.

(a) *Rural development.* This subpart provides for the development of building sites and related facilities in rural areas. It is designed to:

(1) Recognize community needs and desires, and encourage leadership responsibility in local planning, control and development.

(2) Recognize standards for building-site design which encourage and lead to the development of economically stable communities, and the creation of attractive, healthy, and permanent living environments.

(3) Encourage improvements planned for the site to be the most cost-effective of the practicable alternatives. Encourage utilities and services utilized to be reliable, efficient and available at reasonable costs.

(4) Provide for a planning process that will consider impacts on the environment and existing development in order to formulate actions that protect, enhance, and restore environmental quality.

(b) *Subdivisions.* The Agency does not review or approve subdivisions. Each site approved by the Agency must meet the requirements of § 1924.115 of this subpart, on a site by site basis.

(c) *Development related costs.*

(1) *Applicant.* The applicant is responsible for all costs incurred before loan and/or grant closing associated with planning, technical services, and actual construction. These costs may be included in the loan/grant as authorized by Agency regulations.

(2) *Developer.* The developer is responsible for payment of all costs associated with development under this subpart.

§ 1924.103 Scope.

This subpart is for Agency personnel when considering a site or site development work for Rural Housing (RH) loans for individuals. It provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, Farm Labor Housing (LH) loans and grants, and Rural Housing Site (RHS) loans. It also provides a site development standard (Exhibit B of this subpart) which supplements this subpart to determine the acceptability of development. All of this subpart applies to Single Family Housing unless otherwise noted. All of this subpart also applies to Multiple Family Housing except §§ 1924.115, 1924.120 and 1924.121, which applies only to Single Family Housing, and any paragraph specifically shown for Single Family Housing. In addition, the Agency will consult with appropriate Federal, State, and local agencies, other organizations, and individuals to implement the provisions of this subpart.

§ 1924.104 Definitions.

As used in this subpart:

Agency. Farmers Home Administration (FmHA).

Applicant. Any person, partnership, limited partnership, trust, consumer cooperative, corporation, public body or association that has filed a preapplication, or in the case of Agency programs that do not require a preapplication, an official application with the Agency in anticipation of receiving or utilizing Agency financial assistance.

Community. A community includes cities, towns, boroughs, villages, and unincorporated places which have the characteristics of incorporated areas with support services such as shopping, post office, schools, central sewer and water facilities, police and fire

protection, hospitals, medical and pharmaceutical facilities, etc., and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings.

Developer. Any person, partnership, public body or corporation which intends to develop a site(s) and ask the Agency to finance it.

Development. The act of building structures and installing site improvements on an individual dwelling site, a subdivision, or a multiple family tract.

Multiple Family Housing. Agency Rural Rental Housing loans, Rural Cooperative Housing loans, Farm Labor Housing loans and grants, and Rural Housing Site loans.

Single Family Housing. Agency Rural Housing loans for individuals for construction of, repair of, or purchase of a dwelling to be occupied by one household.

Site. A parcel of land proposed as a dwelling site, with or without development.

Site approval official. The Agency official making the determination that a site meets the requirements in this subpart to be acceptable for site loans. (See § 1924.120 of this subpart.)

Street surfaces. Streets may be hard or all weather surfaced.

(1) *Hard surface*—a street with a portland cement concrete, asphaltic concrete, or bituminous wearing surface or other hard surfaces which are acceptable and suitable to the local public body for use with local climate, soil, gradient, and volume and character of traffic.

(2) *All-weather*—a street that can be used year-round with a minimum of maintenance, such as the use of a grader and minor application of surface material, and is acceptable and suitable to the local public body for use with local climate, soil, gradient, and volume and character of traffic.

Subdivision. Five or more contiguous (developed or undeveloped) lots, or building sites. Subdivisions may be new or existing.

§ 1924.105 Planning/performing development.

(a) *General.* Planning is an evaluation of specific development for specific land uses. Planning must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, local economy, aesthetic and cultural values, public and private services, housing and social conditions and a degree of flexibility to accommodate changing demands. Although all planning and performing development work is the responsibility of the applicant or developer, close coordination must occur with local planning officials and with the respective Agency office to minimize the chances of spending money on development that does not meet the Agency's requirements. All development will be arranged and completed according to applicable local, State or Federal regulations including applicable health and safety standards, environmental concerns and requirements of this subpart. When a public authority requires inspections prior to final acceptance, written assurance by the responsible public authority, of compliance to local, city, county, State or other public codes, regulations and ordinances is required prior to final acceptance by the Agency.

(1) *Agency advice and assistance.* Applicants and developers shall be encouraged to seek the advice and assistance of the Agency before significant expenditures are made. Actions taken which are not in accordance with this subpart may jeopardize the possibility of receiving future financial assistance from the Agency. When receiving an inquiry about a Single Family Housing site development or a Multiple Family Housing project, the Agency official receiving the request will:

(i) Provide information regarding publications, site planning, engineering data, environmental data, soils data, and other technical advice and assistance which are available through local, State, and Federal agencies, planning commissions, and private institutions and organizations.

(ii) Explain the requirements for compliance with subpart G of part 1940 of this chapter, as well as the limitations on applicants during the application review process as prescribed in § 1940.309 of subpart G of part 1940 of this chapter.

(iii) Discuss the requirements of the Agency with respect to compliance with local, regional, and State regulations; construction practices; energy efficiency; nondiscrimination; market analysis; good site planning; and location. Also, when applicable, provide and explain Form FmHA 400–4, "Assurance Agreement," Form FmHA 400–1 "Equal Opportunity Agreement," and HUD Form 935.2, "Affirmative Fair Housing Marketing Plans."

(2) *Technical services.*

(i) Professional assistance is available from the Soil Conservation Service (SCS) and the Cooperative Extension Service.

(ii) An applicant or developer for a Multiple Family Housing project or a Single Family Housing site which requires technical services under § 1924.13(a) of subpart A of this part, must contract for the technical services of an architect, engineer, land surveyor, landscape architect, or site planner, as appropriate, to provide complete planning, drawings, and specifications. Such services may be provided by the applicant's or developer's "in house" staff subject to Agency concurrence. Technical services must be performed by professionals who are qualified and authorized to provide such services in the State in which the project would be developed. All technical services must be provided in accordance with the requirements of professional registration or licensing boards. For payments for technical services, follow § 1924.102(c) of this subpart. At completion of all construction or completion of a phase or phases of the total project, the person(s) providing technical services under this section must notify the Agency office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(iii) For developments not specifically required to have technical services under paragraph (a)(2)(ii) of this section, such services may be required by the State Director when construction of streets or installation of utilities is involved.

(3) *Drawings, specifications, contract documents, and other documentations.* Adequate drawings and specifications must be provided by the applicant or developer to fully describe the work. Contract documents must be prepared under § 1924.6 or, in the case of more complex construction, § 1924.13 of subpart A of this part.

(b) *Single Family Housing.* Proposals for development of individual dwelling sites have the following specific requirements:

(1) *Site development design requirements.* Exhibit B of this subpart will be used as a guide by applicants or developers in preparing proposals and supporting documents for Single Family Housing loans, in addition to specific requirements made in this subpart.

(2) *Environmental review.*

(i) An individual Single Family Housing loan is normally considered a Categorical Exclusion under the National Environmental Policy Act (NEPA). However, Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," must be completed by the Agency to determine that the specific action complies not only with NEPA, but also with other applicable environmental laws, executive orders, and regulations. To complete the form, the preparer will use

reliable environmental information. Sources of such information include, but are not limited to, the State's Natural Resource Management Guide and the appraisal. If the completed Form FmHA 1940–22 indicates a potential impact to one or more environmental resources, the action is subject to disqualification as Categorical Exclusion and a Class I assessment must be completed in accordance with § 1940.317(g) of subpart G of Part 1940 of this chapter. If it is obvious at the outset that the action will be disqualified as a Categorical Exclusion, the preparer should forego completion of Form FmHA 1940–22 and proceed directly to the Class I assessment.

(ii) If it appears that an action will be subject to disqualification as a Categorical Exclusion due to indications of cumulative impacts, a Class I or Class II assessment will be completed, as appropriate, in accordance with subpart G of Part 1940 of this chapter. A cumulative impact is the impact on the environment which results from the incremental impact of the proposed action, when added to other past, present and reasonably foreseeable future actions, regardless of what Agency (Federal or non-Federal) or person undertakes such other actions.

(c) *Multiple Family Housing.* Exhibit C of this subpart should be used as a guide by the applicant or developer in preparing a proposal and supporting documents for Multiple Family Housing projects. Exhibit B of this subpart contains site development design requirements which apply to all Multiple Family Housing projects.

§ 1924.106 Location.

(a) *General.* It is the Agency's policy to promote compact community development and not to approve sites located in floodplains, on wetlands, or on important farmlands, unless there is no practical alternative. Furthermore, the Agency will not accept locations that adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places, located within the Coastal Barrier Resource System, or on a barrier island. In order to be eligible for Agency participation:

(1) The site must be located in an eligible area as defined in the program regulations under which the development is being funded or approved.

(2) The proposal must comply with the applicable environmental laws, Executive Orders, and subpart G of part 1940 of this chapter.

(b) *Single Family Housing.* In addition to the general requirements in paragraph (a) of this section, sites must provide a desirable, safe, functional, convenient, and attractive living environment for the residents, and insure long-term market demand and acceptability.

(c) *Multiple Family Housing.* Multiple family housing projects shall be located in accordance with the requirements in paragraph (r) of § 1944.215 of subpart E of part 1944 of this chapter. Locating sites in less than desirable locations of the community or in close proximity to undesirable influences such as railroad tracks, cemeteries; adjacent to or behind commercial sites; bordering structures which are not decent, safe, or sanitary or a positive conducive influence on the proposed site; bordering sites which have potential environmental concerns such as processing plants, etc., is not acceptable. Screening such sites does not make them acceptable. Sites which are not an integral part of a residential community and do not have a reasonable access, either by location or terrain, to essential community facilities such as water, sewerage, schools, shopping, employment opportunities, medical facilities, etc., are equally not acceptable.

§ 1924.107 Utilities.

All development under this subpart must have adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance.

(a) *Water and wastewater disposal systems.*

(1) *Single Family Housing.* If sites are served by central water or sewer systems the systems must meet the requirements of paragraphs (a)(2) (i) and (ii) of this section. If sites have individual water or sewer systems they must meet the requirements for water and sewerage in Exhibit B, paragraphs V and VI of this subpart. Sites in subdivisions of more than 25 dwelling units on individual systems, or sites that do not meet the requirements of Exhibit B, paragraphs V and VI of this subpart, must have State Director concurrence.

(2) *Multiple Family Housing.* Proposals processed under this paragraph shall be served by centrally owned and operated water and wastewater disposal systems unless this is determined to be economically or environmentally unfeasible. All central systems, whether they are public, community or private, shall meet the design requirements of the State Department of Health or other comparable reviewing and regulatory authority(ies). The regulatory authority(ies) will verify in writing that the water and wastewater systems are in compliance with the current provisions of the Safe Drinking Water Act and the Clean Water Act, respectively.

(i) Sites which are not presently served by a central system, but are scheduled for tie-in to the central system within 2 years should have all lines installed during the initial construction. Such developments must have an approved interim water supply or wastewater disposal system installed capable of satisfactory service until the scheduled tie-in occurs.

(ii) In addition to written assurance of compliance with State and local requirements, there must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed pending extension or construction of permanent public services, the developer must assume responsibility for the operation and maintenance of the interim facility or establish an entity for its operation and maintenance which is acceptable to the local governing body. If a system is not or will not be publicly owned and operated, it must comply with one of the following:

(A) Be an organization that meets the ownership and operating requirements for a water or wastewater disposal system that the Agency could finance under subpart A of part 1942 of this chapter or be dedicated to and accepted by such an organization.

(B) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in HUD Handbook 4075.12, "Ownership and Organization of Central Water and Sewerage Systems." The Agency should be assured that the organization has the right, in its sole discretion, to enforce the obligation of the operator of the water and/or sewerage systems to provide satisfactory continuous service at reasonable rates. The advice and assistance of the Regional Attorney should be obtained in preparing any necessary agreement with the organization or individual supplying water and/or sewerage systems.

(C) Be adequately controlled as to rates and services by a public body (unit of Government or public services commission).

(iii) When central systems are not available, the Agency will thoroughly evaluate the proposed individual systems for economic feasibility and potential impact on the environment. Information and guidance for evaluation and design of individual water and wastewater systems is contained in Environmental Protection Agency (EPA) publications "Manual of Individual Water Supply Systems" and "Design

Manual, Onsite Wastewater Treatment and Disposal Systems", respectively. Developments of more than 25 dwelling units with individual systems must have the National Office concurrence. A request for concurrence must contain written recommendations and the following:

(A) Information prepared by the local, county or State regulatory authority having jurisdiction indicating whether individual systems are feasible on the proposed sites. Supporting factual data should include evidence that clearly shows that individual systems will perform satisfactorily for a reasonable period of time with reasonable maintenance cost. Reasonable time and reasonable cost can be equated with the cost and expected life of a central system if one were available.

(B) Supporting information for the proposed individual water systems, covering the following points:

(*1*) Documentation of how individual water supplies can be developed with satisfactory water production at a reasonable cost. In areas where difficulty is anticipated in developing an acceptable water supply, the availability of a water supply will be determined before closing the loan.

(*2*) Documentation that the quality of the supply meets the chemical, physical and bacteriological standards of the regulatory authority having jurisdiction. The maximum contaminant levels of U.S. EPA shall apply. Individual water systems must be tested for quantity and bacteriological quality. Where problems are anticipated with chemical quality, chemical tests may be required. Chemical tests would be limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH, turbidity, color, or other undesirable elements. Polluted or contaminated water supplies are unacceptable. In all cases, assurance of a potable water supply before loan closing is required.

(C) Supporting information for individual wastewater disposal systems with subsurface discharge provided by a soil scientist, geologist, soils engineer, or other person recognized by the local regulatory authority. This data should include the following:

(*1*) Assurance of nonpollution of ground water. The local regulatory authority having jurisdiction must be consulted to ensure that installation of individual wastewater systems will not pollute ground water sources or create other health hazards/or otherwise violate State water quality standards.

(*2*) Records of percolation tests. Guidance for performing these tests is included in the EPA design manual, "Onsite Wastewater Treatment and Disposal Systems." (This may be waived by the State Director when the State has established other acceptable means for allowing onsite disposal.)

(*3*) Determination of soil types and description. The assistance of the SCS or other qualified persons should be obtained for soil type determination and a copy of its recommendations included in the documentation.

(*4*) Description of ground water elevations, showing seasonal variations.

(*5*) Confirmation of space allowances. An accurate drawing to indicate that there is adequate space available to satisfactorily locate the individual water and/or wastewater disposal systems; likewise, documented assurance of compliance with all local requirements. Structures served by wastewater disposal systems with subsurface discharge require larger sites than those structures served by another type system.

(*6*) Description of exploratory pit observations, if available.

(D) Supporting information for individual wastewater disposal systems with surface discharge covering the following points:

(*1*) Effluent standards issued by the appropriate regulatory agency that controls the discharge of the proposed individual systems. Assurance from this regulatory agency that the effluent standards will not be exceeded by the individual systems being proposed.

(*2*) Program of maintenance, parts and service available to the system-owner for upkeep of the system.

(*3*) A plan for local inspection of the system by a responsible agency with the authority to ensure compliance with health and safety standards.

(b) *Electric service.* The power supplier will be consulted by the applicant to assure that there is adequate service available to meet the needs of the proposed development. Underground service is preferred.

(c) *Gas service.* Gas distribution facilities, if provided, will be installed according to local requirements where adequate and dependable gas service is available.

(d) *Other utilities.* Other utilities, if available, will be installed according to local requirements.

§ 1924.108 Grading and drainage.

(a) *General.* Soil and geologic conditions must be suitable for the type of construction proposed. In questionable or unsurveyed areas, the applicant or developer will provide an engineering report with supporting data sufficient to identify all pertinent subsurface conditions which could adversely affect the structure and show proposed solutions. Grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and assure that drainage from adjacent properties onto the development or from the development to adjacent properties does not create a health hazard or other undesirable conditions. Grading and drainage will comply with Exhibit B, paragraphs III and IV, of this subpart.

(b) *Cuts and fills.* Development requiring extensive earthwork, cuts and fills of 4 feet or more shall be designed by a duly licensed or registered engineer. Where topography requires fills or extensive earthwork that must support structures and building foundations, these must be controlled fills designed, supervised and tested by a qualified soils engineer.

(c) *Slope protection.* All slopes must be protected from erosion by planting or other means. Slopes may require temporary cover if exposed for long periods during construction.

(d) *Storm water systems.* The design of storm water systems must consider convenience and property protection both at the individual site level and the drainage basin level. Storm water systems should be compatible with the natural features of the site. In areas with inadequate natural and/or man-made drainage systems, permanent and/or temporary storm water storage shall be an integral part of the overall development plan. Design of these facilities shall consider safety, appearance and economical maintenance operations.

§§ 1924.109–1924.114 [Reserved]

§ 1924.115 Single Family Housing site evaluation.

(a) *Site review.* The site approval official will evaluate each site (developed or undeveloped) to determine acceptance for the program. Information on the site will be provided by the appraiser on a form provided by the Agency and available in any Agency office. The review appraiser and/or the site approval official will review the information, complete any required information, and sign the back of the form. If the site is new construction in a subdivision, the builder will provide Form HUD–92541, "Builder's Certification of Plans, Specifications, and Site", available in any Agency office. The site approval official must complete the proper environmental review required by subpart G of part 1940 of this chapter for each site. (See § 1924.105(b)(2) of this subpart.)

(b) *Site access.* Each site must be contiguous to and have direct access from:

(1) A hard surfaced or all weather street or road which is developed in full compliance with public body requirements, dedicated for public use, and is being maintained by a public body or a Home Owners Association that has demonstrated its ability or can clearly demonstrate its ability to maintain the street, or

(2) An all weather extended driveway which can serve no more than two sites connecting to a hard surface or all weather street or road that meets the requirements of the above paragraph, or

(3) A hard surfaced street in a condominium or townhouse complex which:

(i) Is owned in common by the members or a member association and is maintained by a member association that has demonstrated its ability or can clearly demonstrate its ability to maintain the street, and

(ii) Connects to a publicly owned and dedicated street or road.

(c) *Exceptions to street requirements.* A site not meeting the conditions in paragraph (b) of this section will be acceptable if:

(1) The applicant is a builder for a conditional commitment (a loan will not be approved until the site meets the conditions in paragraph (b) of this section), or the builder posts an irrevocable performance and payment bond (or similar acceptable assurance) that assures the site approval official that the site will be developed to meet the conditions in paragraph (b) of this section, or

(2) The site is recommended by the site approval official and approved by the State Director. A request for State Director approval must justify that it is in the best interest of both the government and the applicant to approve the site.

(d) *Site layout.* (1) Sites shall be surveyed and platted. Permanent markers shall be placed at all corners.

(2) Sites shall meet all requirements of State and local entities and the Agency.

(e) *Covenants, conditions and restrictions.* Sites in subdivisions shall be protected by covenants, conditions and restrictions (CC&Rs) to preserve the character, value and amenities of the residential community and to avoid or mitigate potential environmental impacts unless, an exception is granted by the State Director after considering the suitability of local ordinances, zoning, and other land use controls.

(1) CC&Rs shall be recorded in the public land records and specifically referenced in each deed.

(2) The intent of the CC&Rs is to assure the developers that the purchasers will use the land in conformance with the planned objectives for the community. In addition, the CC&Rs should assure the purchasers that the developers will proceed to use the land as planned and that other purchasers will use and maintain the land as planned to prevent changes in the character of the neighborhood that would adversely impact values or create a nuisance.

§§ 1924.116–1924.119 [Reserved]

§ 1924.120 Approval authority.

The State Director is responsible for delegating Single Family Housing site review and approval authority to appropriate employees when the employees have had sufficient training and have demonstrated the capability to perform the required actions, delegation is in writing in accordance with FmHA Instruction 2006–F.

§ 1924.121 [Reserved]

§ 1924.122 Exception authority.

The Administrator may in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the written request of the State Director or the appropriate program Assistant Administrator. Requests for exceptions must be supported with documentation to explain the adverse effect on the Government, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1924.123 State supplements and exhibits.

(a) *State supplements.* State Directors may supplement this subpart only to meet State and local laws and regulations and to provide for orderly processing of submittals.

(b) *State exhibits.* State Directors may develop exhibits for use by applicants or developers if the exhibits to this subpart are not adequate for use in the State. Those exhibits may be developed to further explain the items needed within the various submittals; organization of those items; and coordination of this subpart with the requirements of the Agency program(s) providing the financial assistance.

§ 1924.124–1924.149 [Reserved]

§ 1924.150 OMB control number.

3. Exhibit A of subpart C is removed and reserved.

Dated: June, 14, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–20432 Filed 8–18–94; 8:45 am]

BILLING CODE 3410–07–U

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7 CFR Part 1942

RIN 0575–AB82

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations that are utilized by the Rural Development Administration (RDA) in administering Community Facility Loans and Grants. This action is necessary to implement a provision of the Rural Electrification Administration Loan Restructuring Act of 1993, (REA Act) and change the security requirements for solid waste disposal loans. The REA Act prohibits that a condition for assistance under any RDA program be a requirement that the recipient of such assistance accept or receive electric service from any particular utility, supplier, or cooperative. Also, a change is proposed in the security requirements for loans secured primarily by revenue and the funds used to construct or improve solid waste facilities in rural communities. The intended effect of changing the security requirements for solid waste facilities is to provide better service to communities seeking to resolve solid waste disposal problems on a regional level.

DATES: Written comments must be received on or before October 18, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence, SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, Room 6328,

Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is a "significant regulatory action."

Intergovernmental Review

The programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Disposal Systems for Rural Communities, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance with Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR Part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0015 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection requirement from those approved by OMB.

Background

A change is proposed in the security requirements for loans made for construction or improvements to solid waste facilities. The requirements of the Environmental Protection Agency Subtitle D regulations have increased the capital needs of rural communities for disposal of solid waste. The current security requirements for loans on solid waste facilities are too stringent, and this proposed action will add flexibility that is needed to improve the program. Currently, additional security is required when revenue is the primary security for loans involving solid waste facilities. The proposed change will remove the requirement for additional security.

This proposed action also incorporates into RDA loan and grant regulations the provision contained in the REA Act of 1993 which prohibits a recipient of the programs from imposing certain conditions on the users of the service provided. For example, a utility, supplier, or cooperative that provides electric service cannot obtain RDA financing for a water system and require that the water customers connect to their electric system as a condition for receiving water. The REA Act requires that appropriate measures and sanctions be implemented against any person violating or attempting to violate this prohibition.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs-Housing and community development, Loan security, Rural areas, Waste treatment and disposal-Domestic, Water supply-Domestic.

Therefore, Chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraphs (g)(2)(ii) and (g)(3)(ii) and by adding paragraph (j)(12) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(g) * * *

(2) * * *

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the Government during the repayment period of the loan.

* * * * *

(3) * * *

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the Government during the repayment period of the loan.

* * * * *

(j) * * *

(12) *Prohibition on electric service.* Recipients of assistance processed in accordance with this subpart cannot require the users of the services provided to accept or receive electric service from any particular utility, supplier, or cooperative. If the recipient of assistance is a utility, supplier, or cooperative that provides electric service, the recipient must agree that users of the facility financed will not be required to accept or receive electric service. All recipients that also provide electric service must include the following in its rules and regulations: "No existing or future user of the facility financed by the Rural Development Administration has been or will be required to receive electric service as a condition to utilize the services provided by the facility." A violation of this prohibition will result in the acceleration of all loans received under this subpart and debarment from receiving future Federal financial assistance. Compliance with this paragraph will be monitored through routine servicing procedures.

* * * * *

Dated: August 9, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–20433 Filed 8–18–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–94–1725; FR–3638–P–02]

RIN 2502–AG26

Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (1994 Revisions): Amendment and Notice of Electronic Conference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Amendment to proposed rule and notice of electronic conference.

SUMMARY: The Department is amending its proposed rule published on July 21, 1994 (59 FR 37360), to change the date of the Technology Demonstration,

extend the deadline for submitting comments on the proposed rule, and announce the availability of an electronic conference on the computer loan origination (CLO) aspects of the rule.

DATES: Comment due date: The new deadline for comments on the proposed rule is Friday, September 30, 1994. The new date for the Technology Demonstration is September 20, 1994. The electronic conference will run from August 19, 1994, to September 30, 1994.

ADDRESSES: Owners and operators of computerized loan origination systems (CLOs) are also invited to participate in a Technology Demonstration of Computerized Loan Origination Systems, to be sponsored by the Department and held at HUD Headquarters, 451 Seventh Street, SW., Washington, DC, on Tuesday, September 20, 1994, beginning at 9:30 a.m. (EST), as discussed more fully in the preamble of the proposed rule under **SUPPLEMENTARY INFORMATION.**

Interested persons are invited to submit written comments regarding the rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For technical questions about CLOnet: Fred Dow, Director, Office Automation Staff, Office of Housing, room 9134, telephone (202) 708–4585; the TDD number for persons who are hearing- or speech-impaired is (202) 708–4594. For general questions about the proposed rule, William Reid, Senior Economist, Office of Policy Development and Research, room 8212, telephone (202) 708–0421; the TDD number is (202) 708–0770. For legal questions, Grant E. Mitchell, Senior Attorney for RESPA, room 10252, telephone (202) 708–1552; or Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, room 10252, telephone (202) 708–3137. The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department is announcing a revised date for the Technology Demonstration described in its proposed rule (59 FR 37360, July 21, 1994). The Department is also extending the deadline for submission of comments on the proposed rule to Friday, September 30, 1994, to allow commenters additional time to incorporate into their comments any views they have developed as a result of the Technology Demonstration.

In addition, the Department is announcing the availability of an electronic conference as another tool for interested persons to exchange information and ideas on the computer loan origination (CLO) aspects of the proposed rule. The electronic conference will be for discussion only; comments must still be in writing and submitted as described above under the heading **ADDRESSES** in order to be considered by the Department during the development of the final rule.

This on-line conference will run 24 hours per day from August 19, 1994, to September 30, 1994, and will provide industry and individual users who access the conference an opportunity to discuss and debate with one another the CLO aspects of the proposed rule through a computer network. The conference is called CLOnet and can be accessed by calling Metasystems Design Group, Inc. (MDG), in Arlington, Virginia, telephone (703) 243–6622. There is a monthly charge of $20, after which connect time is unlimited and free (other than long-distance charges). A personal computer (PC), modem, and communications software are required to access the conference.

The Department is using this opportunity as a trial for supplementing its existing FHAnet with the subject-specific CLOnet. Both conferences can provide an excellent interactive method for the public to "meet" on and discuss relevant matters. Because the purpose of the current CLOnet is to provide an electronic medium for discussion of the effect of the proposed rule on CLOs and consumers, any HUD employee who chooses to participate in the discussion may do so only in his or her individual capacity and not in any official capacity as a representative of the Department.

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

Dated: August 16, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–20476 Filed 8–16–94; 4:54 pm]

BILLING CODE 4210–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S–025]

Longshoring and Marine Terminals

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

ACTION: Proposed rule; notice of informal public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposed on June 2, 1994 (59 FR 28594) to revise its Safety and Health Regulations for Longshoring and, to a far lesser extent, to amend its Safety and Health Regulations for Marine Terminals. The proposed rule covers cargo handling and related activities conducted aboard vessels and at Marine Terminals. The proposed amendments to the Marine Terminals standard are intended primarily to provide regulatory consistency with the proposed Longshoring ship-board rules.

The June 2, 1994 notice and subsequent correction notice on June 13, 1994 (59 FR 30389) announced the cities and dates for three informal rulemaking hearings that will be held on all issues raised by the proposal. The dates of these hearings have been changed. This notice sets the new dates and specific locations of the informal public hearings to be held as part of the rulemaking process. In addition, it extends the original date for the submission of Notices of Intention to Appear by three weeks and reduces the time frame for the submission of documentary evidence and the text of lengthy testimony from 21 days to 14 days prior to the date of the hearing where the evidence will be presented.

DATES: Written comments on the standard must be postmarked on or before September 23, 1994.

Notices of intention to appear at the informal public hearings must be postmarked by September 14, 1994.

The hearings will begin at 9:30 a.m. and be held in the following cities, beginning on the following dates:

Charleston, South Carolina on October 4, 5 and 6, 1994.

Seattle, Washington on October 19, 20 and 21, 1994.

New Orleans, Louisiana on November 15, 16 and 17, 1994.

Parties who request more than 10 minutes for their presentation at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of

their testimony and all documentary evidence prior to the date of the hearing to be attended as follows:

Charleston, South Carolina: postmarked by September 20, 1994;

Seattle, Washington: postmarked by October 5, 1994; and

New Orleans, Louisiana: postmarked by November 1, 1994.

ADDRESSES: The Charleston hearings will be held at the SHERATON INN CHARLESTON, 170 Lockwood Drive, Charleston, South Carolina. The telephone number (803) 723–3000.

The Seattle hearings will be held at the HOLIDAY INN CROWNE PLAZA, 1113 6th Avenue, Seattle, Washington. The telephone number is (206) 464–1980.

The New Orleans hearings will be held at THE INN ON BOURBON, 541 Bourbon Street, New Orleans, Louisiana. The telephone number is (504) 524–7611.

Written comments should be submitted to the Docket Office, Docket S–025, room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Comments of 10 pages or less may be faxed to the Docket Office, if followed by a hard copy. The OSHA Docket Office fax number is (202) 219–5046.

Notices of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. S–025, room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8615.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Notice of Intention to Appear at the Informal Hearing

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by September 14, 1994. The notice of intention to appear must contain the following information:

A. The name, address, and telephone number of each person to appear;

B. The capacity in which the person will appear;

C. The approximate amount of time required for the presentation;

D. The issues that will be addressed;

E. A brief statement of the position that will be taken with respect to each issue; and

F. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. S–025, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8615.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–5986, by the same date, provided the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Individuals with disabilities wishing to attend the hearings should contact the hearing management officer, Mr. Thomas Hall, to obtain appropriate accommodations at the hearing.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. One copy must be suitable for copying and shall not be stapled or bound. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than 14 days prior to the date of the hearing.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal hearing.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge (ALJ), but will not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on the first day. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which might impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings, and the pre-hearing guidelines which the ALJ will issue for this hearing, will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. It should be noted that § 1911.4 allows the Assistant Secretary, upon reasonable notice, to issue alternative procedures to expedite proceedings or for other good cause.

The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911, including the powers:

A. To regulate the course of the proceedings;

B. To dispose of procedural requests, objections and comparable matters;

C. To confine the presentations to the matters pertinent to the issues raised;

E. To regulate the conduct of those present at the hearing by appropriate means;

F. In the Judge's discretion, to question and permit the questioning of any witnesses and to limit the time for questioning; and

G. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of public response on the issues involved.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the OSH Act (29 U.S.C. 655); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911.

Signed at Washington, DC, this 11th day of August, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–20379 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–94–017]

Special Local Regulations; City of Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent special local regulations for the annual Festival on the Fourth. This event is held each year on July 4 on the Ashley River, at Charleston, South Carolina. In the past, the Coast Guard established temporary special local regulations each year to protect the safety of life on the navigable waters during the effective times. However, because the event recurs annually, the Coast Guard is proposing a permanent description of the event and establishment of permanent regulations in the Code of Federal Regulations (CFR) to better serve the boating public by creating a permanent reference.

DATES: Comments must be received on or before October 18, 1994.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group, 196 Tradd Street, Charleston, South Carolina 29401. The comments and other materials referenced in this notice will be available for inspection and copying at this same address. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR E. P. Boyle, Coast Guard Group Charleston, at (803) 724–7619.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD07–94–017] and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of these regulations are LTJG J. M. SICARD, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J. M. LOSEGO, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Charleston Water Festival, Inc., sponsors the Festival on the Fourth celebration. Approximately, two towboats, one pick-up boat, forty waterskiers, and five jet skiers conduct various exhibitions during the Festival on the Fourth event, including ski jumping, kite skiing and jet ski maneuvering. The event also closes with a fireworks display on that portion of the Ashley River in Charleston, South Carolina, between Brittle Bank Park and the main river channel.

The event's exhibitions, coupled with the fireworks display, create an extra hazard in the navigable waters and require these regulations.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than one nautical mile on the Ashley River from Brittle Bank Park to the main river channel in Charleston, South Carolina, entry into which is prohibited for eleven and a half hours on the day of the event.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.c of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. A copy of the Categorical Exclusion document is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.706 is added to read as follows:

§ 100.706 Ashley River, Charleston, SC.

(a) *Regulated Area.* A regulated area is established on that portion of the Ashley River in Charleston, South Carolina, between Brittle Bank Park and the main river channel, bounded by a line beginning at: 32°47.3′ N, 079°57.8′ W; thence to 32°47.37′ N, 079°58.05′ W; thence to 32°47.1′ N, 079°57.78′ W; thence to 32°47.18′ N, 079°57.7′ W; thence returning to the origin. Floating markers will be placed in the river to delineate the regulated area.

(b) *Special local regulations.* Entry into the regulated area, by other than event participants, is prohibited. After termination of the water ski, jet ski exhibition, and the fireworks display, and during the intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective dates.* The regulations in this section will be effective annually on July 4 from 11 a.m. EDT (Eastern Daylight Time) to 10:30 p.m. EDT, unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners and a **Federal Register** notice.

Dated: March 28, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 94–20191 Filed 8–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–20–1–5732b; FRL–5016–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 19, 1994.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T–AP), Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Planning Section (6T–AP), EPA Region 6, telephone (214) 655–7596.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register.**

Dated: July 1, 1994.

William B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94–20342 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD-FRL–5054–2]

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of the availability of supplemental information, and reopening of public comment period on the supplemental information.

SUMMARY: On February 8, 1994 (59 FR 5868), the EPA proposed standards (the proposal or proposed standards) to limit emissions of hazardous air pollutants (HAP's) from existing and new bulk gasoline terminals and pipeline breakout stations under section 112 of the Clean Air Act as amended in 1990 (Act). The public comment period on the proposed rule ended April 11, 1994. This action announces the availability of supplemental information and the reopening of the comment period for comment on only the supplemental information. This supplemental information was provided during the comment period on the proposal and pertains to the level of control and test procedures for tank truck leakage. The EPA plans to consider comments received on this action, along with the comments received on the proposal, and take final action on the rule on November 23, 1994 as required under consent decree. Due to this short schedule, only a 30-day comment period is being provided and no public hearing will be held.

DATES: Comments must be received on or before September 19, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (6102), ATTN: Docket No. A–92–38, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and Mr. Stephen Shedd, address shown in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket. Docket No. A–92–38, containing supporting information used in developing the proposed standards, public comments received on the proposal, and the test procedures and methods discussed in today's notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. A

reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning today's notice, contact Mr. Stephen Shedd at (919) 541–5397, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On February 8, 1994 (59 FR 5868), the EPA proposed standards to limit emissions of hazardous air pollutants (HAP's) from existing and new bulk gasoline terminals and pipeline breakout stations under section 112 of the Act. Two comment letters presented information on California standards for tank truck leaks at existing facilities that are more stringent than those standards proposed by the EPA. The EPA proposed that tank trucks and railcars annually pass a pressure and vacuum test before loading gasoline at existing and new major source facilities. The California standards have a more stringent requirement for the annual test, an additional annual test for internal vapor valves, and a year-round leak rate requirement and test procedures. Additionally, the EPA proposed for new facilities the use of a loading rack vacuum assist system, in addition to the proposed annual pressure and vacuum test, to further control leakage from tank trucks and railcars. The EPA did not analyze nor fully discuss these California standards during development of the proposal or at proposal. The purpose of this notice is to announce and discuss the consideration of these additional standards. Below is a discussion of the California standard for tank truck leakage and the EPA's consideration of that information. As noted in the **ADDRESSES** section of today's notice, the docket (Docket No. A–92–38) contains the California test procedures and methods discussed below.

The California Air Resources Board (ARB) and the California air pollution control districts have been implementing tank truck leakage standards since the late 1970's. Currently all tank trucks transporting gasoline in California, including tank trucks from neighboring States that operate in California, must meet the California standards. In summary they include three major standards, an annual certification and a year-round standard for the tank and its vapor piping and hoses and a year-round pressure standard for the tank truck's internal vapor valve. The annual certification standards include initially pressurizing and later evacuating the tank and associated vapor piping and hoses, to 18 inches of water and to 6 inches of water, respectively. In 5 minutes the allowable pressure change can be no more than the values shown in Table 1. The EPA's Control Techniques Guideline (CTG) document and New Source Performance Standards (NSPS) (40 CFR part 60, subpart XX) contain annual pressure and vacuum test levels of initial pressures and test duration which are the same as California's. However, a less stringent pressure change of 3 inches of water column is allowed for all tank trucks under the NSPS, CTG, and proposal.

TABLE 1. ALLOWABLE TANK PRESSURE CHANGE

Tank or compartment capacity (gallons)	Allowable pressure change per tank or compartment tested (inches of water, gauge, per 5 minutes)	
	Annual certification	Year-round (not to be exceeded anytime)
2,500 & Up	1	2.5
2,499–1,500	1.5	3.0
1,499–1,000	2.0	3.5
999–less	2.5	4.0

Table 1 presents a year-round allowable pressure change standard that is 1.5 inches of water column higher than annual certification allowable pressure change. This year-round standard is periodically demonstrated by a combustible gas detector method or the annual certification test procedure (using the allowable year-round pressure change value) by owners and operators and used by the California ARB and districts for audits and compliance, respectively. Combustible gas detectors are easy to use and transport and can be used in the field while trucks are loading gasoline. The annual certification pressure/vacuum test procedure requires the tank to be taken out of gasoline service and requires more test equipment than the combustible gas detector method. Therefore, the combustible gas detector method provides an easy-to-use field compliance procedure. Tank trucks with a leak found above 100 percent of the lower explosive limit (LEL) on a combustible gas detector are required to be taken out of service until they pass the allowable year-round pressure change using the annual certification test method. If the truck fails both tests, the truck owner is fined and the tank is not allowed to return to service until it meets the annual certification standard. Those tanks found to have leaks above 100 percent of the LEL and found to meet the year-round allowable pressure change with the annual certification test procedure are not penalized if maintenance is not performed before the pressure test. A similar combustible gas detector procedure was presented in the EPA's CTG, but is not contained in the NSPS or this proposed NESHAP. However, some other States and oil companies are using this detector procedure as a compliance method, in addition to the annual pressure and vacuum tests. The Bay Area Air Quality Management District (BAAQMD) developed a field pressure test procedure that measures the pressure change without taking the tank out of service. Nitrogen gas is used to pressurize the tank's vapor head space. This field pressure test method was determined by the California ARB in 1986 to be equivalent to the combustible gas detector method. Since 1986, the BAAQMD has implemented a comprehensive outreach program with the field pressure test. Operators are instructed in the field test procedure, and participate in an ongoing inspection and maintenance program. Participation is voluntary, and the incentive is to reduce the penalties for violations by having documentation showing a history of regular tests and maintenance on the tank truck.

The third California standard for tank trucks is the annually tested certification pressure test on the tank truck's internal vapor valve. This valve provides a seal between the truck's tank and its vapor piping and connected hose. For this test, the tank and associated vapor piping and hose are pressurized to 18 inches of water column, and the valve is then closed. Then, while leaving the tank under pressure, the pressure in the tank truck's vapor collection piping and vapor hose is released to atmospheric pressure and then capped. After 5 minutes, a pressure increase of no more than 5 inches of water column is allowed to occur downstream of the valve in the tank truck's vapor piping and hose. Any pressure increase indicates that the valve is leaking. This leakage would eventually be released to the atmosphere when the vapor hose and piping are not connected to a vapor collection system. This standard for internal vapor valves is not contained in the CTG, the NSPS, or the proposed standard.

The California ARB is currently revising its tank truck standards to change the level of the annual test and is updating its test procedures and methods. The BAAQMD tested 200 tank

trucks and found that 86 percent of the trucks could pass a 0.25-inch standard and 91 percent could pass a 0.5-inch standard. The California ARB proposed that the allowable annual certification's allowable pressure change be reduced by 50 percent (1-inch drop is proposed to be reduced to a 0.5-inch, etc.). Besides general updating and clarifications of the test procedures and methods, the California ARB is adding the field pressure test used by BAAQMD in the ARB certification procedures.

Under section 112 of the Act, the minimum baseline (floor) at which standards may be set, for existing sources, is the "average emission limitation achieved by the best performing 12 percent of the existing sources"(section 112(d)(3) of the Act). The existing California standards are used statewide and on tank trucks from surrounding areas. California is estimated to account for nearly 12 percent of the national gasoline consumption. Since trucks in California and surrounding areas transport about 12 percent of the national gasoline, it is logical to assume that this represents about 12 percent of the affected gasoline tank truck population. The EPA looks at emission limitations achieved by each of the best performing 12 percent of existing sources, and average those limitations (59 FR 29196). "Average" is interpreted to mean a measure of central tendency such as the arithmetic mean or median. In the case of the California standards, nearly or about 12 percent of tank trucks at least meet or exceed the California standards, therefore these standards are at least the arithmetic average, and certainly the 94 percentile or median. Additionally, the existing California standards achieve the lowest emission limitation (in this case by achieving the lowest leakage rates) and are the best performing of existing sources. Thus, the EPA now considers the existing California standards as the existing source floor since they represent the average emission limitation achieved by the best performing 12 percent of the existing sources.

The EPA proposal contains a requirement to operate a vacuum assist system at new source facilities. The agency proposed this requirement for new sources based on the system providing "emission control that is achieved in practice by the best controlled similar source" (section 112(d)(3) of the Act). Many commenters questioned the amount of emission control that would be achieved by the vacuum assist system. In the EPA's consideration of the vacuum assist system as the floor for new sources, the EPA will also consider the existing California standards discussed earlier.

Through consideration of comments received on today's notice along with those on the proposed rule, the EPA will determine the control levels to be applied to tank truck leakage. Today's opening of the comment period is only for taking comment on the supplemental material contained in this notice on tank truck vapor leakage controls.

Specifically, the EPA is requesting comments and data on the consideration of the existing California standards as the floor level of control for new and existing facilities as required under section 112 of the Act. The EPA is also requesting comment on whether the level of control for tank trucks at new and existing facilities should be based on the existing or the proposed California standards. Comments are also requested on the use and accuracy of the test procedures and methods referred to earlier and provided in the docket, including both the existing and updated or revised procedures and methods.

Dated: August 4, 1994.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 94-20441 Filed 8-18-94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 6

Federally Supported Health Centers Assistance Act of 1992

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Health and Human Services (the "Secretary"), in consultation with the Attorney General, proposes to issue rules under the "Federally Supported Health Centers Assistance Act of 1992". The Act provides for liability protection for certain health care professionals and entities. This proposed rule sets forth information whereby an entity or a person can determine when, and the extent to which, it is likely to be protected under the Act.

DATES: The public is invited to submit comments on this proposed rule until September 19, 1994.

ADDRESSES: Comments should be submitted to:

Libby Merrill, Office of Program Policy and Development, Bureau of Primary Health Care, 4350 East-West Highway, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT:

Richard C. Bohrer, Director, Division of Community and Migrant Health, Phone: (301) 594-4300.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 224(a) of the Public Health Service Act (the Act), (section 233(a) of Title 42 of the United States Code), provides that the remedy against the United States provided under the Federal Tort Claims Act (FTCA) resulting from the performance of medical, surgical, dental or related functions by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment shall be exclusive of any other civil action or proceeding. Public Law 102-501 provides that, subject to its provisions, certain entities and officers, employees and contractors of entities shall be deemed to be employees of the Public Health Service within the exclusive remedy provision of section 224(a). This proposed rule implements certain provisions of Pub. L. 102-501.

II. Entities

An entity will be deemed to be an employee of the Public Health Service pursuant to Pub. L. 102-501 only if HHS, in consultation with the Attorney General, has determined, and has advised the entity, that the entity—

(A) receives Federal funds under any of the following grant programs:

(1) Section 329 of the Act, 42 U.S.C. 254b (relating to grants for migrant health centers);

(2) Section 330 of the Act, 42 U.S.C. 254c (relating to grants for community health centers);

(3) Section 340 of the Act, 42 U.S.C. 256 (relating to grants for health services for the homeless); and

(4) Section 340A of the Act, 42 U.S.C. 256a (relating to grants for health services for residents of public housing); and

(B) meets the following requirements:

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, progressional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has

obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of section 224 to the entity of its officers, employees, of contractors as provided for under this section, or, is such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) has fully cooperated with the Attorney General in providing information relating to an estimate described under section 224(k) of the Act.

Proposed § 6.5 provides that an entity will be deemed to be an entity described in section 224(g) as of the effective date of the notice which it receives from the Department of Health and Human Services that it has been deemed to be an entity as described for purposes of the Act. Each notice shall be effective only as to acts and omissions occurring on and after the date specified in the notice and prior to January 1, 1996, the statutory sunset date for this program. (Proposed § 6.6(a).)

In some cases, grantees contract with other entities (as opposed to individual contractors—see section III below) for the provision of health services. The typical situation is a subgrant or contract for the provision of the full range of health services. For example, the legislative history of Pub. L. 102–501 describes the case of a grantee in the Los Angeles area which itself has no clinical staff, but which contracts with three primary care clinics for the actual delivery of services. If one (or more) of these clinics provides the full range of services mandated under section 330 to its own medically undeserved population, in accordance with other applicable requirements under section 330, it would be eligible for a determination by the Secretary that it too is a covered entity. (H.R. Rep. No. 102–823, Part 2, p. 7, 102d Cong. 2d Sess., Sept. 14, 1992.) Proposed § 6.3(b) provides that the Secretary will identify those contracting entities that will be subject to coverage under section 224(g) in notices issued pursuant to § 6.5.

III. Covered Individuals

In addition to the entity itself, section 224(g) provides that certain individuals may be covered under the FTCA. Officers and employees are subject to coverage, as well as certain contractors.

Public Law 102–501 provides that an individual may be considered to be a contractor of an entity described in Pub. L. 102–501 only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

(1) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract; or

(2) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).

Coverage of individuals, whether employees of contractors, does not extend to acts or omissions that are not related to the grant supported activity. The covered entity itself (assuming it meets the statutory requirements for FTCA coverage) will be covered for claims against it, even if an individual health care practitioner is not covered in a particular case. Thus, for example, if a contractor works fewer than 32½ hours and is not a provider of obstetrical services, the contractor would not be covered for services related to the grant, but the grantee itself would be covered.

IV. Covered Acts and Omissions

Proposed § 6.6 provides elaboration on the scope of the statutory protection for covered entities and individuals. Paragraph (a) states the relevant dates of coverage. Paragraph (b) repeats the provision of section 224(a) that limits coverage to claims for damage for personal injury or death resulting from the performance of medical, surgical, dental, or related functions. Paragraph (c) states that for covered individuals, only acts or omissions within the scope of their employment (or contract for services, in the case of covered contractors) are covered. Thus, for example, "moonlighting" activities of a physician employed by a covered grantee would not be covered.

Paragraph (d) of proposed § 6.6 addresses the limitation that only acts or omissions related to the grant-supported activity are covered. The Department is aware that there has been some confusion since the enactment of section 224(g) about the types of activities that would be covered. In particular, there have been questions about the issue of when coverage is available where individuals who are not registered patients of the grantee are treated. This paragraph provides clear standards for answering these questions. Coverage will be available for the treatment of non-patients of the covered entities only when the Secretary determines either that (1) the provision of the services to such individuals benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by the entity, or (2) the provision of services to such individuals facilitates the provision of services to patients of the entity, or (3) such services are otherwise required to be provided to such individuals under an employment contract or similar arrangement between the entity and the covered individual. Examples of situations within the scope of proposed § 6.6(d) are as follows:

- A community health center deemed to be a covered entity establishes a school-based or school-linked health program as part of its grant supported activity. Even though the students treated are not necessarily registered patients of the center, the center and its health care practitioners will be covered for services provided, if the Secretary makes the determination in subparagraph (1).
- A migrant health center requires its physicians to obtain staff privileges at a community hospital. As a condition of obtaining such privileges, and thus being able to admit the center's patients to the hospital, the physicians must agree to provide occasional coverage of the hospital's emergency room. The Secretary would be authorized to determine that this coverage is necessary to facilitate the provision of services to the grantee's patients, and that it would therefore be covered by subparagraph (2).
- A homeless health services grantee makes arrangements with local community providers for after-hours coverage of its patients. The grantee's physicians are required by their employment contracts to provide periodic cross-coverage for patients of these providers, in order to make this arrangement feasible. The Secretary may determine that the arrangement is within the scope of subparagraph (3). Again, however, it should be understood that this would not extend the scope of coverage under Pub. L. 102–501 to "moonlighting" activities by center health care practitioners.

This proposed rule is not intended to constitute, and does not constitute, a comprehensive notice pertaining to any provision of Pub. L. 102–501 except to the extent that procedures pertaining to

implementation of Pub. L. 102–501 are described explicitly above. The applicability of Pub. L. 102–501 and 42 U.S.C. 233(a) to a particular claim or case will depend upon the determination or certification (as appropriate) by the Attorney General that the individual or entity is covered by Pub. L. 102–501 and was acting within the scope of employment, in accordance with normal Department of Justice procedures. A determination or certification by the Attorney General is subject to judicial review.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, benefits, incentives, equity, and availability of information. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. In addition, the Regulatory Flexibility Act of 1980 requires that we include an analysis of all rules the significantly impact small businesses.

These proposed regulations provide information whereby health care entities or individual scan determine when, and to what extent they are likely to be protected for medical malpractice under the Federal Tort Claims Act (FTCA). Therefore, the Secretary certifies that the proposed regulations will not have a significant effect on a substantial number of small entities.

For this reason, a regulatory analysis is not required.

Paperwork Reduction Act of 1980

This proposed rule contains no information collection or reporting requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 6

Grant Programs—Health.

Dated: May 9, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: June 16, 1994.

Donna E. Shalala,

Secretary.

Part 6 is added to Chapter I of Title 42 to read as follows:

PART 6—FEDERAL TORT CLAIMS ACT COVERAGE OF CERTAIN GRANTEES AND INDIVIDUALS

Sec.

6.1 Applicability.
6.2 Definitions.
6.3 Eligible Entities.
6.4 Covered Individuals.
6.5 Deeming Process for Eligible Entities.
6.6 Covered Acts and Omissions.

Authority: Sections 215 and 224 of the Public Health Service Act, 42 U.S.C. 216 and 233.

§ 6.1 Applicability.

This part applies to entities and individuals whose acts and omissions related to the performance of medical, surgical, dental, or related functions are covered by the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671–2680) in accordance with the provisions of section 224(g) of the Public Health Service Act (42 U.S.C. 233(g)).

§ 6.2 Definitions.

Act means the Public Health Service Act, as amended.

Attorney General means the Attorney General of the United States and any other officer or employee of the Department of Justice to whom the authority involved has been delegated.

Covered entity means an entity described in § 6.3 which has been deemed by the Secretary, in accordance with § 6.5, to be covered by this part.

Covered individual means an individual described in § 6.4.

Effective date as used in § 6.5 and § 6.6 refers to the date of the Secretary's determination that an entity is a covered entity.

Secretary means the Secretary of Health and Human Services (HHS) and any other officer or employee of the Department of HHS to whom the authority involved has been delegated.

Subrecipient means an entity which receives a grant or a contract from a covered entity to provide a full range of health services on behalf of the covered entity.

§ 6.3 Eligible entities.

(a) *Grantees.* Entities eligible for coverage under this part are public and nonprofit private entities receiving Federal funds under any of the following grant programs:

(1) Section 329 of the Act (relating to grants for migrant health centers);

(2) Section 330 of the Act (relating to grants for community health centers);

(3) Section 340 of the Act (relating to grants for health services for the homeless); and

(4) Section 340A of the Act (relating to grants for health services for residents of public housing).

(b) *Subrecipients.* Entities that are subrecipients of grant funds described in paragraph (a) of this section are eligible for coverage only if they provide a full range of health care services on behalf of an eligible grantee and only for those services carried out under the grant funded project.

§ 6.4 Covered individuals.

(a) Officers and employees of a covered entity are eligible for coverage under this part.

(b) Contractors of a covered entity who are physicians or other licensed or certified health care practitioners are eligible for coverage under this part if they meet the requirements of section 224(g)(5) of the Act.

(c) An individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of a covered entity will not be covered for acts or omissions occurring after receipt by the entity employing such individual of notice of a final determination by the Attorney General that he or she is no longer covered by this part, in accordance with section 224(i) of the Act.

§ 6.5 Deeming process for eligible entities.

Eligible entities will be covered by this part only on and after the effective date of a determination by the Secretary that they meet the requirements of section 224(h) of the Act. In making such determination, the Secretary will receive such assurances and conduct such investigations as he or she deems necessary.

§ 6.6 Covered acts and omissions.

(a) Only acts and omissions occurring on and after the effective date of the Secretary's determination under § 6.5 and before January 1, 1996, are covered by this part.

(b) Only claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions are covered by this part.

(c) With respect to covered individuals, only acts and omissions within the scope of their employment (or contract for services) are covered. If a covered individual is providing services which are not on behalf of the covered entity, such as on a volunteer basis or on behalf of a third-party (except as described in paragraph (d) of this section), whether for pay or otherwise, acts or omissions which are related to such services are not covered.

(d) Only acts and omissions related to the grant-supported activity of entities are covered. Acts and omissions related to services provided to individuals who are not patients of a covered entity will be covered only if the Secretary determines that:

(1) the provision of the services to such individuals benefits patients of the entity and general populations that

could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(2) the provision of the services to such individuals facilitates the provision of services to patients of the entity; or

(3) such services are otherwise required to be provided to such individuals under an employment contract or similar arrangement between the entity and the covered individual.

[FR Doc. 94-20361 Filed 8-18-94; 8:45 am]

BILLING CODE 4160-15-M

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42 CFR Part 54a

RIN 0905-AE08

Grants for National Alcohol Research Centers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the current regulations governing grants for alcohol abuse and alcoholism prevention, treatment, and rehabilitation services and National Alcohol Research Centers to set forth changes necessitated by enactment of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act, and to make other changes necessary to update the regulations.

DATES: Comments concerning the regulations must be received on or before October 18, 1994 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B-11, 9000 Rockville Pike, Bethesda, Maryland 20892-0001.

FOR FURTHER INFORMATION CONTACT: Jerry Moore at the address above, or telephone (301) 496-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 122 of the ADAMHA Reorganization Act, Public Law 102-321, which was enacted on July 10, 1992, transferred Public Health Service (PHS) Act section 511, National Alcohol Research Center, to Title IV, Part C, Subpart 14 of the Act, and redesignated the section as PHS Act section 464J. Under PHS Act section 464J, the Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism (NIAAA), may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral and social issues related to alcoholism and alcohol abuse, and shall make annual grants to the Centers, including a grant to a designated Center for research on the effects of alcohol on the elderly. The NIH proposes to amend the current regulations governing these grants by revising the "Table of Contents" section, removing reserved sections 54a.508 and 54a.509, and redesignating section 54a.510 as 54a.508, revising the authority citation and "Applicability" section to show the changes necessitated by enactment of the ADAMHA Reorganization Act, providing additional definitions, replacing the language in section 54a.504 with non-specific language which will eliminate the need to seek OMB regulatory review for future changes in the grant application form, and revise section 54a.506(c) by removing the $1 million limitation on grant awards to conform to Public Law 98-24 which eliminated the $1 million cap. Additionally, NIH proposes to add a new section 54a.509 to the current regulations setting forth other HHS policies and regulations that apply to grants awarded under subpart E. 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

Because this rule merely makes minor changes in grant application practices and conforms grant awards to the current statute, it will have no consequential effects on the economy or small entities. Therefore the Secretary has determined that this rule is not significant within the definition of Executive Order 12866, and the Secretary certifies that this rule will not have a significant impact on a substential number of small entities.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) review and approval 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 program affected by the regulations is 93.981.

List of Subjects in 42 CFR Part 54a

Alcohol abuse; Alcoholism; Grant programs—Health.

Dated: December 17, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: August 5, 1994.

Donna E. Shalala,

Secretary.

For reasons set out in the preamble, it is proposed to amend part 54a, subpart E, of title 42 of the Code of Federal Regulations, to read as set forth below.

PART 54a—GRANTS FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES AND NATIONAL RESEARCH CENTERS

Subparts A—D [Reserved]

Subpart E—Grants for National Alcohol Research Centers

1. The authority citation for subpart E would be revised to read as follows:

Authority: 42 U.S.C. 216, 285n-2.

2. and 3. Section 54a.501 would be revised to read as follows:

§ 54a.501 To which programs do these regulations apply?

The regulations in this subpart apply to grants to develop, establish, and support centers for interdisciplinary research relating to alcoholism and other alcohol problems as authorized by section 464J of the Act (42 U.S.C. 285n-2).

4. Section 54a.502 would be revised to read as follows:

§ 54a.502 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

HHS means the Department of Health and Human Services.

National Alcohol Research Center or *Center* means an institution engaged in long-term interdisciplinary research relating to alcoholism and other alcohol problems.

Non profit as applied to any institution or association means an institution or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

5. Section 54a.503 would be amended by revising the heading and paragraph (b) to read as follows:

§ 54a.503 Who is eligible to apply?

* * * * *

(b) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

6. Section 54a.504 would be revised to read as follows:

§ 54a.504 How to apply for a grant?

An institution interested in applying for a grant under this subpart must submit an application at such time and in such form and manner as the Secretary may prescribe.[1]

7. Section 54a.505 would be amended by revising paragraphs (f), (h) and (i), and adding a new paragraph (j) to read as follows:

§ 54a.505 Program requirements.

* * * * *

(f) Have the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate students, for nursing, social work and other specialized graduate students, and for medical and osteopathic students and physicians;

(g) * * *

(h) Provide assurances that any significant changes in the Center's scientific activities or other Center activities will be made only with the prior approval of the Secretary;

(i) Establish a Program Advisory Committee, chaired by the Center director, to review and make recommendations to the Center director on the conduct of all activities of the Center. The Committee shall be composed of persons who are not associated with the Center (apart from their membership on the Committee); and

(j) Have a detailed 5-year plan for the Center program which identifies the principal areas of research, the relationship of each area of research to the central theme of the Center program, the discipline involved, and plans for coordination among them.

8. Section 54a.506 would be amended by revising paragraphs (a), (a)(8) and (c) to read as follows:

§ 54a.506 Grant awards.

(a) Within the limits of funds available, the Secretary, after taking into account the comments of an appropriate peer review group, may award grants to applicants with proposed programs which have been recommended for approval by the council and will in his or her judgment best promote the purposes of section 464J of the Act; taking into consideration among other pertinent factors:

* * * * *

(8) The degree to which the application adequately provides for the requirements of § 54a.505.

(b) * * *

(c) 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 a separate application at the time and in the form and manner that the Secretary may require to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of those awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. Continuation awards require a determination by HHS that continued funding is in the interest of the government.

* * * * *

9. Section 54a.507 would be amended by removing the footnote and revising the last sentence of paragraph (a) to read as follows:

54a.507 Expenditure of grant funds.

(a) * * * For purposes of this paragraph, construction means the construction of new buildings, the expansion of existing buildings, and the acquisition, remodeling, replacement, renovation, major repair (to the extent permitted by regulations), or alteration of existing buildings (including architects' fees, but not including the cost of acquisition of land or off-site improvements), and initial equipment of new buildings and of the expanded, remodeled, repaired, renovated, or altered part of existing buildings.

* * * * *

§ 54a.510 [Redesignated as 54a.508]

9. Section 54a.510 would be redesignated as 54a.508.

10. A new section 54a.509 would be added to read as follows:

§ 54a.509 Other HHS policies and regulations that apply.

Several other policies and regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR part 50, subpart A—Responsibilities 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 procedures

45 CFR part 16—Procedures of the Departmental Grant Appeals Board

45 CFR part 46—Protection 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 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 successor

NIH Guide for the Care and Use of Laboratory Animals (Revised 1985), as may be amended, or successor

59 FR 11146 (March 9, 1994), as may be amended, or its successor—NIH Guidelines for Inclusion of Women and Minorities as Subjects in Clinical Research

[FR Doc. 94–20359 Filed 8–18–94; 8:45 am]

BILLING CODE 4140–01–M

[1] Grant applications, instructions, and program guidelines may be obtained from the Director of the National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Rockville, Maryland 20857.

Administration for Children and Families

45 CFR Part 212

RIN 0970–AB45

Assistance for United States Citizens Returned From Foreign Countries

AGENCY: Administration for Children and Families, HHS, Office of Refugee Resettlement.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking would amend the regulations concerning the U.S. Repatriate Program. The proposed rule would require agencies which provide assistance to groups of United States citizens who are returned from foreign countries to the United States by the Department of State due to war, threat of war, civil disorder, or natural disaster to request and obtain advance approval from the Administration for Children and Families to incur expenses for developing and preparing to implement repatriation plans for groups of eligible persons. This action is necessary in order for the Department to appropriately oversee the limited funding available for such activities.

DATES: Comments must be received on or before October 18, 1994.

ADDRESSES: Comments should be addressed to Division of State Legalization and Repatriation, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 6th floor, Washington, DC 20447.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m., except Federal holidays. Although we will not be able to acknowledge or respond to comments individually in preparing the final rule, we will respond to comments in the preamble.

FOR FURTHER INFORMATION CONTACT: David B. Smith (Director, Division of State Legalization and Repatriation), 202–401–9255.

SUPPLEMENTARY INFORMATION

Background

The U.S. Repatriate Program is authorized by Section 1113 of the Social Security Act and is responsive to Executive Order 12656 regarding services provided to repatriated U.S. citizens. The program provides temporary assistance to needy U.S. citizens and their dependents who are returned to the United States by the Department of State for reasons of destitution, illness, war, threat of war, invasion, civil unrest, or natural disaster. Under current law and regulations, assistance provided through the program to repatriates must be repaid to the United States Government unless the Assistant Secretary for Children and Families specifically waives this requirement.

Group Repatriation

When groups of U.S. citizens and their dependents must be evacuated from foreign countries and returned to the United States due to war, threat of war, invasion, civil unrest, or natural disaster, States administer the necessary reception and assistance. These repatriation events are generally referred to as Group Repatriations. In the event that the President declares a national security emergency, Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," requires the Secretary of Health and Human Services to coordinate such a repatriation. This type of group repatriation is referred to as Emergency Repatriation.

In response to E.O. 12656, the U.S. Repatriate Program has developed a National Emergency Repatriation Plan which calls for States to develop their own Emergency Repatriation Plans. Under these plans, the States provide for the logistical arrangements for receiving U.S. citizens repatriated as part of a declared national security emergency and providing assistance for their travel to their final destinations and other necessities to ensure the immediate welfare of the repatriates. These plans are activated upon the request of the Department if, and only if, the President declares a national security emergency.

Since the States' Emergency Repatriation Plans are suitable for use in the event that groups of American citizens are evacuated due to war or threat of war, invasion or other civil violence, or natural disaster—but a national security emergency is not declared under Executive Order 12656—the U.S. Repatriate Program recognizes that States could use these plans as both Emergency Repatriation Plans and Group Repatriation Plans, and encourages them to do so.

Administrative Costs

The statutory authority, as well as the current regulations, provide for States or other agencies providing repatriation assistance to be reimbursed for their administrative expenses. Since group/emergency repatriations are a relatively rare event, the Department wishes to ensure that the amount of administrative expenses incurred by States in planning or preparing for receiving group repatriations is reasonable and appropriate.

To this end, we are proposing that if States wish to be reimbursed for their administrative expenses, they must seek and receive prior approval from the Department before incurring expenses associated with developing group/emergency repatriation plans. States must also receive prior approval to be reimbursed for the costs of preparing to implement the plans, such as conducting training exercises or making physical preparations to a reception site, unless notified by the Department that such preparations are necessary.

In order to keep administrative requirements to a minimum, we are not proposing to mandate any particular format for States to request approval. In submitting a written request for administrative expenses in advance of incurring costs, a State may use any format the State desires. States should include an estimate of the expenses they will incur, along with a description of the activities to be undertaken and a rationale for the expenditure.

Departmental review of the request will consist of (1) determining if the activities are, in fact, necessary, and (2) evaluating whether the estimated cost is reasonable for the activities to be conducted.

We are also proposing to make technical changes throughout 45 CFR part 212 to update references to the office's designation and the agency official's title.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (Public Law 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small entities.

The primary impact of this rule is on State governments. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it would simply require agencies to obtain advance approval from the Administration for Children and Families before incurring administrative costs in developing implementation plans for the repatriation of groups of eligible individuals. Thus, a regulatory flexibility analysis is not required.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Paperwork Reduction Act

This proposed amendment would require States to submit information regarding their activities and estimated costs for Departmental approval prior to the incurring of administrative expenses for planning and implementing group/emergency repatriation procedures. The Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) has been requested.

(Catalogue of Federal Domestic Assistance Program No. 93.579, U.S. Repatriate Program)

List of Subjects in 45 CFR Part 212

Administrative cost, Repatriation, Reporting and recordkeeping Requirements, Social Security Act, U.S. Repatriate Program.

Dated: June 23, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: August 5, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 212 of subtitle B of title 45 of the Code of Federal Regulation is proposed to be amended as follows:

PART 212—ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

1. The authority citation for part 212 continues to read as follows:

Authority: Sec. 302, 75 Stat. 142, sec. 1102, 49 Stat. 647; 42 U.S.C. 1313, 1302.

2. Section 212.1 is amended by revising paragraph (d) and (e) to read as follows:

§ 212.1 General definitions.

* * * * *

(d) The term "Administration" means the Administration for Children and Families, Department of Health and Human Services;

(e) The term "Assistant Secretary" means the Assistant Secretary for Children and Families;

* * * * *

3. Section 212.8 is amended by redesignating the current text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 212.8 Federal payments.

* * * * *

(b) To receive reimbursements, States, or other agencies, shall request and receive prior approval from the Assistant Secretary for administrative expenses incurred in developing or preparing to implement repatriation plans for groups of eligible persons. Such requests should include a description of the activities to be undertaken, an estimate of the expenses and a rationale for the expenditures. In reviewing requests, the Assistant Secretary will consider the necessity and reasonableness of the costs.

§§ 212.1, 212.2, 212.8 and 212.9 [Amended]

4. In addition to the amendments set forth above, in 45 CFR 212 remove the word "Administrator" and add, in its place, the words "Assistant Secretary" in the following places: (a) Section 212.1(i); (b) Section 212.2; (c) Section 212.8, as redesignated; and (d) Section 212.9(a)(4) and (b).

§§ 212.3, and 212.10 [Amended]

5. Also, in 45 CFR 212 remove the words "the Service" and add, in their place, the words "the Administration" in the following places: (a) Section 212.3(b); and (b) Section 212.10(b).

[FR Doc. 94–20360 Filed 8–18–94; 8:45 am]

BILLING CODE 4184–01–M

Notices

Federal Register
Vol. 59, No. 160
Friday, August 19, 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

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1320.18. The Agency solicits comments on subject submission. This action is necessary in order for the Agency to amend its Farmer Programs servicing regulations to add the Disaster Set-aside (DSA) Program. This program will be made available to Farmer Program borrowers who operated a farm or ranch in a county where a disaster occurred in 1993 and was declared/designated a disaster area in accordance with FmHA regulations. Under this program, distressed borrowers will have the opportunity to move their next scheduled FmHA annual installment to the end of the loan term. The intended effect is to service disaster victims in an efficient and timely manner while keeping them in business.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Loan Officer, Farmer Programs Loan Servicing and Property Management Division, USDA, 14th Street and Independence Avenue, SW., South Building, Washington, DC 20250, Telephone (202) 720–4572.

SUPPLEMENTARY INFORMATION: The Agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within 10 days. The supporting statement attached explains the need for adding FmHA Regulation 1951–T, Disaster Set-Aside Program.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement

7 CFR 1951–T, Disaster Set-Aside Program

1. Explanation of the circumstances that make the collection of information necessary.

The Farmers Home Administration (FmHA) is requesting expedited clearance of the paperwork burden for this regulation. Approval is requested in accordance with the Paperwork Reduction Act and 5 CFR 1320.

Eighty percent of the 3,151 counties serviced by FmHA were declared disaster areas in 1993. Due to heavy flooding in the midwest and extreme droughts in the South, considerably more borrowers were affected by disasters in 1993 than in any of the previous five years. Although this program was initially begun for the borrowers who were affected by the 1993 disasters, it will also help those who are affected by the 1994 flood disaster in the South if they were also affected by the previous disasters in 1993. It will also be possible to consider extension of this program to assist borrowers affected only by the 1994 disaster. This consideration will be given prior to issuance of the final rule. In order to prevent massive delinquencies and farm failures, it is imperative that borrowers in a crisis situation receive immediate financial assistance.

It is for this purpose and by the authority granted the Secretary under the Consolidated Farm and Rural Development Act (CONACT), Section 331A (7 U.S.C. 1981a), FmHA has made available the Disaster Set-aside Program. As provided in Section 331A, the Secretary has the authority to defer principal and interest at the request of the borrower on any outstanding loan made, insured, or held by the Secretary under the CONACT, subject to the borrower showing that due to circumstances beyond his/her control, he/she is temporarily unable to continue making payments when due without unduly impairing his/her standard of living. The set-aside program is designed to assist borrowers in financial distress who operated a farm or ranch in a county where a disaster occurred in 1993 and was declared/designated a disaster area as set forth in subpart A of part 1945 of this chapter.

Under this program, farmer programs borrowers can receive immediate financial relief from their FmHA payment obligations. FmHA projects that approximately 60,000 borrowers affected by 1993 disasters will request assistance under the set-aside program. Of these borrowers, approximately 20,000 have installments that came due January 1, 1994. If these installments are not paid by January 1, 1995, or otherwise set-aside, the borrower will be two installments behind and will no longer be eligible to receive disaster set-aside assistance. Borrowers more than one payment behind will be able to receive more assistance and offered more options through FmHA's loan servicing program under 7 CFR 1951–S. However, borrowers who cannot obtain servicing through 7 CFR 1951–S may be able to cure their delinquency with set-aside assistance. The set-aside program will be better for some borrowers than the servicing program provided through 7 CFR 1951–S since the set-aside will be a faster process, eligibility requirements are easier to meet, paperwork is less, and some borrowers will be able to be back on track after one payment is set-aside. The Agency realizes that although this may not be a solution to finding the borrower a feasible plan, it may provide temporary assistance to borrowers needing that type of relief. It will allow some borrowers to use sources other than FmHA to maintain their farm operation and allow them to work out their financial difficulty over the next year or so. Borrowers can cure their FmHA delinquency while at the same time continue farming and find the means to recover from the affects of the disaster. Other borrowers may prefer to use the year to voluntarily liquidate. This regulation will therefore provide options to prevent the foreclosure of borrowers in both of these instances It is because of these reasons that implementation of this regulation as an interim rule is crucial to providing assistance to borrowers with the most

urgent need while keeping them in business or allowing them crucial time to make optional choices. Borrowers who are not eligible for the DSA program, or who need more extensive servicing, will still have the opportunity to be considered for FmHA's primary loan servicing program as set forth in 7 CFR 1951–S.

The set-aside program allows eligible borrowers to move one FmHA annual installment for each loan to the end of the loan term, thereby quickly eliminating the immediate financial stress. The installment set-aside may be the one due immediately after the disaster or, if that installment is paid to the neglect of other creditors or family living and operating expenses, then the next scheduled installment may be set-aside. Borrowers who received primary loan servicing after the disaster will not be eligible for the disaster set-aside, as restructuring of the account resolved the financial distress for the current and next production/marketing period.

The reporting requirements imposed on the public by the regulations set out in 7 CFR 1951–T are necessary to administer this program. Borrowers must request DSA in writing and be able to show from their actual production income and expense records that because of the disaster, their projected income was reduced to an amount that would prevent payment of all family living and operating expenses, and paying amounts due FmHA and/or other creditors. The addendum is needed in order to amend the promissory note/assumption agreement to reflect the amount set-aside and provide for collection on or before the final due date of the loan.

2. Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.

The information required of FmHA farm borrowers is collected by FmHA loan servicing officials to facilitate an effective decision-making process when considering set-aside requests.

The effectiveness of this regulation is dependent upon collection of information from the borrower and the ability to execute an agreement for future repayment of the set-aside installment. Without this information, the Agency cannot provide disaster victims with the servicing they most desperately need in an expedient manner.

Specifically, the burden imposed by this regulation is described as follows:

Written Request for DSA

The letter of notification about the DSA program requires borrowers to respond in writing if they wish to be considered for set-aside. Written response can be limited to one sentence with signatures of all persons liable for the FmHA debt. The burden is limited to the time it takes the borrower to read the notification letter and prepare a signed written request. The average response time is estimated to be 15 minutes.

Production, Income and Expenses Records

The letter of notification about the DSA program also requires the borrower to provide actual production, income and expense figures for the production/marketing period in which the 1993 disaster occurred, unless this information has already been provided to FmHA. The majority of the borrowers who request DSA will have already provided these records because of other FmHA regulations that require annual year-end analysis of the farming operation. The average response time is estimated to be 5 minutes.

Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-Aside Program

In order for eligible borrowers to participate in the DSA program, an addendum must be signed for each loan installment set-aside and attached to the promissory note/assumption agreement. This addendum must be signed within 30 days from the date the borrower is notified of eligibility. The addendum provides an agreement from the borrower that the installment being set-aside, plus accrued interest on any principal set-aside, will be paid on or before the final due date of the loan. The addendum is completed by FmHA personnel. The burden imposed on the borrower is limited to the time required to read and sign the addendum. The average burden time is estimated to be 5 minutes.

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

The information collected is of such type and nature that the use of improved information technology, such as data and word processing, would not significantly reduce the public burden. The Agency has not identified any legal obstacles to reducing reporting burdens associated with this regulation.

4. Describe efforts to identify duplication.

Every effort has been made to avoid unnecessary duplication of information collected. Any information that was previously collected concerning the debtor that remains relevant is utilized to reduce the public burden.

5. Show specifically why any similar information already available cannot be used or modified for the purpose(s) described in 2.

There is no similar information available to replace the written request of the borrower or the set-aside addendum. However, and as previously stated, if the borrowers production and income and expense records for the disaster year have already been collected, this information does not have to be provided again.

6. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information required by this regulation places no burden on small businesses or other small entities beyond that performed in the course of normal business practices.

7. Describe the consequence to Federal program or policy activities if the collection were conducted less frequently.

The borrower can only request disaster set-aside one time. Therefore, the frequency of collection is at the absolute minimum level necessary to enable FmHA to make responsible decisions.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

There are no information requirements that are inconsistent with the guidelines in 5 CFR 1320.6.

9. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The following groups were contacted in July 1994 to obtain their views on the paperwork burden: (1) Lane Landenburger of the North Dakota Department of Agriculture, Telephone number 701–223–4423, (2) Lynn Hayes, Farmers Legal Action Group, Telephone number 612–223–5400, (3) Renee Robinson, Illinois Stewardship Alliance, Telephone number 217–498–9707, and (4) Melody G. Julian, National Association of County Supervisors, 316–227–3761. The regulation and form letter were reviewed. Their comments were all favorable. In their opinion, the regulation and instructions to the borrower were easy to understand. Most borrowers should have their actual

records for the 1993 disaster year completed since the 1993 tax year has already passed. In fact, most borrowers will have already provided these records to FmHA for their year-end analysis and will not have to provide them again. In these cases, the only item left to submit is the letter of request. They also stated the addendum the borrower signs is easy to read and understand and there shouldn't be any confusion.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents for the information required by this regulation.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information to be collected under this regulation does not involve any questions of a sensitive nature.

12. Provide estimates of annualized cost to the Federal Government and to the respondents. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses, and any other expense that would not have been incurred without the paperwork burden.

The annual cost to the Federal Government to implement and administer this regulation is estimated to be $1,544,400, which includes salaries, operational expenses and overhead. The national average cost factor is $17.16 per hour. Federal Government costs for this regulation are based on the number of notifications, responses and persons qualifying for the program, times the hourly cost factor.

The estimated annual cost to respondents is $246,092, using a rate of $10.34, derived from the Statistical Abstract of the United States 1992, the National Data Book, Table 650, page 410. This table was based on information from the U.S. Bureau of Labor Statistics Average Hourly and Weekly Earnings in Current and Constant (1982) Dollars for 1991.

13. Provide estimates of the burden of the collection of information.

Attached is a chart indicating the estimates of the public's annual burden. FmHA estimates that approximately 100,000 farmer programs borrowers will be notified of the DSA program. This number includes all FP borrowers who operated in a disaster area during 1993. FmHA estimates that approximately 60,000 of these borrowers will make a written request for DSA. The other 40,000 will not apply for various reasons. Approximately 10,000 borrowers have or will be restructured under subpart S of part 1951 and therefore will not be eligible for this program. Approximately 20,000 will not apply because they know they cannot meet the eligibilty requirements. The other 10,000 will not apply because even though they might have operated in a disaster area, they were able to pay all family living and operating expenses, and all payments to FmHA and other creditors.

Of the 60,000 borrowers who request DSA, FmHA estimates that 50,000 will actually receive DSA. The other 10,000 will either not qualify for the program or will choose 1951–S servicing instead.

14. Explain reasons for changes in burden, including the need for any increase.

This is a new regulation.

15. For collections of information whose results are planned to be published for statistical use.

There are no plans to publish information from these documents for statistical purposes and therefore Section B does not apply.

7 CFR 1951–T, DISASTER SET-ASIDE PROGRAM

Section of regulation	Title	Form No.	July 8, 1994						
			Est. No. of responses	Reports filed annually	Total annual responses	Est. No. of hours per response	Est. total hours	Est. hourly salary rate	Est. total cost
1951.953(b)(1)	Written Request for DSA.	Letter	60,000	1	60,000	.25	15,000	10.34	$155,100
1951.953(b)(2)	Production, income and expense records.	Written	60,000	1	60,000	.08	4,800	10.34	49,632
1951.957(a)(1) Exhibit A.	Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-aside Program.	Written	50,000	1	50,000	0.8	4,000	10.34	41,360
Totals				170,000		23,800	246,092		

PART 1951—SERVICING AND COLLECTIONS

Subpart T—Disaster Set-aside Program

Sec.
1951.951 Purpose.
1951.952 General.
1951.953 Notification and request for DSA.
1951.954–1951.956 [Reserved]
1951.957 Eligibility determination and processing.
1951.958 Supervision and servicing of borrowers with DSA.
1951.959 Exception authority.
1951.960–1951.999 [Reserved]
1951.1000 OMB control number.
Exhibit A—Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-Aside Program

Subpart T—Disaster Set-aside Program

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for establishing and implementing the Disaster Set-aside Program (DSA). The DSA program is available to Farmer Programs (FP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a 1993 disaster. FP loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Non-program (NP) farm type loans may be serviced

under this subpart for borrowers who also have program FP loans. FP borrowers have until July 1, 1995, to request disaster set-aside and submit a complete application. Requests received after this date will not be accepted.

§ 1951.952 General.

Disaster set-aside is a program whereby borrowers who are current or not more than 1 installment behind on any and all FP loans may be permitted to move one Farmers Home Administration (FmHA) scheduled annual installment(s) for each eligible FP loan to the end of the loan term. Borrowers whose loans are restructured in accordance with subpart S of this part after the disaster occurred are not eligible for the DSA program. The intent of this program is to relieve some of the borrower's immediate financial stress caused by the disaster and avoid foreclosure by the Government.

§ 1951.953 Notification and Request for DSA.

(a) *Notification.* The County Supervisor will use form letter 1951–1–T to notify FP borrowers of the availability of the DSA program and how to apply. All FP borrowers, as defined in § 1951.906 of subpart S of this part, who operated a farm or ranch in a county during 1993 in which a disaster occurred and was declared/designated as a disaster area, or contiguous county, as set forth in subpart A of part 1945 of this chapter will be notified within 10 days of the effective date of this instruction. Notification of the DSA program will not affect the notification requirements set forth in subpart S of this part.

(b) *Request for DSA.*

(1) All FP borrowers liable for the debt must request disaster set-aside in writing prior to July 1, 1995.

(2) Borrowers must provide the County Supervisor with actual production, income and expense figures for the production/marketing period in which the 1993 disaster occurred, unless this information is already in the borrower case file.

(3) Borrowers may only be considered for DSA one time.

(c) *Eligibility requirements.*

(1) The borrower operated a farm or ranch in a county declared/designated a disaster area as set forth in subpart A of part 1945 of this chapter, or a contiguous county to such an area based on a 1993 disaster. The borrower must have been operating the farm or ranch at the time of the disaster.

(2) The borrower has acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults have been resolved. This means that even though the borrower has acted in good faith, he/she may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy, not properly maintaining chattel and real estate security, not properly accounting for the sale of security as agreed, or not carrying out any other agreements made with FmHA.

(4) The borrower is current or not more than one installment behind on any and all FP loans at the time the scheduled installment(s) will be set-aside as reflected on the Finance Office 540 or 582 status reports.

(5) The borrower's projected income for the disaster year was reduced as a result of the disaster, causing insufficient income available to pay all family living and operating expenses, pay debts to other creditors and pay FmHA. This determination will be based on the borrower's actual production and income and expense records for the disaster year. Releases of normal income security will continue as set forth in subpart A of part 1962 of this chapter.

(6) The term remaining on the loan(s) receiving set-aside equals or exceeds 2 years from the due date of the installment being set-aside.

(7) All FP loans will be current after the scheduled installments are set-aside.

§§ 1951.954–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* Upon receipt of a DSA request, the County Supervisor will determine whether the borrower meets the eligibility requirements set forth in § 1951.953(c) of this subpart and notify the borrower of the results within 30 days from the date of the DSA request. The file shall contain documentation to reflect the date of request and the date the borrower was notified and the addendum signed.

(1) The borrower shall be provided up to 30 days to sign Exhibit A, "Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-aside Program." If the addendum is not signed within 30 days and/or prior to the borrower becoming more than 1 installment behind, the DSA request will be withdrawn and the borrower notified of their appeal rights under subpart B of part 1900 of this chapter.

(2) Pending requests for primary loan servicing will continue to be considered as set forth in subpart S of this part. However, borrowers cannot accept servicing under both programs.

(i) Borrowers determined eligible for the DSA and 1951–S servicing will be required to choose between the two program requests. The choice will be noted in the borrower case file and initialed by the borrower.

(ii) Borrowers may choose to proceed with the DSA prior to a decision being made for primary loan servicing such as in cases where a decision will not be available on the primary loan servicing application prior to the borrower becoming more than 1 installment behind.

(iii) The application for the program not chosen will automatically be withdrawn at the time the installment(s) are set-aside or the loan(s) restructured, whichever is applicable. This voluntary withdrawal is not appealable.

(iv) By signing Exhibit A of this subpart, the borrower agrees to the withdrawal of any pending request for primary loan servicing. The borrower may resubmit a request at any time according to subpart S of this part.

(b) *Processing.* Installments will be set-aside as set forth in this paragraph.

(1) All borrowers liable for the debt will sign Exhibit A of this subpart for each loan installment set-aside. Exhibit A may be modified with the assistance of the Office of the General Counsel to comply with individual State laws.

(2) Only one unpaid installment for each FP loan may be set-aside.

(i) The installment set-aside will be the first scheduled annual installment due immediately after the disaster occurred, or if that installment is paid current, the next scheduled annual installment. Set-aside will not be granted on the loan if both of these installments are paid current.

(ii) The amount set-aside will not exceed the annual scheduled installment being set-aside minus any portion of that installment paid prior to Exhibit A being signed by the borrower. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date.

(iii) Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

(3) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside.

(4) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(5) There are no security requirements attached to the DSA program. All existing security instruments will remain in effect.

(6) Exhibit A will be used as the source document to process the set-aside through ADPS. Until automation capabilities are implemented, Exhibit A should be placed in a pending file and the borrower's account flagged "51–S." The Finance Office borrower account status reports will reflect the amount(s) set-aside for each loan.

(7) The National Automated Tracking System (AGCREDIT) will be utilized to document the notification and servicing scheme associated with this subpart.

(8) The loan(s) will be considered current after the installment(s) is set-aside and, therefore, debt writedown or net recovery buyout may not be subsequently approved under subpart S of this part, and loans may not be made under § 1941.14 of subpart A of part 1941 of this chapter, unless the set-aside is reversed as set forth in § 1951.958(b)(2) of this subpart or the borrower becomes delinquent on the non-set-aside portion.

(c) *Adverse determination.* Borrowers who do not meet the requirements for the DSA program will be notified of their appeal rights in accordance with subpart B of part 1900 of this chapter. If the borrower becomes more than 1 installment behind on any FP loan while processing the DSA request, or while an appeal is being considered, the DSA request will be denied and/or any associated appeal request withdrawn. Being denied set-aside based on the failure to meet the not-more-than-1-installment-behind requirement is not an appealable issue, but is reviewable. The letter to the borrower will describe in full detail all the reasons for the adverse decision. Borrowers denied set-aside will continue to be serviced in accordance with subpart S of this part.

§ 1951.958 Supervision and servicing of borrowers with DSA.

(a) *Supervision.* Borrower supervision will continue as set forth in subpart B of part 1924 of this chapter.

(b) *Servicing.* FP loans will continue to be serviced in accordance with the appropriate servicing regulations.

(1) Payments applied to the amount set-aside will be processed as a miscellaneous payment on Form FmHA 451–2, "Schedule of Remittance."

(2) The set-aside will be reversed and the addendum cancelled if, prior to the first scheduled installment due date after set-aside, the current borrower needs a writedown in order to develop a feasible plan or a net recovery buyout in accordance with subpart S of this part, or loan assistance set forth in § 1941.14 of subpart A of part 1941 of this chapter. The Finance Office must be notified by memorandum of the set-aside reversal prior to the time assistance is granted. A copy of the memorandum will be attached to the addendum.

(3) In cases not covered by paragraph (b)(2) of this section, the set-aside will be considered automatically cancelled whenever a program loan receives primary loan servicing.

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision or failure to take action in the case of an omission would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director, with the recommendation of the Assistant Administrator for Farmer Programs; or upon request initiated by the Assistant Administrator for Farmer Programs. Requests for exception must be made in writing and supported with documentation to explain the adverse effect and proposed alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.960–1951.999 [Reserved]

§ 1951.1000 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number [0000–0000]. Public reporting burden for this collection of information is estimated to be 15 minutes 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB#0000–0000), Washington, D.C. 20503.

Exhibit A of Subpart T—Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-Aside Program

Purpose: For use with the DSA program and to be signed by the borrower and attached to the promissory note/assumption agreement.

Addendum to the Promissory Note/Assumption Agreement for the Disaster Set-Aside Program

Date _____

Case Number _____

Name _____

Note/Assumption Agreement:

Fund Code _____

Loan No. _____

Date _____

Amount _____

This addendum amends the above described promissory note or assumption agreement to set forth the terms and conditions for set-aside of the installment described below.

Date of Scheduled Installment Set-Aside

_____

Amount of Installment Set-Aside:

Principal $ _____

Interest _____

Total $ _____

Any principal amount set-aside will continue to accrue interest at the same rate being charged the non-set-aside portion of the note.

This addendum does not change any of the terms or conditions of the promissory note/assumption agreement.

The undersigned borrower and any cosigners hereby agree to pay the installment being set-aside, plus any accrued interest on the principal amount set-aside, on or before the final due date of the loan, as set forth on the note or assumption agreement being amended

If the promissory note/assumption agreement is later restructured through primary loan servicing, the addendum will automatically be considered cancelled and the amount set-aside will be included in the total debt restructured.

The undersigned borrower(s) understands that by signing this addendum he/she is agreeing to the withdrawal of any pending request for primary loan servicing. This withdrawal does not affect the undersigned's future eligibility for primary loan servicing.

_____

Borrower

_____

Borrower

Dated: August 15, 1994.

Michael V. Dunn,

Administrator.

[FR Doc. 94–20434 Filed 8–18–94; 8:45 am]

BILLING CODE 3410–07–U

Forest Service

Environment Impact Statement, Shamrock Timber Sale(s), Tongass National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will issue a supplemental Draft EIS for the Shamrock Timber Sale(s). The supplement will include an additional road and unit, minor road changes, designation of retention areas, a new Forest Service list of sensitive species, a change in subsistence findings, and a change in the range of timber volume in the Proposed Action and Purpose and Need. This revised Notice of Intent (NOI) updates and replaces the December 1991 Notice.

The proposed action changes from 10–40 to 10–52 million board feet of commercial timber within the Shamrock area, and as before, to construct the associated road system. The timber would be sold in one or more timber sales beginning in September 1995.

The study area includes Value Comparison Units 436, 438, and 429 on Kupreanof Island in southeast Alaska. This area, encompassing approximately 108,000 acres, has been allocated by the Tongass Land Management Plan to Land Use Designation IV, in which management emphasis is primarily on commodity or market resources.

The original NOI was published on page 66428 of the 12/23/91 **Federal Register.** Notice of the draft EIS was published on page 45338 of the 10/27/93 issue, and the comment period of the Draft EIS was extended on page 59033 of the 11/5/93 issue.

The purpose of this project is to provide 10–52 million board feet of timber for harvest according to direction described in the Tongass Land Management Plan, to meet the Federal obligation to make timber volume available for harvest by timber operators, and to improve the timber productivity of the project area by harvesting mature stands of timber and replacing them with faster growing stands of second-growth timber.

The decision to be made is whether to harvest 10–52 million board feet of timber from the Shamrock Study Area, and if so, in which locations and under what conditions. This decision will be made by Abigail R. Kimbell, the Stikine Area Forest Supervisor.

EFFECTIVE DATE: Public scoping began in April 1992 and has been ongoing since that time. Interested publics are invited to comment. The comment period on the supplemental Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: The Shamrock analysis is being conducted by EA Engineering, Science and Technology under contract to the Petersburg Ranger District. Questions and comments can be directed to Ron Bockelman, EA Engineering, Science and Technology, 8520 154th Avenue NE., Redmond, WA 98052, phone (206) 869–2194.

SUPPLEMENTARY INFORMATION: A public scoping letter was sent to all persons who indicated an interest in the project by responding to the Stikine Area Project Schedule, or who otherwise notified the Stikine Area that they were interested in the Shamrock Timber Sale(s).

Alternatives include the no-action alternative and four action alternatives that would harvest form 20–52 million board feet of timber from 1,066–2,592 acres and construct 22–40 miles of specified road. Yarding systems would include shovel, highlead, skyline, and helicopter.

The following issues have been identified:

1. Transportation: What effect will road construction and subsequent maintenance following harvest have on access to and within the Shamrock Area?

2a. Timber Resources: How will long-term forest health and productivity be affected by harvesting and the specific harvest treatments in the Shamrock area?

2b. Threatened, Endangered, and Sensitive Plants (TES); Wetlands: Will harvesting and road construction result in adverse impact to any populations of TES plants? What are the expected losses of wetland area and functional value under each harvest alternative?

3. Wildlife: What effects will timber harvest and related activities have on wildlife habitat?

4. Fish: What effects will timber harvest and road construction have on habitats used by trout and salmon?

5. Biodiversity: How will timber harvesting associated with the Shamrock area affect the biodiversity and old growth structure of Kupreanof Island?

6. Watershed: Will timber harvesting adversely affect the hydrologic balance and water quality of streams in the Shamrock area?

7. Floodplains: Will harvest activities and road construction in the Shamrock area affect the conveyance of floodwater or result in an increase in potential flood damage?

8. Soils: To what degree will soil erosion and sedimentation increase as a result of harvest activities and the construction of roads in the Shamrock area?

9. Minerals: Will timber harvest and road building in the Shamrock area affect mining activities?

10. Air Quality: Are there potential air quality impacts due to burning, road construction, or harvest activities?

11. Subsistence: To what extent will each alternative affect subsistence resources and use within the study area?

12. Cultural Resources: Would cultural resources, particularly Native American sites, be impacted by harvesting in the Shamrock area?

13a. Recreation Opportunities: What effects will the proposed sale or sales in this area have on recreational opportunities?

13b. Wild and Scenic Rivers: What effects will each alternative have on streams eligible or suitable for Wild and Scenic River designation?

14. Visual Resources: To what extent will each alternative influence the landscape character of the analysis area, and to what extent will harvest designs be mitigated to protect visual quality?

15. Economics: To what extent will action alternatives within the Shamrock area include timber sale(s) that are profitable and meet economic criteria for timber harvest in the Tongass National Forest?

The supplemental Draft EIS is scheduled for publication in December 1994 and the Final EIS in September 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so 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, 533 [1978]). Also, environmental objections that could have been raised at the Draft EIS stage may be waived if not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts (*City*

of Angoon v. *Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so 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 helpful if comments refer to specific pages or chapters of the draft environmental impact 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 in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is the Abigail R. Kimbell, Forest Supervisor, Stikine Area of the Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: August 10, 1994.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 94–20392 Filed 8–18–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Upper Buffalo Creek Watershed, Marion County, WV

AGENCY: Soil Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Rollin N. Swank, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Upper Buffalo Creek Watershed project is available. Single copies of this record of decision may be obtained from Rollin N. Swank at the address show below.

FOR FURTHER INFORMATION CONTACT:

Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4153.

("This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.")

Dated: August 15, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–20412 Filed 8–18–94; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington 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 Washington Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 noon on Wednesday, September 21, 1994, at the Westin Hotel, 1900 5th Avenue, Seattle, Washington 98101. The purpose of the meeting is to review current civil rights developments in the State, and plan future project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bill Wassmuth or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–20387 Filed 8–18–94; 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: Field Representative Exit Questionnaire.

Form Number(s): BC–1294.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 13 hours.

Number of Respondents: 160.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In a continuous effort to devise policy and practice aimed at reducing turnover among field representatives (FR)s—our field interviewing staff—the Census Bureau needs to collect data on the reasons FRs leave the Bureau. An exit questionnaire will help the Census Bureau in identifying specific reasons for the turnovers. Based on the survey results, the Census Bureau can develop both general and specific plans to reduce turnover. Approximately every month, a sample of one–half of all FRs voluntarily resigning within the period will be contacted by telephone to complete a questionnaire. Interviewers hired to conduct the census enumeration will not be included in the sample. Similar data was last gathered in 1992. Since computers have recently become part of the FRs' tools the questionnaire now incorporates questions how on the use of computers may affect their decisions on continued employment.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

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

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

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

Dated: August 15, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–20403 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–07–F

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: Continuous Measurement System—Random Digit Dialing Test.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 21,000 hours.

Number of Respondents: 28,000.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The Census Bureau is developing and evaluating a design to continuously measure the long–form data that has traditionally been collected once a decade as part of the decennial census. Under the Continuous Measurement System (CMS) a long–form questionnaire would be mailed to a sample of different addresses contained in our master address file (MAF) each month. Continuously collecting the long–form data will not only provide more timely data, but will lessen respondent burden in the decennial census. The first phase in this research is to conduct a survey in approximately 2,000 different households each month over a 14 month period. The objectives of this test are to determine the feasibility and costs of a telephone nonrespondent follow–up component for the CMS, examine question wording to collect "rolling" or accumulated income estimates based on 5 years of data, review possible seasonal effects on income estimates, prototype the processing system, and research the cost and effectiveness of using cross–reference directories to obtain phone numbers. Random Digit Dialing (RDD) will be employed in the test as a means of sampling and for obtaining telephone numbers of households.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

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

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

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

Dated: August 15, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–20402 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–07–F

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: Feature and Address Reference Source Assessment Survey (FARSAS).

Form Number(s): GEO–MAF–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,656 hours.

Number of Respondents: 7,967.

Avg Hours Per Response: 20 minutes.

Needs and Uses: For the 2000 decennial census, as well as other census programs, the Census Bureau is building on its 1990 census address list to create a permanent and continuously maintained Master Address File (MAF). We will link this national inventory of living quarters to the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) data base. The existence of such a linked address/geographic file for the nation will provide important opportunities for the Census Bureau's research and demographic programs. The Census Bureau currently solicits the participation of local governments and metropolitan planning organizations (MPOs) in a cooperative arrangement to determine the locations of missing addresses and streets to assist us in maintaining the TIGER data base. For those not wishing to participate we will conduct the FARSAS to help us determine both the availability and usefulness of reference materials we can use to update the TIGER data base for those areas. On the basis of information collected during FARSAS we will be able to resolve non–matching cases from the geocoding process.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Voluntary.

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

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

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

Dated: August 15, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–20404 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Mega Computer Corporation; Order Denying Permission to Apply for or Use Export Licenses

On March 23, 1992, Mega Computer Corporation (Mega Computer) was convicted in the U.S. District Court for the Southern District of California of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Public Law 103–277, July 5, 1994)) (the Act). The conviction followed a plea of guilty to one count of a multiple-count criminal indictment. Mega Computer was convicted of knowingly violating the Act by exporting from the United States to Singapore United States-origin computer equipment without the validated export license required by the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations).

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Regulations for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of its conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Mega Computer's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Mega Computer permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on March 23, 2002. I have also decided to revoke all export licenses issued pursuant to the Act in which Mega Computer had an interest at the time of its conviction.

Accordingly, it is hereby Ordered:

I

All outstanding individual validated licenses in which Mega Computer appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Mega Computer's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II

Until March 23, 2002, Mega Computer Corporation, 10840 Thornmint Road, San Diego, California 92127, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III

After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Mega Computer by affiliation, ownership, control, or position or responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV

As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V

This Order is effective immediately and shall remain in effect until March 23, 2002.

VI

A copy of this Order shall be delivered to Mega Computer. This Order shall be published in the **Federal Register**.

Dated: August 10, 1994.

Charles M. Guernieri,

Acting Director, Office of Export Licensing.

[FR Doc. 94–20461 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–DT–M

Materials Technical Advisory Committee; Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held September 29, 1994, at 10:30 a.m., in the Herbert C. Hoover Building, Room 1617–M2, 14th Street and Pennsylvania Avenue NW., Washington, D.C. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials and or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 22, 1994, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: August 15, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–20458 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A-580–008]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On June 29, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea covering exports of this merchandise to the United States by the manufacturer Daewoo Electronics Co., Ltd. (Daewoo). Based on our review of these exports during the period April 1, 1988 through March 31, 1989, we found a margin of 4.00 percent. Daewoo had no shipments during the April 1, 1989 through March 31, 1990, administrative review period. We invited interested parties to comment on the preliminary results. We received comments from the Independent Radionic Workers of America, International Union of Electronic, Electrical, Technical, Salaried, and Machine Workers, AFL-CIO, the International Brotherhood of Electrical Workers of America, and the Industrial Union Department, AFL-CIO (collectively the petitioners) and Daewoo stating that they have no objection to our preliminary results. Therefore, our final results of review remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Richard Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1994 (59 FR 33487), the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty order on CTVs from the Republic of Korea (49 FR 18336; April 1984) covering exports of this merchandise to the United States by the manufacturer, Daewoo. For administrative convenience, we have combined the results of two reviews covering the periods April 1, 1988 through March 31, 1989, and April 1, 1989 through March 31, 1990, for this manufacturer. We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews include CTVs, complete and incomplete, from the Republic of Korea. The order covers all CTVs regardless of tariff classification. During the period of review, the subject merchandise was classified under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684. 9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the *Harmonized Tariff Schedule* (HTS). Although the HTS and TSUSA item numbers are provided for convenience and Customs purposes, our written description of the scope remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results of the reviews. We received comments from petitioners and Daewoo stating that they have no objection to our preliminary results. Therefore, our final results of review remain the same as those presented in our preliminary results.

Final Results of the Review

Based on our review of these exports during the period April 1, 1988 through March 31, 1989, we determine Daewoo's dumping margin to be 4.00 percent. Daewoo had no shipments during the April 1, 1989 through March 31, 1990, administrative review period.

The Department shall instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, since Daewoo has been reviewed in a period subsequent to this period, the cash deposit rate for Daewoo will remain at 0.90 percent, the company's rate from the most recently reviewed period. See, *Color Television Receivers from the Republic of Korea; Amendment to Final Results of Antidumping Duty Administrative Review* (59 FR 21958; April 28, 1994).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–20453 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–806]

Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 5, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. The review period is March 29, 1991 through June 30, 1992. The review covers four manufacturers/exporters.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results as described below in the comments section of this notice.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–4475.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 41721) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 12, 1991, 56 FR 36135). The Department has now completed that administrative review in

accordance with Section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is silicon metal containing at least 96.00 but less than 99.99 percent of silicon metal from Brazil. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule* (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon metal (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On February 3, 1993 the Department determined, pursuant to 19 CFR 353.29 (1993), that silicon metal with a higher aluminum content containing between 89 and 96 percent of silicon metal is of the same class or kind of merchandise as silicon metal subject to the antidumping duty order. While this scope determination was undertaken in the context of the antidumping duty order governing silicon metal from the People's Republic of China, the silicon metal subject to that order is the same as the silicon metal covered by this order. Therefore, the Department will include such merchandise in future reviews of this order.

This review covers four manufacturers/exporters of Brazilian silicon metal. The period covered by this review is March 29, 1991 through June 30, 1992.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.22(c) of the Department's regulations. We received comments from the petitioners (American Alloys, Inc., Elkham Metals Company, Globe Metallurgical Inc., SKW Metals & Alloys, Inc. and SMI Group, Inc., Rock Island Silicon Division) and from four respondents (Companhia Brasileira Carbureto de Calcio (CBCC), Companhia Ferroligas Minas Gerais-Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), and Rima Eletrometalurgia S.A. (Rima)). On January 14, 1994, we held a public hearing.

Comment 1: Petitioners contend that CBCC refused to provide cost information necessary for the calculation of cost of production (COP) and constructed value (CV). Specifically, petitioners argue that CBCC did not properly report its interest expenses and charcoal replacement costs. Petitioners also contend that CBCC understated its electricity and quartz replacement costs. Petitioners conclude that the Department should utilize the highest, most adverse margin as best information available (BIA) since the deficiencies in CBCC's COP/CV response are so pervasive.

Department's Position: We disagree with petitioners. While during verification we did find areas where the costs were not appropriately quantified, we have not found these deficiencies to be so significant or pervasive as to call into question the accuracy of the entire response. It should be noted that some of the issues, as discussed in comments 2, 4, 6, and 11, are related to methodological questions, rather than areas of incorrect reporting of costs. In the instances where we found insufficient verification support (*see* December 20, 1993 "CBCC Cost Verification Report"), we relied on partial BIA. For the methodological issues, we recalculated the costs to correct a particular cost element. Although we have made certain adjustments to the information submitted by CBCC (*see e.g.*, our responses to comments 2, 4, 5, 6, 7, and 9), we generally have used CBCC's data in reaching these final results of administrative review.

Comment 2: Petitioners note that Solvay do Brasil owns 99.8 percent of CBCC. Petitioners contend that if the Department uses the COP/CV information submitted by CBCC, it should base its calculation of interest expense upon the borrowing experience associated with the consolidated group of companies. Petitioners contend that the Department should use the financial expenses reported on Solvay do Brasil's financial statements to perform this calculation. Finally, petitioners assert that the Department should apply this allocation to the replacement cost of manufacture (COM) to properly account for Brazilian hyperinflation.

CBCC argues that calculation of interest expense on a consolidated basis would be improper. CBCC contends that the December 20, 1993, verification report concludes that CBCC made interest-free loans to Solvay do Brasil. CBCC contends that it charged Solvay do Brasil the minimum Brazilian statutory requirement for the monetary correction. CBCC also argues that the Department found no evidence of loans from Solvay do Brasil to CBCC at verification.

Department's Position: We agree with petitioners that CBCC's interest expense should be calculated on a consolidated basis. Since the cost of capital is fungible, we believe that calculating interest expense based on consolidated statements is the most appropriate methodology (see, *e.g.*, *Final Determination of Sales at Less Than Fair Value, Small Business Telephones from Korea*, 54 FR 53141, 53149 (December 27, 1989), *Final Results of Antidumping Duty Administrative Review, Brass Sheet and Strip from Canada*, 55 FR 31414, 31418–31419 (August 2, 1990), and *Final Determination of Sales at Less Than Fair Value, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.*, 54 FR 18992, 19074 (May 3, 1989)).

In order to extinguish its outstanding debt, CBCC issued new shares of capital stock to its parent company. Also, we established at verification that Solvay do Brasil owns 99.8 percent of CBCC. Based on these facts, it is evident that the shift in debt is due to the parent company's control over the subsidiary. Accordingly, the degree of relationship influenced the structure of debt for the entire company. Therefore, consistent with our normal practice, we revised CBCC's submitted interest expenses based on the consolidated financial statements of Solvay do Brasil.

During verification, CBCC company officials did not provide the source documents for Solvay's financial income and expenses. Therefore, we have used BIA to determine CBCC's financial expenses. As BIA, we used information from Solvay do Brasil's financial statements. This percentage was then applied to each month's COM to ensure that CBCC's COP data fully reflected interest expenses.

Comment 3: Petitioners contend that the Department's December 20, 1993, COP verification report suggested allocating interest expenses to CBCC's COP based on the sum of the financial expenses reflected in CBCC's and Solvay do Brasil's 1991 and 1992 financial statements. Petitioners note that if the Department took that approach, it would determine interest expenses as a percentage of the sum of both companies' cost of goods sold (COGS), adjusted for intercompany interest transactions. Petitioners further contend that CBCC's financial statements reflect only net interest expenses, and that use of the allocation that the Department proposed in its December 20, 1993, verification report would give CBCC credit for all of its interest income, whether short-term or not. Petitioners argue that CBCC submitted no information regarding

short-term interest income, making it impossible for the Department to make any adjustment for intercompany interest transactions.

Department's Position: We agree with petitioners that CBCC did not provide information documenting the company's short-term interest income. As previously discussed in our response to Comment 2, we have relied upon BIA in our calculation of CBCC's interest expense. As BIA, we used the financial expense information from Solvay do Brasil's financial statements. We then applied this percentage to each month's COM for purposes of our COP/CV calculations.

Comment 4: Petitioners assert that CBCC purchased electricity at a discount when the electricity is used to restart idled machinery. Petitioners note that, prior to March 1992, CBCC averaged the cost of electricity obtained from its own production and from three separate pricing plans. Petitioners note that, after March 1992, CBCC stopped averaging electricity costs, and used the discounted electricity associated with the running of idled machines. Petitioners contend that the Department should use CBCC's average electricity costs in the COP/CV calculations rather than the discounted electricity costs associated with the restarting of idled machinery.

CBCC contends that the antidumping law contemplates that producers will base pricing decisions on currently available COP information. CBCC contends that the Department verified that the furnace was idle prior to the acquisition of the discounted energy, and that the discounted energy was only used on the restarted furnace. CBCC argues that it applied the discounted energy to silicon metal so as to minimize the COP of silicon metal consistent with the Department's COP methodology. CBCC suggests that averaging its electricity costs would result in rejection of its cost data simply because the cost is not high enough.

Department's Position: In reaching these final results we have relied upon our general practice in a hyperinflationary economy which is to calculate a monthly average cost for each input. The Department believes that it is inappropriate to specifically identify inputs obtained at a lower cost to a particular product or production run. The furnaces used to produce silicon metal can produce other products that are not subject to review. Likewise, other furnaces used to produce non-subject merchandise can be used to produce silicon metal. Accordingly, any benefits derived from the use of a particular furnace relate to all products produced during the period of review.

We note that in this case it is strictly a management decision as to which product will be made in the furnace which is receiving the less expensive input. As such, in months in which there were U.S. shipments of silicon metal, the furnace which utilizes less expensive electricity can be assigned to produce silicon metal. That same furnace could be assigned to produce ferrosilicon in months in which CBCC had U.S. sales of ferrosilicon, a product which is also subject to an antidumping duty order. In fact, during the period covered by this review, the furnace in question did produce both silicon metal and ferrosilicon. (Both silicon metal and ferrosilicon were also produced in other furnaces.)

The facts of the instant case are consistent with the Department's position requiring the weight-averaging of the costs of merchandise produced in more than one facility. The Department has consistently held that it is inappropriate to make adjustments for cost differences between facilities when the merchandise produced in each is identical (see *Department of Commerce Policy Bulletin No. 92.2,* July 29, 1992, which is on file at the Central Records Unit).

Comment 5: Petitioners contend that the Department verified that on several occasions CBCC paid an advance deposit on its electricity bill. Petitioners further contend that the Department should make an upward adjustment to CBCC's reported electricity costs to account for the effect of Brazilian inflation.

CBCC argues that it received a credit from CEMIG (its energy supplier) for advance payment. CBCC asserts that the Department should deduct the amount of the credit from the invoiced amount since that represents the real "cost" of the item.

Department's Position: In calculating the replacement cost of electricity obtained in each month of the period of review we used the invoiced price for that month. We did not reduce the invoiced amount for the effect of any "credits" CBCC may have obtained. Such a reduction would not properly reflect the replacement cost of electricity. Although this is a short-term monetary asset which is not subject to the balance sheet monetary corrections, through agreement, CEMIG credits CBCC for the value of cruzeiros as of the invoice date. This does not reduce the replacement cost of electricity CBCC obtained but merely reduces the nominal cruzeiro amount outstanding. Under the Department's replacement cost methodology each month's cost is measured in the monthly nominal invoiced cruzeiro amounts. Therefore, we have accepted the amounts billed by CEMIG as each month's replacement cost, without the effect of the "credit."

Comment 6: Petitioners note that CBCC reported electricity costs exclusive of the ICMS tax in its calculation of third-country COP. Petitioners contend that these tax payments should have been included in CBCC's calculation of electricity costs.

Department's Position: We agree with petitioner. When using third-country sales as the basis of FMV, we must determine if the manufacturer incurred costs which resulted from the payment of taxes on the purchase of inputs. In this review period, CBCC incurred ICMS tax, a value added tax ("VAT"), in purchasing electricity. CBCC is able to offset some of this tax when it sells products in the home market because it charges and receives a VAT on its home market sales. In this case, even though the home market was not viable, CBCC did make some home market sales. However, there were not enough home market sales for the VAT charged and received on those sales to offset all of the VAT it paid on the electricity purchased to produce the merchandise sold in the third country. Accordingly, this resulted in a net cost to CBCC for the ICMS taxes paid in the production of silicon metal sold for export. As such, the Department included the net amount of the ICMS VAT in the submitted COP and CV amounts.

This approach differs from that used in the Department's remand determination concerning the underlying investigation. In that determination, we made an allowance for an offset to the ICMS VAT paid currently for potential VAT to be received on future home market sales. Under this approach the ICMS was, in effect, excluded from the calculation of constructed value. We have subsequently reconsidered this methodology and have concluded that allowing such an offset for potential, future sales results in an adjustment that we now consider to be purely speculative. Accordingly, we will include in CV ICMS on inputs that are not offset by VAT charged and collected on actual home market sales which occur during the period of review. We believe our current approach better reflects the economic reality of the costs incurred during the period of review (*i.e.* current costs are not tied to potential future events). Our approach in this case is consistent with the *Final Determination of Sales at Less Than Fair Value, Ferrosilicon from Brazil,* 59

FR 732, 737 (January 6, 1994). We believe this approach also is in accordance with the court's remand instructions on this issue in *Camargo Correa Metais, S.A. v. United States*, Slip. Op. 93–163 (CIT August 12, 1993).

Comment 7: Petitioners contend that CBCC made no provision in its calculation of charcoal costs for the effects of inflation when CBCC harvested an area. Petitioners note that the Department requested additional documentation from CBCC at verification regarding CBCC's estimates of charcoal harvest and the other assumptions CBCC built into its calculation of charcoal cost. Petitioners contend that, because CBCC failed to provide information, the Department should apply BIA. Petitioners argue that use of BIA is appropriate when a respondent refuses to submit information after being asked to do so, and where the refusal to provide the requested information impedes the Department's proceeding.

Petitioners contend that CBCC's failure to provide the appropriate information justifies the use of noncooperative BIA for CBCC. Finally, if the Department determines not to use noncooperative BIA for CBCC, petitioners suggest that the Department adjust CBCC's reported cost for company-produced charcoal upward to an amount equal to that charged to CBCC from unrelated suppliers.

Department's Position: We agree with petitioners that we should adjust CBCC's charcoal replacement costs. However, we disagree that CBCC was noncooperative and should receive a margin based solely upon BIA. We discovered errors made by CBCC when it calculated its cost of producing charcoal, a primary raw material used in the production of silicon metal. For purposes of calculating replacement costs, CBCC substantially understated its cost of producing charcoal by inaccurately recording the costs associated with its forests which provide the raw material needed to produce charcoal. We note, however, that CBCC reported cost information consistent with that which is maintained in its normal cost accounting system. Therefore, we have recalculated the cost of CBCC's production of charcoal. We relied upon the actual weighted-average monthly cost CBCC was charged by unrelated vendors.

Comment 8: Petitioners argue that the Department should revise CBCC's reported 1992 quartz replacement costs upward to account for the more costly delivery charges the Department discovered at verification.

Department's Position: At verification we noted that CBCC changed procedures for quartz purchasing in 1992. Because we found that CBCC's reported quartz replacement costs for 1992 did not reflect the entire cost of the material, we randomly chose May 1992 as a sample to determine the amount of the discrepancy. In establishing the amount of the discrepancy, we valued all quartz purchases received in May at the delivered price in effect for the region of origin. This reconciliation indicated that CBCC's estimate of delivery charges for this month understated the per ton cost for quartz by approximately four percent. Because CBCC did not fully report its quartz replacement costs, we have applied partial BIA for this material. As BIA, we have adjusted upward the reported quartz prices reported for January through May 1992 by four percent.

Comment 9: Petitioners contend that CBCC's calculation of inventory holding gains/losses is flawed. Petitioners note that there is a large difference between the amount of silicon metal produced by CBCC and the amount of silicon metal sold by CBCC. Petitioners also object to the limited data provided by CBCC for electrode paste and charcoal and argue that CBCC's inclusion of a large year-end depreciation charge in December 1991 resulted in significantly understated COPs for all but one month of the review period.

Petitioners assert that, by using sales and production data provided by CBCC, petitioners have derived a corrected inventory holding gain/loss calculation for CBCC. Petitioners contend that the Department should use petitioners' revised calculation of CBCC's inventory holding gains/losses in the final results.

Department's Position: We have reviewed CBCC's calculation of inventory holding gains/losses (see CBCC's February 24, 1993 submission at Exhibit A) and have found certain inconsistencies which render that calculation unacceptable. For certain months CBCC reported sales and shipments of silicon metal but showed no removal of silicon metal from inventory. In other months, the tonnage of silicon metal removed from inventory was either much less or much greater than the amount of merchandise that CBCC reported in its sales listings.

Moreover, we find that petitioners' "corrected" calculation of CBCC's inventory gains/losses is also unacceptable since it fails to account for finished silicon metal consumed in the production of other products. Accordingly, we have rejected both CBCC's and petitioners' calculation of inventory gains/losses, and have removed this item from our COP/CV calculations, which has the effect of increasing COP/CV.

Comment 10: Petitioners argue that the Department should make an addition to CBCC's COP to account for certain costs (power, secondary materials and crushing costs) which CBCC omitted from CBCC's revised COP/CV calculation. Petitioners note that these expenses were included in CBCC's original COP/CV response.

CBCC contends that power, secondary materials and crushing costs were included in its revised response under the variable "VARCOM." CBCC argues that it summarized these three costs in order to comply with the Department's reporting requirements.

Department's Position: Although the power, secondary materials and crushing costs were not detailed in CBCC's revised COP/CV calculations, the total reported costs furnished by CBCC (variables "TOTCOP" and "TOTCV") did include these expenses. CBCC did omit these items from the variables representing variable overhead, fixed overhead, and total variable cost of manufacturing, *i.e.*, variables "VARFOH", "FIXFOH", and "TOTCOM". However, since CBCC included these expenses in its calculation of total COM, no adjustment to CBCC's reported COP or CV is required.

Comment 11: Petitioners contend the Department should reject CBCC's allocation of general and administrative (G&A) and selling expenses. (CBCC allocated these expenses to individual products using the ratio of each product's cost of goods sold (COGS).) Petitioners contend that the Department should follow its established practice and allocate these expenses to total COGS, as the Department did in the preliminary results of this review.

CBCC suggests that the allocation of G&A and selling expenses used in the Department's preliminary calculations results in a systematic overstatement of these expenses. CBCC argues that the Department should allocate the ratio of G&A and selling expenses by the historical ratio of these expenses to historical COM. CBCC notes that the Department followed this methodology in the redetermination of the original investigation for this proceeding (see *Silicon Metal from Brazil: Preliminary Determination on Remand*, (November 17, 1993, at 5).

Department's Position: G&A expenses are period expenses which are normally measured over a fiscal year. As such, the Department calculated G&A on an annual historical basis. In order to avoid overstating G&A expenses and to

neutralize hyperinflationary effects, we applied the G&A ratio (*i.e.*, the ratio of annual G&A expenses to cost of goods sold reflected in the financial statements) to each month's COM calculated on a historical basis. In addition, CBCC had failed to include Solvay do Brasil's G&A expenses. Therefore, we applied a portion of Solvay do Brasil's G&A in the final calculation of these costs (see CBCC Calculation Adjustment Memorandum, February 2, 1994). This is consistent with the method we used to calculate G&A expenses in the remand determination in the underlying investigation.

Comment 12: Petitioners contend that the Department should include ICMS and IPI taxes in the calculation of CBCC's raw material costs. Petitioners contend that these taxes are included on home market sales, and must, therefore, be included in the COP of home market merchandise.

Department's Position: Petitioners' argument that ICMS and IPI taxes are included on home market sales is not relevant since CBCC's home market sales were insufficient to form a basis for FMV and, therefore, FMV was based upon third country sales. However, we agree that, since the ICMS and IPI taxes resulted in a net cost to CBCC, the Department should include this net amount of ICMS and IPI in the submitted COP and CV amounts. Our reasoning for doing so is discussed further in our response to comment 6, which involved a similar situation.

Comment 13: Petitioners argue that the Department failed to include CBCC's and Minasligas's imputed credit expenses in the preliminary CV calculations. Petitioners argue that the Department should make an adjustment for imputed credit in the final calculations.

Department's Position: We agree with petitioners. In these final results we have included CBCC's and Minasligas's imputed credit costs in our calculation of CV. We based this adjustment on the credit expenses that these companies incurred on home market or third-country sales.

Comment 14: Petitioners contend that the Department should use the quartz replacement costs reported by Minasligas in its original COP/CV response rather than the costs reported in Minasligas's revised response of November 9, 1993. Minasligas provided average quartz delivery charges in its revised COP/CV response. Petitioners note that the Department's verification report indicates that averaging freight charges significantly understates Minasligas's type A quartz costs.

Minasligas contends that, while the corrected cost data may result in lower delivered prices for type A quartz, the revised data result in significantly lower overall replacement costs for that material. Minasligas indicates that it does not object to use of the quartz replacement costs reported in its original COP/CV response, and notes that the Department used these costs in the preliminary calculations.

Department's Position: We agree with petitioners. As discussed in the cost verification report (December 17, 1993), the revised costs calculated by Minasligas and filed with the Department on November 9, 1993 reflect a methodology which understates the delivered cost of type A quartz, by allocating the delivery charges among all quartz purchases. Accordingly, we have rejected the revised replacement cost for quartz and relied upon the cost information Minasligas reported in its original COP/CV response. As Minasligas notes, this is the information we used in reaching the preliminary results of review.

Comment 15: Petitioners state that the Department determined at verification that Minasligas did not include forest amortization costs in its calculation of charcoal replacement costs. Petitioners argue that omission of these expenses significantly understates the cost of the charcoal which Minasligas produced. Petitioners contend that the Department should use the costs associated with Minasligas's purchase of charcoal from unrelated suppliers in the final calculation of charcoal replacement costs.

Minasligas argues that the charcoal replacement costs it reported in its original COP/CV response were exclusively based on the delivered price charged to the company by suppliers cutting trees on land that Minasligas did not own. Minasligas contends that it pays less for charcoal cut from trees on its own land, and that its corrected charcoal costs are significantly lower than those reported in its original COP/CV response. Minasligas indicates that the Department should use the charcoal replacement costs reported in its original COP/CV response, if the Department decides not to use the corrected charcoal replacement costs supplied by Minasligas.

Department's Position: We agree with petitioners. As discussed in the cost verification report (December 17, 1993), the revised costs calculated by Minasligas and filed with the Department on November 9, 1993 reflect a methodology which understates the replacement cost of charcoal by averaging the payment to subcontractors for charcoal obtained from company-owned land with the higher costs from unrelated charcoal vendors. This calculation does not include any cost to Minasligas for acquiring forests or planting and maintaining forests. Accordingly, we have rejected the revised replacement cost for charcoal and relied upon the cost information provided by Minasligas in its original COP/CV response.

Comment 16: Petitioners contend that the Department found at verification that Minasligas had not accurately accounted for loss allowances for quartz and charcoal used in 1991 silicon metal production. Petitioners contend that the Department should make an upward adjustment to Minasligas's reported 1991 quartz and charcoal costs to account for this expense. Petitioners suggest that the Department use the loss allowances provided by Minasligas for 1992 silicon metal production to make this adjustment.

Minasligas contends that the question of whether quartz and charcoal losses were understated prior to 1992 is irrelevant because Minasligas had no U.S. sales during that time. Minasligas notes that it did provide an acceptable calculation for charcoal and quartz losses for 1992.

Department's Position: We agree with the petitioners that, prior to 1992, the measured consumption of charcoal and quartz into the furnace was not consistently and scientifically adjusted to reflect losses sustained between the time the material was delivered into the factory stockyard and introduced into a furnace. Beginning in 1992, Minasligas established a loss allowance and consistently applied it to both quartz and charcoal. For 1991 quartz and charcoal, Minasligas estimated loss allowances and recorded them on an occasional basis. We have recalculated loss allowances for 1991 based upon BIA. As BIA, we have used the loss allowance established by the company in 1992 and applied this percentage to both quartz and charcoal consumption for all months in 1991. We disagree with Minasligas's assertion that the 1991 costs are irrelevant, since they are used to determine whether home market sales were sold at or above their COP.

Comment 17: Petitioners contend that the Department should allocate Minasligas's consumption of iron rods and tubes over all months of the period of review, instead of accepting Minasligas's approach. (Minasligas recognized the entire expense associated with these charges in the month in which they were requisitioned out of inventory.) Petitioners suggest that for those months for which Minasligas did

not report iron rods and tube costs, the Department should use the per-unit output costs for rods and tubes from the most recent month with an adjustment for inflation.

Minasligas contends that allocating the consumption of rods and tubes over the period of review would only marginally change the cost of materials for the month that Minasligas had a U.S. sale. Minasligas contends that more rods were requisitioned during that month than were consumed.

Department's Position: We agree with petitioners that it is more accurate to allocate the number of rods and tubes removed from inventory to production tons over the period in which they were consumed, rather than just the month of requisition. Accordingly, we have reallocated the total rods and tubes consumed during the period of review equally to tons produced during this same time period. Each month's allocated consumption quantity was then valued at the reported replacement cost for that same month. We also agree with Minasligas that this adjustment does not have a serious impact on the reported cost information.

Comment 18: Petitioners assert that verification revealed that Minasligas's supplier measures electricity from the fifth of one month to the fifth of the following month. Petitioners further argue that Minasligas used the invoice received from its supplier on approximately the tenth of the month to represent the electricity costs for that month. Petitioners contend that such a methodology understates the replacement costs for electricity since it primarily reflects the costs incurred during the previous month. Petitioners contend that for each month of the review period the Department should use the electricity costs reported by Minasligas for the following month.

Department's Position: We agree with the petitioners. Minasligas reported the replacement cost of monthly electricity for the month in which the bill was received. Each month's bill reflects the cost of electricity purchased in the prior month. Therefore, the reported replacement cost of electricity is understated since it lags the actual cost by one month. We have corrected for this understatement by matching each month's bill with the month that it covered.

Comment 19: Petitioners contend that Minasligas's allocation of G&A expenses is incorrect. (Minasligas allocated monthly G&A expenses to individual products based upon the number of furnaces used in the production of each product.) Petitioners contend that the Department should allocate G&A expenses to total COGS as was done in the preliminary results.

Minasligas contends that a larger portion of its operation is devoted to ferrosilicon than to silicon metal. Minasligas contends that allocating G&A expenses to total COGS overstates the amount of G&A expenses relating to silicon metal.

Department's Position: We agree with petitioners. G&A expenses are period expenses which relate to the operation of the company as a whole and are not customarily associated with a particular product or process. Therefore, we recalculated G&A expenses on a company-wide annual historical basis and, in order to avoid overstating G&A expenses and to neutralize hyperinflationary effects, we applied the G&A ratio to each month's COM calculated on a historical basis.

Comment 20: Petitioners contend that the Department should calculate Minasligas's interest expense as the consolidated expenses of Minasligas and Delp Engenharia S.A. (Delp). Petitioners note that Delp controls over 93 percent of Minasligas's common stock and thus has a controlling interest in Minasligas. Petitioners suggest that the Department use Delp's 1991 and 1992 financial statements to perform this calculation.

Minasligas contends that Delp and Minasligas are separate entities, maintain separate financial statements, and have their own interest expense and income. Therefore, Minasligas asserts that it would be improper to calculate interest expense on a consolidated basis.

Department's Position: We agree with petitioners that Minasligas should report interest expense on a consolidated basis. See our response to comment 2.

In the case of Minasligas, Delp does not consolidate its accounts with Minasligas. In addition, because there are no significant intercompany transactions between the two companies, we combined the financial expenses of the two companies and calculated an interest expense as a ratio to cost of sales, effectively creating consolidated accounts. The Department only allows income generated from investments of working capital, which the company documents as short-term in nature, to offset interest expense (see, *e.g., Final Determination of Sales at Less Than Fair Value, Cellular Mobile Telephones from Japan*, 54 FR 45447, 45455 (October 31, 1985), and *Final Determination of Sales at Less Than Fair Value, Mechanical Transfer Presses from Japan*, 55 FR 335, 342 (January 4, 1990)). Minasligas was able to substantiate only a portion of the investments to be short-term; consequently, we have allowed only the documented portion of interest income as an offset. We did not allow an offset to Minasligas's parent, Delp, for interest expense because the information required to substantiate such an adjustment is not contained in the record of this review.

In order to avoid overstating financing charges, we applied the interest expense ratio (*i.e.*, the ratio of net interest expense to cost of goods sold) to each month's COM calculated on a historical basis rather than to amounts computed under the replacement cost basis. This is consistent with the methodology used in the remand determination in the underlying investigation.

Comment 21: Petitioners contend that Minasligas did not submit information regarding short-term interest income at the consolidated, parent company level. Accordingly, the petitioners contend that it is not feasible to "compute interest expense using the sum of Minasligas's and Delp's financial expenses adjusted for intercompany interest transactions", as suggested by the Department's cost verification report. Finally, petitioners assert that the Department should apply this allocation to COM to properly account for Brazilian hyperinflation.

Department's Position: We agree with petitioners that the record does not contain information regarding short-term interest income at Minasligas's parent company, Delp. Accordingly, we have not allowed any such offset for Delp's interest income in our calculation of combined interest expense. Consistent with our practice in the *Final Determination of Sales At Less Than Fair Value; Ferrosilicon from Brazil*, 59 FR 732, 736–737, January 6, 1994, we have applied the calculated interest expense ratio to the monthly COMs calculated on a historical basis rather than amounts computed under the replacement cost basis.

Comment 22: Petitioners contend that Minasligas's calculation of inventory holding gains/losses is flawed because Minasligas failed to properly "layer" inventory according to the month that the merchandise was placed in inventory. Petitioners contend that Minasligas's calculation reflects one level of inventory even though Minasligas held merchandise in inventory for at least two preceding months. Petitioners contend that this flaw makes Minasligas's calculation unusable. Accordingly, petitioners contend that the Department should disregard Minasligas's calculation, and make no adjustment for inventory

holding gain or loss in the final COP calculations.

Department's Position: We agree with petitioners. Minasligas's calculation of inventory holding gains/losses did not account for merchandise that spent multiple months in inventory. Accordingly, we have rejected Minasligas's claimed inventory holding gain.

Comment 23: Petitioners contend that the Department should disallow the portion of Minasligas's duty drawback claim pertaining to IPI and ICMS taxes. Petitioners contend that these expenses are taxes, not duties. Petitioners also note that these two taxes were not listed in the duty drawback regulations provided by Minasligas.

Department's Position: We disagree with petitioners. Article 314 of the Brazilian Customs Regulations provides for the "suspension of payments of *tributes* due when importing merchandise to be exported * * *." (Emphasis added.) The suspension is not limited to customs duties. It includes all "tributes" paid upon importation of the merchandise. IPI and ICMS taxes incurred on imported electrodes are two such tributes which are suspended upon exportation of the merchandise. Thus, Minasligas correctly included these expenses in its claimed adjustment for duty drawback.

Comment 24: Petitioners contend that the Department should use adverse, noncooperative BIA for RIMA. Petitioners make reference to the Department's December 22, 1993 verification report regarding RIMA's COP/CV response. That report indicated that RIMA: (1) Was unwilling to supply the Department with necessary worksheets, schedules, or source documents, (2) that the aspect of RIMA's COP/CV response pertaining to related party transactions, G&A expenses, finance costs, and profit were not verified, (3) that RIMA's calculation of charcoal and quartz costs were not reflective of monthly replacement costs, and (4) that RIMA did not adjust the value of its electrode purchases to account for inflation.

Petitioners assert that the verification report indicates that RIMA based its cost response on a managerial cost accounting system that was not used for purposes of valuing inventory in the financial statements. As such, petitioners contend that RIMA's submitted cost information could not be reconciled with RIMA's financial statements. According to petitioners, the verification report also indicates that RIMA based its calculation of labor hours on theoretical times and that actual labor hours exceeded these theoretical hours by a significant amount. Finally, petitioners find that the Department determined that RIMA's COP response did not account for costs associated with write-downs or obsolescence.

Petitioners contend that RIMA's refusal to provide requested information significantly impeded the completion of this review. In accordance with the Department's practice, petitioners argue that the Department should assign as BIA the higher of the highest prior margin established for any company or the highest margin determined in this administrative review.

Department's Position: At verification we encountered serious and pervasive problems in our efforts to verify the information submitted by RIMA. We found that these problems were so extensive that we could not test major areas of the response. For those areas we tested, we found significant discrepancies in the amounts reported, in addition to a lack of sufficient data to corroborate the response. We outlined the major deficiencies that we found during verification in the public version of the cost verification report (December 22, 1993) and the RIMA calculation memorandum, both of which are on file in the Central Records Unit.

Under these circumstances, the Department cannot properly base its determination on the information submitted by RIMA. The Department cannot be placed in the position of having to identify and perform numerous and substantial revisions to develop accurate cost data, if indeed such revisions were even possible in this case. As stated in *Photo Albums and Filler Pages From Korea; Final Determination of Sales at Less Than Fair Value*, 50 FR 43754, 43755–43756 (October 29, 1985):

> It is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze fully the information and other parties are able to review and comment on it. Verification is intended to establish the accuracy and completeness of a response rather than to supplement and reconstruct the information to fit the requirements of the Department.

Therefore, for the reasons stated above, we have determined that rejection of the cost response submitted by RIMA is appropriate for these final results and is consistent with past practice (see, *e.g.*, *Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.*, 54 FR 18992 (May 3, 1989), 31704–31709, and *Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 FR 34586 (August 23, 1990, 34586–34587)).

In accordance with section 776(c) of the Tariff Act, we use BIA in cases where a party refuses or is unable to produce information in a timely manner and in the form required. The Department generally uses a two-tiered approach in its choice of BIA. For uncooperative respondents, the Department uses the higher of: (1) The highest rate for any company from the original investigation or a prior administrative review, or (2) the highest rate found in the current review for any company. For respondents that attempt to cooperate, the Department uses the higher of: (1) The highest rate ever applicable to the firm for the subject merchandise, or (2) the highest calculated rate in the current review for any firm (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., Final Results of Antidumping Duty Administrative Review*, 58 FR 39729, 39739, July 26, 1993).

RIMA responded to our questionnaire and to each of our requests for supplemental information. Therefore, we have determined that RIMA attempted to cooperate, even though it was unable to substantiate much of the information contained in its COP/CV response. Since RIMA attempted to cooperate, we have applied a rate of 91.06 percent, the highest rate ever applicable to RIMA for the subject merchandise (see *Silicon Metal from Brazil, Final Determination of Sales at Less Than Fair Value*, 56 FR 26972, June 12, 1991).

Comment 25: Petitioners contend that it is the Department's established practice to exclude from the dumping calculations sales that were sold during the review period but shipped outside the period of review. Because Eletrosilex's only sale was shipped after the close of this review period, petitioners argue that Eletrosilex had no sales subject to review for the current 1991–1992 administrative review. Petitioners contend that the Department should maintain the 91.06 percent all others rate for Eletrosilex since this constitutes the most recent information available for Eletrosilex. Petitioners note that in *Asahi Chemical Indus. Co., Ltd.* v. *United States*, 585 F. Supp 1261, 1267 (CIT 1982), the CIT held that when there were no shipments during the period of review, the Department uses the most recent information to determine margins.

Department's Position: We disagree. Section 353.22(b) of our regulations stipulates that administrative reviews "normally will cover, as appropriate, entries or sales of the merchandise during the 12 months immediately preceding the most recent anniversary month."

We based this review upon sales because (1) the selling price and each of the expenses associated with this sale were known by Eletrosilex and reported to the Department at an early stage of the review process, and (2) use of this sale in our margin calculations constitutes the most accurate reflection of Eletrosilex's pricing practices during the review period. Moreover, we note that we have based some other administrative reviews upon sales rather than entries (see *Portable Electric Typewriters from Japan, Final Results of Administrative Review*, 56 FR 56393, 53697, November 4, 1991, and *Gray Portland Cement and Clinker from Japan, Final Results of Administrative Review*, 58 FR 48826, 48832, September 20, 1993). Finally, we note that the question addressed in *Asahi* was whether we could conduct an administrative review in the absence of exports, entries or sales during the period of review. In this case, Eletrosilex clearly had sales during the period of review.

Comment 26: CBCC and RIMA contend that the Department violated the statute and the regulations by failing to publish the final results of review by July 31, 1993. CBCC and RIMA note that section 751(a)(1) of the Tariff Act stipulates that the Department will issue a final determination "(A)t least once during each 12-month period", and that § 353.22(c)(7) of the regulations indicates that the Department will publish a final determination "not later than 365 days after the anniversary month."

CBCC and RIMA contend that the Department abused its discretion by conducting a verification of sales and cost data since these verifications further delayed the issuance of the final results. CBCC and RIMA suggest that the final results should be based upon the record that existed on July 31, 1993, and that the record at that time indicated no dumping margins for either company.

Department's Position: We disagree. The CIT has determined that the completion of administrative reviews within the one-year time period is "directory" rather than "mandatory" (see *Koyo Seiko Co.*, v. *United States*, 796 F. Supp. 517,523 (CIT 1992)). While we strive to complete administrative reviews within a year, the issuance of our final results is sometimes delayed by other regulatory and statutory requirements associated with the administration of the antidumping law.

In this case, petitioners demonstrated that "good cause" existed for verification pursuant to 19 C.F.R. § 353.22(c) and 353.36(a). Specifically, petitioners noted potential deficiencies in the replacement cost data provided by CBCC and RIMA. Because "good cause" existed for verification, our decision to verify the COP responses of CBCC and RIMA was appropriate.

Comment 27: Minasligas indicates that it agrees with the statement in the Department's cost verification report (December 17, 1993) that an allocation of direct and indirect labor, maintenance, and other overhead items based upon production quantity would result in lower fabrication charges than those reported in its questionnaire response. (Minasligas allocated these charges on the number of furnaces in its COP/CV response.)

Department's Position: Consistent with our finding in the *Final Determination of Sales at Less Than Fair Value; Ferrosilicon from Brazil*, 59 FR 732, 739, January 6, 1994, we have determined that the number of furnaces is not an adequate basis for allocating labor or other fabrication costs. The number of furnaces in a facility is an arbitrary measure which does not necessarily reflect the actual level of labor and overhead expended in the production of the subject merchandise. In the instant case, output tons is a more accurate allocation basis because these costs are directly related to production amounts. Therefore, we have revised the submitted costs to reflect an allocation based on actual production units.

Comment 28: Eletrosilex contends that the Department incorrectly based its conversions of certain cruzeiro-denominated expenses (inland freight, port charges, ocean freight, warehousing, and packing) on the U.S. sale date. Eletrosilex argues that the Department's policy in countries with hyperinflationary economies is to base currency conversions on the date that the expenses were incurred. Eletrosilex requests that the Department follow this policy with respect to the conversion into dollars of the cruzeiro-denominated expenses outlined above.

Department's Position: We agree. As is our standard practice in cases where the economy is hyperinflationary, we based our currency conversions on the date that the cost was incurred, rather than on the date of the U.S. sale (see *Final Determination of Sales at Less Than Fair Value, Industrial Nitrocellulose from Yugoslavia* (55 FR 34946, 34949, August 27, 1990), and *Final Determination of Sales at Less Than Fair Value, Oil Country Tubular Goods from Israel* (52 FR 1511, 1513, January 14, 1987)). We have adjusted our final calculations for Eletrosilex accordingly.

Comment 29: Eletrosilex contends that the allocation of G&A and selling expenses that the Department used in its preliminary results is improper because it does not accurately reflect Eletrosilex's experience as a silicon metal producer and seller during the period of review. Eletrosilex notes that the Department relied upon the 1991 financial statement to perform this calculation, and that these financial statements do not fully reflect Eletrosilex's experience for the review period. Eletrosilex contends 1991 was an "aberrational year" in which it incurred G&A and selling expenses which were unrelated to the production of silicon metal.

Eletrosilex indicates that on March 10, 1993, it submitted total G&A and selling expenses by month for every month included in the period of review. Eletrosilex urges the Department to derive G&A and selling expenses by summing all selling expenses and dividing the total amount of these expenses by the total COM that Eletrosilex reported for the period March 29, 1991 through June 30, 1992.

Department's Position: As noted in our response to Comment 11, our current practice in cases in which the economy is hyperinflationary is to apply the G&A and selling expenses ratio to each month's COM calculated on a historical basis. We did not ask Eletrosilex to supply historical COM information in this review. Accordingly, as a reasonable alternative to our current practice, we have summed all selling expenses reported by Eletrosilex for the period of review, and divided this total amount by the total COM that Eletrosilex reported for the review period.

Comment 30: RIMA contends that the Department's December 22, 1993 COP/CV verification report incorrectly characterized its personnel as "unwilling" to supply worksheets, schedules, and source documents. RIMA states that it cooperated with the verification team and that the difficulties encountered during the verification were due to: (1) The fact that the verification outline was not made available to RIMA until a week before commencement of the verification, (2) the company had never previously undergone a verification, (3) there had been a good deal of turnover in the company and the personnel responsible for the verification did not

participate in the preparation of the response, and (4) the verification began on Saturday, continued through Sunday, and a Brazilian national holiday.

Department's Position: We disagree with RIMA. RIMA's suggestion that the company's problems relate to having only one week of preparation time after receipt of the verification agenda is completely erroneous. The verification outline was in fact released to counsel for RIMA on October 28, 1993, and verification of RIMA's cost response began on November 13, 1993. Thus the agenda was available more than two weeks prior to the start of verification. Further, the verification agenda merely indicates the Department's approach to performing the verification. Any suggestion that the company did not realize the Department intended to review the underlying source documents is unsupported. The fact that the Department is particularly concerned with each company's methodology for linking the cost response to its cost and financial accounting system is indicated in the Department's questionnaire (September 1, 1992), which requires the company to provide detailed explanations of this connection. The questionnaire also instructed company personnel to contact the Department if for any reason they did not intend to rely on the company's cost accounting records to prepare the response (September 1, 1992 at page 53).

RIMA's further assertions that the company's problems related to conducting verification on a weekend and a lack of verification experience are not persuasive. Company personnel and their counsel knew well in advance of the need to schedule verification time on the weekends; in fact, counsel for each of the respondents, including counsel for RIMA, provided input in setting the verification schedule for this case. It should also be noted that the Department's personnel conducting the verification noted no improvement in the company's ability to provide verification support as the verification progressed into the regular work week. Indeed we know of no reasons why it would improve on a particular day of the week since the information the Department requested should be available within the company, and all of the company personnel who participated in the verification were available on the weekend.

It is not unusual for a respondent to be unfamiliar with the verification process and the Department does not expect such experience. However, if company personnel are unable to explain the methodology followed in preparing the response and provide the source documents which were relied upon, we are not able to conclude that this is simply a result of being unfamiliar with the verification process.

Comment 31: RIMA argues that it used a reasonable methodology to report quartz and charcoal costs. RIMA contends that it used its financial accounting system to price these inputs because (1) its cost system does not use replacement values, and (2) the cost system was subject to distortions that were known to RIMA's management. Moreover, RIMA argues that the variations between these two cost systems were minor, and that RIMA provided the most accurate information in its COP/CV response that it could.

RIMA argues that the COP/CV verification report indicates that RIMA's production standard specifies the use of specific types of charcoal and quartz. However, RIMA, in practice, sometimes used other types of these materials, depending on availability. RIMA contends that use of these other materials resulted in a lower calculated cost than RIMA reported in its COP/CV response.

Department's Position: We disagree with RIMA's assertions that its reported material cost were overstated. As discussed in the cost verification report, the monthly replacement costs noted for certain of the materials actually used in production were higher than the unit costs for the specific materials which RIMA had indicated were used in production. Thus these unit prices were understated.

Comment 32: RIMA asserts that it provided "critical source documentation" concerning the quantity of inputs used in the production of silicon metal, contrary to the assertion of the Department's verification report. RIMA contends that during the verification it made the "underlying statistical measurements" available for inspection by the verification team. RIMA argues that it should not be expected to produce daily or hourly source documents because of the great volume of papers involved.

Department's Position: We disagree with RIMA's contention that it provided source documents. We also disagree with RIMA's assertion that we expected the company to provide daily or hourly source documents. RIMA was expected to provide an accurate response to the Department's specific requests for information. As discussed in the Department's verification report (December 22, 1993), prior to verification RIMA completely failed to indicate the true nature of its cost and financial accounting systems, and even stated that the systems reflect the same costs. RIMA also indicated that its cost accounting system was relied upon in preparing the submitted cost information. We found each of these assertions to be inaccurate.

Although RIMA was able to provide pages of graphs which purportedly reflected the actual material consumption, RIMA was unable to reconcile this information to either the cost or financial accounting system. Thus, the reported material consumption quantities were presented to the Department quite literally in a complete vacuum, merely a handful of graphs, unreconcilable to any other recorded measure of material consumption. This was the extent of the underlying statistical measurements which were made available to the Department for inspection.

As discussed in our response to comment 24, the discrepancies noted in the material quantity input together with other significant inconsistencies have caused us to reject RIMA's cost submission.

Comment 33: RIMA argues that it is unfair for the Department to penalize the company for having a cost accounting system that does not tie to its financial accounting system. RIMA contends that its former cost accounting system was not designed to tie into its financial accounting system, and argues that rejection of its response is equivalent to a penalty for providing accurate data.

Department's Position: The Department is not penalizing RIMA for having any particular type of accounting system. RIMA's cost information was rejected for the specific reasons which are outlined in the public version of the cost verification report and the calculation memorandum. We found that these problems were so extensive that major areas of the response could not be tested. For those areas which were tested we found significant discrepancies in the amounts reported, in addition to a lack of sufficient data to corroborate the response.

Finally, we are unable to understand RIMA's argument that rejection of its response is equivalent to a penalty for providing accurate data. The record does not begin to establish that the information provided by RIMA is accurate in any way.

Comment 34: RIMA argues that the Department's COP/CV verification report erroneously characterized the reported labor hours as "theoretical" rather than "actual". RIMA states that it used its statistical process control reports to calculate labor expense, and

asserts that this constitutes a more accurate way of reporting this expense than would have been reflected in RIMA's "managerial" costing system.

Department's Position: We disagree that the cost verification report provides an erroneous characterization. The Department's cost verification report outlines the findings at verification. As the report indicates, the analysis upon which the reported labor cost was based is no longer performed by RIMA and was never used for any purpose other than the company's submission. Based upon the company's inability to relate this analysis to any other recorded measure of costs, we cannot conclude that the information provided reflected a "more accurate" measure of the costs.

Comment 35: RIMA argues that it properly did not report several of the home market transactions characterized as "unreported sales" in the Department's December 20, 1993 sales verification report. RIMA contends that commercial samples and intracompany transfers are not "sales" and should not have been reported.

Department's Position: We agree with RIMA that several of the home market transactions which are characterized as unreported sales in our December 23, 1993 verification report were in fact commercial samples or intracompany transfers. We note, however, that our determination to use BIA for RIMA was based upon RIMA's inability to provide reliable cost data. The commercial samples and intracompany transfers referenced in the December 23, 1993 sales verification report were not factors in our decision to use BIA for RIMA.

Comment 36: RIMA argues that the home market sales that it did not report made no difference in the determination of market viability or foreign market value.

Department's Position: As noted in our response to comment 24 we used BIA for RIMA because RIMA was unable to provide reliable cost data. Thus, the question of whether these unreported sales would have made a difference in the determination of foreign market value is moot.

Addendum

We have made an additional change in our analysis for these final results: We have amended our COP calculations to adjust for the amount of the Brazilian inflation that was factored into the home market selling price. To make this adjustment, we compared Minasligas's and Eletrosilex's selling prices to their respective COPs in effect as of the date of payment rather than the date of sale.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period March 9, 1991 through June 30, 1992:

Manufacturer/Exporter	Margin (percent)
CBCC	0
Minasligas	0
Eletrosilex	0
RIMA	91.06

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by Section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for the reviewed companies will be those listed above, (2) for previously investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period, (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise, and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the CIT's decisions in *Floral Trade Council v. United States*, Slip Op. 93–79 (CIT May 25, 1993), and *Federal Mogul Corporation and Torrington Company v. United States*, Slip. Op. 93–83 (CIT May 25, 1993). The all others rate is 91.06 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1993).

Dated: August 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–20455 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications; Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Alaska Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Anchorage Metropolitan Statistical Area. The award number of the MBDC will be 10–10–95005–01.

DATES: The closing date for applications is September 30, 1994. Applications must be post-marked on or before September 30, 1994. A pre-application conference will be held on September 1,

at 10:00 a.m., at The Federal Building, Room 154, Anchorage, Alaska, (907) 271–5027.

ADDRESSES: San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1995 to December 31, 1995, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15% $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or

other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Pubic Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: August 16, 1994.

Donald L. Powers,

Federal Register Liaison Officer.

[FR Doc. 94–20452 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Rochester, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Rochester, New York Minority Business Development Center (MBDC). The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority business. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Rochester, New York Metropolitan Area. The award number of the MBDC will be 02–10–095992–01.

DATES: The closing date for applications is *September 26, 1994*. Applicants must be post-marked on or before *September 26, 1994*.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, New York Regional Office, 26 Federal Plaza, Room 3720, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Ron Isler at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from February 1, 1995 to January 31, 1996, is estimated at $198,971. The total Federal amount of $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share 15% $29,846 in non-federal (cost sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of, cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information and requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may be received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such

as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: August 16, 1994.

Mel A. Jackson,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–20451 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–21–P–M

National Oceanic and Atmospheric Administration

Approval of Final Management Plan for the Apalachicola National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability of final management plan.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, has approved the final management plan for the Apalachicola National Estuarine Research Reserve.

The Apalachicola National Estuarine Research Reserve was designated in 1979. Pursuant to the Coastal Zone Management Act and implementing regulations, the Florida Department of Environmental Protection in conjunction with SRD staff has produced a five-year management plan that provides a course of action for managing the site from 1994 through 1998.

Copies of the document can be obtained from the Apalachicola National Estuarine Research Reserve, Florida Department of Environmental Protection, 261 Seventh Street, Apalachicola, FL 32320. (904) 653–8063.

FOR FURTHER INFORMATION CONTACT: Paul Salop, OCRM, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th Floor (N/ORM2), Silver Spring, MD 20910. (301) 713–3133 ext. 124.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–20377 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 081194G]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee will hold a public meeting on September 8, 1994, in the 1776 Room of the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10:00 a.m.

The following topics will be discussed: Review of summer flounder stock assessment and recommendations to the Council and the Atlantic States Marine Fisheries Commission for the summer flounder quota and management measures for 1995.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: August 15, 1994.

David S. Crestin,

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

[FR Doc. 94–20384 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081194H]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Surf Clam Ocean Quahog Committee, Surf Clam Ocean Quahog Industry Advisory Subcommittee, and Scientific and Statistical Committee will hold a public meeting on September 12, 1994, in the 1776 Room of the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10:00 a.m.

The main agenda item will be consideration of the 1995 surf clam ocean quahog quota.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: August 15, 1994.

David S. Crestin,

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

[FR Doc. 94–20383 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Notice of Hearings and Request for Comments on Preliminary Draft of the Report of the Working Group on Intellectual Property Rights

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings and request for public comments.

SUMMARY: The Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force has issued a preliminary draft of its report, "Intellectual Property and the National Information Infrastructure," and is soliciting public comment. Copies of the preliminary report may be obtained by calling the U.S. Patent and Trademark Office at (703) 305–9300 or by sending a written request to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention to Terri A. Southwick, Office of Legislative and International Affairs. The Working Group will hold public hearings on the preliminary report in Washington, DC, Chicago and Los Angeles.

DATES: The public hearing in Chicago will be held on September 14, 1994, from 9 a.m. to 5 p.m. The public hearing in Los Angeles will be held on September 16, 1994, from 9 a.m. to 5 p.m. The public hearing in Washington, DC, will be held on September 22 and 23, 1994 from 9 a.m. to 5 p.m. Requests to present oral testimony at the Chicago or Los Angeles hearings must be received on or before September 7, 1994. Requests to present oral testimony at the Washington, DC, hearings must be received on or before September 15, 1994. As announced in the previous notice regarding the submission of written comments on the preliminary report, published at 59 FR 35912 (July 14, 1994), all written comments must be submitted on or before September 7, 1994. Comments in reply to initial written comments may be submitted no later than September 28, 1994.

ADDRESSES: The hearing in Chicago will be held at the University of Chicago, Ida Noyes Hall, 1212 East 59th Street, Chicago, Illinois. The hearing in Los Angeles will be held at the University of California at Los Angeles, 1100 Schoenberg Hall, 405 Hilgard Avenue (Southeast side of UCLA Campus), Los Angeles, California. The hearings in Washington, DC will be held at the Andrew W. Mellon Auditorium, Constitution Avenue between 12th and 14th Streets, NW., Washington, DC. Requests to present oral testimony should be submitted to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs. Requests should specify the date and location of the hearing at which the requester wishes to present oral testimony, and should include the name, address, telephone number, fax number and professional affiliation, if any, of the requester.

The transcripts of the hearings will be made available for public inspection 10 days after the hearings at the Scientific and Technical Information Center of the Patent and Trademark Office, Room 2C01, Crystal Plaza 3/4, 2021 Jefferson Davis Highway, Arlington, Virginia, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except holidays. Information about obtaining copies of transcripts of the hearings may be obtained by calling (703) 305–9300 no sooner than 10 days after the hearings.

FOR FURTHER INFORMATION CONTACT: Terri A. Southwick or Michael O'Neil, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 305–9300; Fax: (703) 305–8885.

SUPPLEMENTARY INFORMATION: The Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Bruce A. Lehman, was established as part of the White House Information Infrastructure Task Force. The Task Force, chaired by Secretary of Commerce Ronald H. Brown, was created to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the National Information Infrastructure (NII).

Intellectual Property and the National Information Infrastructure: A Preliminary Draft of the Report of the Working Group on Intellectual Property Rights represents the Working Group's examination and analysis to date of the intellectual property implications of the NII, and includes the Group's draft findings and recommendations. While it addresses each of the major areas of intellectual property law, including patent, trademark and trade secret, the preliminary report focuses primarily on copyright law and its application and effectiveness in the context of the NII.

The Working Group solicited written comments from the public on the preliminary report in a notice published at 59 FR 35912 on July 14, 1994.

Dated: August 12, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–20467 Filed 8–18–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 19, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions:

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Yardstick
5210–00–243–3349
NPA: Northeastern Michigan Rehabilitation & Opportunity Center Alpena, Michigan

Mineral Oil, Lanolated
6505–01–009–2897
6505–00–890–2027
NPA: Montgomery County Chapter, NYSARC, Inc. Amsterdam, New York

Shelter, Complete
8340–00–NSH–0002
8340–00–NSH–0003
8340–00–NSH–0005
(Requirements for the U.S. Marine Corps, Quantico, Virginia)
NPA: ORC Industries, Inc., La Crosse, Wisconsin

Services

Janitorial/Custodial
Byrne Courthouse
601 Market Street
Philadelphia, Pennsylvania
NPA: Elwyn, Inc., Elwyn, Pennsylvania

Janitorial/Custodial
(Remaining buildings not on Procurement List)
Hill Air Force Base, Utah
NPA: Pioneer Adult Rehabilitation Center, Davis County School District, Clearfield, Utah

Deletion: The following commodity has been proposed for deletion from the Procurement List:

Enema Administration Set
6530–00–117–8991

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–20464 Filed 8–18–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 5, 1993, April 22, June 3 and 24, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 39013, 59 FR 19164, 28847 and 32686) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670–01–063–7761

Cup, Disposable
7350–00–761–7467
7350–00–914–5088
7350–00–914–5089

Crate, Wood

8115–00–NSH–0277
8115–00–NSH–0278
8115–00–NSH–0279
8115–00–NSH–0280
8115–00–NSH–0281
8115–00–NSH–0282
8115–00–NSH–0283

(Requirements for the Naval Surface Warfare Center, Crane, IN)

Services

Janitorial/Custodial, U.S. Army Reserve Centers, 1130 Arthur Avenue and 185 15th Avenue, Rockford, Illinois
Janitorial/Custodial, Building 426, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, Schultz Maintenance Complex, Wilson Creek Road, Ellensburg, Washington
Operation of Postal Service Center, Randolph Air Force Base, Texas
Parts Machining U.S. Postal Service, National Inventory Control Center, Topeka, Kansas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–20465 Filed 8–18–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 17, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 31218) proposed addition to the Procurement List.

Comments were received from two cap manufacturers. Both firms noted the serious decline in military uniform headwear purchases of recent years and indicated that the loss of any more headwear items from competitive purchasing would further reduce the competitive market and increase their chances of going out of business.

The Committee is aware of the decline in Government purchasing of clothing items. However, it should be noted that nonprofit agencies participating in the Committee's program which produce military uniform items are also experiencing the results of this decline, and their employees with severe disabilities have traditionally had higher rates of unemployment, and thus more difficulty in securing other work, than workers without disabilities employed by commercial uniform item manufacturers. The nonprofit agency which will produce the cap under the Committee's program is also recovering from the employment losses caused by a severe hurricane which closed the military base on which the agency was performing other contracts under the Committee's program.

It should also be noted that neither of the commenters is currently producing the cap for the Government, as the current competitive contract was won by the nonprofit agency which will produce the cap under the Committee's program. Accordingly, the commenters will not lose anything they currently have, other than a chance to bid on future competitive contracts for the cap. Because there is no guarantee under the competitive bidding system that any particular company will get a contract, the Committee does not consider the loss of this chance to constitute severe adverse impact on a company.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Cap, Garrison, Women's
8410–01–381–5481
8410–01–381–5504
8410–01–381–5507
8410–01–381–5521
8410–01–381–5536
8410–01–381–5544
8410–01–381–5559
8410–01–381–5566
8410–01–381–5612
8410–01–381–5627
8410–01–381–5647

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–20463 Filed 8–18–94; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Futures and Options on Soybean Oil Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The MidAmerica Commodity Exchange (MCE or Exchange) has applied for designation as a contract market in soybean oil futures and option contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 19, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the MCE futures and option contracts for soybean oil.

FOR FURTHER INFORMATION CONTACT: Please contact Frederick Linse of the

Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the MCE in support of the applications for contract market designations may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the MCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 16, 1994.

Blake Imel,

Acting Director.

[FR Doc. 94–20416 Filed 8–18–94; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Flagship Television Stations

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) is announcing that it is seeking flagship television stations to assist AmeriCorps programs with recruitment and community awareness.

ADDRESSES: Responses to this notice should be mailed to the Office of Public Affairs, 9th Floor, 1100 Vermont Avenue NW., Washington, DC. 20525.

FOR FURTHER INFORMATION CONTACT: The Office of Public Affairs at (202) 606–5000, ext. 262.

SUPPLEMENTARY INFORMATION: The Corporation is a new government corporation that encompasses the work and staff of two previously existing federal agencies, the Commission on National and Community Service and ACTION. The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide education opportunity for those who make a substantial commitment to service.

The Corporation is establishing a new national service initiative called AmeriCorps that includes a wide variety of programs operated by grantees which will be local and national non-profits, state and local government agencies, Indian tribes and territories. The Corporation will also support service-learning initiatives for elementary and secondary schools and institutions of higher education called Learn and Serve America and operate the senior volunteers programs previously supported by ACTION. Some of the national service programs will be operating this summer, and most of the others will be operational by this fall.

The Corporation is striving to build partnerships between AmeriCorps programs and television stations in order to promote national service. Through this partnership, television stations will help further national service by assisting AmeriCorps programs with community awareness and recruitment and educating the American public about the impact of national service via public service announcements and an educational documentary. To achieve this end, the Corporation requests that television stations nationwide volunteer to serve as flagship television stations to help promote AmeriCorps programs and national service.

All interested television stations should contact Wendy Grassi at (202) 606–5000 extension 262. Ms. Grassi will provide further information about existing AmeriCorps programs and how to become a flagship television station for AmeriCorps programs.

Dated: August 16, 1994.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 94–20429 Filed 8–16–94; 12:40 pm]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices

AGENCY: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1400, Monday, 29 August 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency (ARPA) and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II§ 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: August 16, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20424 Filed 8–18–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Mr. Frederic C. Schwartz

Air Force Materiel Command

Maj Gen (select) Rondal H. Smith

Mr. Harry E. Schulte

Air Staff and "Others"

Lt Gen Marcus Anderson

Maj Gen Shepperd

Mr. Arthur J. Myers

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–20460 Filed 8–18–94; 8:45 am]

BILLING CODE 3910–01–M

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed North Expansion of Kennecott Copper's Tailings Impoundment in Salt Lake County, UT

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Kennecott Copper proposes to expand their current tailings impoundment by an additional 3,500 acres. The present tailings impoundment is reaching its storage capacity. Kennecott projects the need to store an additional 1.9 billion tons of tailings in order for operation and production to continue throughout the life of the mine. In addition, Kennecott has identified the need for a seismic upgrade of the existing impoundment. The intended location of the expanded facility and its design is projected to meet this need. Construction of the north expansion will require a Department of the Army permit pursuant to Section 404 of the Clean Water Act. The Corps of Engineers, as the lead Federal agency for this project, has determined that an Environmental Impact Statement will be required prior to making a permit decision.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Field Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010, Telephone (801) 295–8380.

SUPPLEMENTARY INFORMATION: Kennecott Copper owns and operates the Bingham Canyon Mine 30 miles southwest of Salt Lake City, Utah within the Oquirrh Mountains. Copper ore is mined from an open pit mine and processed at the concentrator, smelter and refinery facilities. Annual production of copper from the facility is over 250,000 tons annually, Tailings, the end-product of the process, are disposed in a slurry to an existing impoundment.

The existing impoundment's footprint covers approximately 5,700 acres and contains 1.7 billion tons of tailings. The current impoundment is 190 feet high. It has the capacity for an additional 0.3 to 0.4 billion tons of tailings which will raise its height to 250 feet. Its capacity is projected to be reached by 1998. However, the expected life of the mine is estimated at an additional 30 years with a total production of 1.9 billion more tons of tailings.

Construction of the North Expansion will occur in two phases. The Phase 1 design will provide for 1.1 billion tons of tailings storage. (An additional 0.3 to 0.4 billion tons of tailings will be deposited into the existing impoundment during the remaining years of service.) Related project elements for Phase 1 include construction of the North Expansion berm, expanded dewatering of select reaches of the existing impoundment, and modification of the process water system, all designed to enhance the seismic stability of the existing impoundment. Phase 1 is expected to run from year 1999 to 2018.

Phase 2 construction of the North Expansion will allow storage of an additional 0.4 to 0.5 billion tons of tailings, resulting in a final impoundment height of 250 feet by the year 2027.

Construction of the North Expansion will require a new pipeline bridge and modification of the tailings distribution system. It will also involve relocating utility lines, powerlines, the C–7 ditch, the Union Pacific Railroad main lines, the construction of a new bridge for Highway 202 over the relocated railroad lines and the modification of Interstate 80 on and off ramps.

In addition to the proposed North Expansion, other alternatives have tentatively been identified. These include both onsite and offsite alternatives. The onsite alternatives range from the proposed North Expansion to the continued raising and impounding of tailings within the existing impoundment. Offsite alternatives would involve separate sites capable of meeting the tailings storage capacity needs. Five have been identified: Barneys Canyon, Coon Canyon, Dry Fork/Carr Fork, Tooele/Carr Fork and Stockton. All sites are located in the Oquirrh Mountains and within Kennecott Copper's mine properties. Alternatives and their practicability will be analyzed by the Corps of Engineers pursuant to the 404(b)(1) Guidelines contained in 40 CFR Part 230.

Public Scoping Meeting

A public scoping meeting will be held to help identify significant issues and alternatives for inclusion in the DEIS. Potentially significant issues to be analyzed in the DEIS include wetland impacts, impacts to surface and ground water, both in terms of quantity and quality; public safety, air quality, fish and wildlife impacts, transportation and traffic. A public scoping meeting will be held at the following time and location: 6 p.m., Wednesday, September 19, 1994: Main Auditorium, Utah Department of Natural Resources, 1636 West North Temple, Salt Lake City, Utah.

Federal, state and local agencies as well as other interested parties are encouraged to attend the scoping meeting. In addition, written comments addressing relevant issues to be considered in the DEIS as per this NOI may be sent to Mr. Schwinn at the above address. Comments in response to this NOI will be received until the date of the scoping meeting.

Dated: August 12, 1994.

Michael P. Stuhr,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 94–20406 Filed 8–18–94; 8:45 am]

BILLING CODE 3710–EH–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review

and approve a new information collection requirement concerning Defense Production Act Amendments.

DATES: Comments may be submitted on or before October 18, 1994.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR case 93–304 requires contractors, upon the direction of the contracting office, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The interim rule expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *100* 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 this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *6*; responses per respondent, *3*; total annual responses, *18;* preparation hours per response, *100;* and total response burden hours, *1,800.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Defense Production Act Amendments, FAR case 93–304, in all correspondence.

Dated: August 11, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–20386 Filed 8–18–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Vending Facility Program for the Blind on Federal and Other Property

AGENCY: Department of Education.

ACTION: Notice of proposed schedule of arbitration fees and expenses under the Randolph-Sheppard Act.

SUMMARY: The Secretary proposes a schedule of fees and expenses associated with arbitration proceedings conducted under the Randolph-Sheppard Act that will be paid by the Department. The schedule lists the reasonable costs of arbitration and describes the standards by which the Secretary will support those costs.

DATES: Comments must be received on or before October 18, 1994.

ADDRESSES: All comments concerning this proposed schedule should be addressed to George Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317.

FOR FURTHER INFORMATION CONTACT: George Arsnow. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*, gives blind persons, who are trained and licensed by State vocational rehabilitation agencies (called "State licensing agencies" or SLAs), a priority to operate vending facilities on Federal property. The Act further provides for arbitration to resolve disputes that arise under the program between individual vendors and SLAs and between SLAs and Federal agencies. 20 U.S.C. 107d–1(a) and (b). For each of these two categories of arbitrations, the Secretary authorizes the convening of an arbitration panel upon receipt of a complaint filed by either a vendor against an SLA or by an SLA against a Federal agency. 20 U.S.C. 107d–2(a).

The Act directs each of the parties to an arbitration to each appoint one arbitrator (or panel member) and directs the two party-appointed arbitrators to select a neutral chairperson. 20 U.S.C. 107d–2(b) (1) and (2). In order to facilitate this process, the Department sends to the parties names of potential chairpersons from the Roster of Arbitrators maintained by the Federal Mediation and Conciliation Service (FMCS). If the parties seek to appoint a chairperson who is not listed on the FMCS roster, a biographical sketch of that chairperson is to be sent to the Department. Once selected, the panel conducts a hearing and renders a decision, which is subject to appeal and review as a "final agency action" for purposes of the Administrative Procedure Act. 20 U.S.C. 107d–2(a).

The Act, in 20 U.S.C. 107d–2(d), requires the Secretary to pay all reasonable costs of arbitration in accordance with a schedule of fees and expenses that the Secretary publishes in the **Federal Register.** Pursuant to this requirement, the Department has continued to pay certain costs associated with arbitration proceedings authorized by the Secretary, but has not published the schedule referred to in the statute.

The purpose of this notice is to propose a schedule of fees and expenses under section 107d–2(d) of the Act. The proposed schedule outlines the types of costs that the Secretary considers reasonable costs of arbitration and the standards by which the Secretary will determine the rate of payment for these costs. Generally, the Secretary considers reasonable costs of arbitration to include the cost of preparing the official record of arbitration proceedings, professional fees for arbitration panel members, and food, travel, and lodging expenses of panel members and essential witnesses. The Secretary does not consider attorneys' fees to be part of the reasonable costs of arbitration, but rather considers them the responsibility of each party to the arbitration.

The Department has drawn guidance from information and data supplied by the FMCS in formulating these proposed standards.

Executive Order 12866

Clarity

Executive Order 12866 requires each agency to write regulatory documents that are easy to understand.

The Secretary invites comments on how to make this proposed schedule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed schedule clearly stated? (2) Does the schedule contain technical terms or other wording that interferes with its clarity? (3) Does the format of the schedule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? Would the schedule be easier to understand if it was divided into more (but shorter) sections? (4) Is the description of the schedule in the "Supplementary Information" section of this preamble helpful in understanding the schedule? How could this description be more helpful in making the schedule easier to understand? (5) What else could the Department do to make the schedule easier to understand?

A copy of any comments that concern how the Department could make this proposed schedule easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue, SW (room 5125, FOB-6), Washington, DC 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed schedule would not have a significant economic impact on a substantial number of small entities.

Because this proposed schedule would affect only States, State agencies, and individuals, the schedule would not have an impact on small entities. States, State agencies, and individuals are not defined as "small entities" in the Regulatory Flexibility Act.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed schedule.

All comments submitted in response to this proposed schedule will be available for public inspection, during and after the comment period, in room 3230, 330 C Street, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: August 12, 1994.

(Catalog of Federal Domestic Assistance Number does not apply)

Richard W. Riley,

Secretary of Education.

Reasonable Costs of Arbitration Under the Randolph-Sheppard Act

The Secretary proposes that the reasonable costs of arbitration under 20 U.S.C. 107d-2(d) are the following:

(a) *Stenographic Record.*

(1) *General Provisions.* The Department will pay the costs of the services of the official reporter assigned to the arbitration, including preparation of the official transcript of the hearing and six copies thereof. The official transcript and one copy thereof must be submitted to the Department. The remaining five copies of the transcript must be distributed among the parties as determined by the arbitration panel chairperson. Costs of the services of the official reporter may not exceed the reasonable and customary costs for those services in the locality in which the services are furnished.

(2) *Cancellation.* The official reporter may charge the Department its customary fee for cancellation of an arbitration proceeding in situations in which a proceeding is canceled within 24 hours of its scheduled date and time.

(b) *Fees of Arbitrators.*

(1) *Per Diem.* The Department will pay a per diem fee to arbitration panel members, who are not otherwise employed by the Federal or State Government, for their services during the course of the arbitration. The per diem fee to be paid by the Department must be the lesser of—

(i) The customary fee charged by the individual panel member; or

(ii) The reasonable and customary fee charged by arbitrators in the locality where the arbitration will be held.

(2) *Postponement or Cancellation within 48 hours.* If a scheduled arbitration proceeding is postponed or canceled within 48 hours of its scheduled date and time, panel members may charge the Department—

(i) A predetermined, customary, and reasonable postponement or cancellation fee; and

(ii) That portion of the arbitrator's per diem fee proportional to the actual time the panel member expended in preparing for the proceeding.

(3) *Other Postponements or Cancellations.* If a scheduled arbitration proceeding is postponed or canceled more than 48 hours prior to its scheduled date, panel members may charge the Department only that portion of the per diem fee proportional to the actual time expended in preparing for the proceeding.

(4) *Notice.* The customary per diem and predetermined fees charged by a panel member must be included in a biographical sketch that is to be sent to the Department following his or her appointment to the panel.

(c) *Travel, Lodging, and Meal Expenses of Arbitrators and Witnesses.*

(1) *Arbitrators.* Notwithstanding that the Secretary urges the parties to appoint panel representatives from the locality in which the dispute arose and the hearing is to be held, the Department will reimburse the travel, lodging, and food expenses of the arbitration panel members incurred for the purpose of attending hearings and for the purpose of attending any pre- or post-hearing conferences that cannot be conducted by telephone. These expenses will be reimbursed at the rate applicable to Federal Government employees traveling on government business to the hearing location.

The Secretary urges the two panel representatives appointed by the parties to select a neutral chairperson from the locality in which the dispute arose and the hearing is to be held.

(2) *Witnesses.* The Department will reimburse the travel, lodging, and food expenses of witnesses for the purpose of testifying at hearings, if the witness does not reside at the locality of the arbitration proceeding and the testimony of the witness is deemed by the arbitration panel chairperson to be essential to the proper resolution of the dispute. These expenses will be reimbursed at the rate applicable to Federal Government employees traveling on government business to the hearing location.

(d) *Responsibility of Parties.* Attorneys' fees are not considered part of the reasonable costs of arbitration supported by the Department, but are the responsibility of each party to the arbitration.

(Authority: 20 U.S.C. 107d-2(d))

[FR Doc. 94-20147 Filed 8-18-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Dallas Support Office, announces that it intends to award grants to the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. The proposed awards meet the criteria in 10 CFR 600.7(b)(2)(i)(B) in addition to the type of factors listed in 10 CFR 600.14(d). The financial assistance is to provide training through a Peer Exchange Program for the states in Region VI.

SUPPLEMENTARY INFORMATION: The Region VI peer exchange program will provide hands-on training for state

Weatherization Assistance Program (WAP) personnel. This program will provide assistance to each state to send state WAP personnel to another WAP office to observe procedures used by that state to operate the WAP within their state. Similar funding has not been provided in previous fiscal years. Results of the Peer Exchange Program will have a favorable impact on the delivery of the weatherization services to the program clients. The DOE anticipates awarding $2,000.00 to each state to support the Peer Exchange Program over a project period of 12 months.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, Texas 75247, (214) 767–7082.

Issued in Golden, Colorado on August 11, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–20430 Filed 8–18–94; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Award of a Grant, Noncompetitive Financial Assistance

AGENCY: DOE Nevada Operations Office.

ACTION: Notice of intent to award based on an unsolicited application.

SUMMARY: Pursuant to 10 CFR 600.14(f), DOE announces its intent to award a grant based on an unsolicited application from the National Urban Coalition, Washington, DC, to provide Clark County School District, Nevada, with the unique approach of teaching science and math to minority students through the "Say YES" project.

Of special importance in the "Say YES" approach to teaching science and math to minority students is the highly-developed, culturally-affirmative, and historically-accurate training curriculum. The curriculum illuminates the dynamic role of all societies in the development and evolution of math and science. Children, as well as their families and teachers, learn of the contribution their cultures have made to those fields. They come to see and value themselves as carrying forward a great tradition within their own group of excellence in math, science, and technology.

The objectives of this project are: (1) to nurture and sustain children's interest in science and math; (2) to train teachers in better presentation of math and science ideas; (3) to assist students in developing creative and efficient techniques in problem-solving in science and math through hands-on activity; (4) to aid parents in developing skills needed for effective partnering with their children in the learning process; (5) to provide appropriate experiences to assist students in developing an appreciation for the importance of math, science, and critical thinking skills for successful living; (6) to provide students with information and discuss with them the educational and experimental requirements for careers in math, science, and related fields; (7) to provide opportunities whereby students will learn to apply and evaluate communicated ideals relative to relevant issues and current developments in math and science; (8) to affirm the role of all races and cultures in the history of math and science; (9) to describe and demonstrate to students the techniques for communicating ideals and issues using the language of math and science with peers and family members; and (10) to describe and discuss with parents and other interested family members appropriate procedures for becoming advocates for their children's access to higher level courses, programs, and experience in math and science.

The project period for the proposed grant award is five years, to be funded annually. The first year funding is $405,068. The total estimated cost of this award is $1,893,345. This notice is published for public comment at least 14 days prior to making the award.

FOR FURTHER INFORMATION COMMENTS AND QUESTIONS CONTACT: U.S. Department of Energy, Yucca Mountain Site Characterization Office, ATTN; Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, NV 89193–8608.

Issued in Las Vegas, Nevada, on August 9, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–20428 Filed 8–18–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Vancouver Lowlands and Western Pond Turtle Wildlife Mitigation Projects

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to fund the Vancouver Lowlands Wildlife Mitigation Project located in floodplains and wetlands in Clark County in the State of Washington and the Western Pond Turtle Wildlife Mitigation Project located in floodplains and wetlands in Lane, Linn, Marion, Polk, Benton, Clackamas, Yamhill, Washington, Multnomah, and Douglas Counties within the State of Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

The assessment will be included in each of the environmental assessments being prepared for the proposed projects in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of finding will be included in any findings of no significant impact that may be issued following the completion of the environmental assessments.

DATES: Comments are due to the address below no later than August 22, 1994.

ADDRESSES: Submit comments to the Public Involvement Manager, Bonneville Poser Administration—ALP, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Roy B. Fox, NEPA Compliance Officer-PG, Bonneville Poser Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–4261, fax number 503–230–3752.

SUPPLEMENTARY INFORMATION: The Vancouver Lowlands Wildlife Mitigation Project area is located along the western border of Clark County, extending north and west of the City of Vancouver, Washington. It consists of approximately 2123 hectares (5245 acres) of riparian, wetland and pasture habitat along the Columbia River floodplain. The Columbia River borders the southern and western boundaries of the project area (T2N, R1E, Sections 5, 6, 7, 8, 17, 18, 20; T2N, R1W, Sections 1 and 12; T3N, R1W, Sections 35, 36, and 37; T3N, R1E, Sections 30 and 31.) Major riparian and wetland features of the area include the Columbia River, Vancouver Lake, Lake River, Buckmire and Matthew Sloughs, Shillapoo Lakebed, and Post Office, Round, Green, Curtis, and Campbell lakes. Several smaller wetlands occur throughout the project area. Land ownership within the project area includes Washington

Department of Wildlife, Clark County, Port of Vancouver, Washington Department of Natural Resources and several private landowners. BPA proposes to fund implementation of a wildlife management strategy that would protect, enhance and restore wildlife habitat in the Vancouver Lowlands. Existing wetlands would be maintained or restored where possible, and enhanced to improve wildlife habitat. Enhancement activities could include control or removal of non-native fish and plant species and agricultural cultivation, planting and irrigation.

The Western Pond Turtle Wildlife Mitigation Project spans the entire Willamette River Hydrographic Basin, thus including the Willamette River floodplain. the townships and ranges that approximately compose the basin are: T3N, R5W–R2W; T2N, R5W–R2W; T1N, R5W–R7E; T1S, R5W–R7E; T2S, R5W–R7E; T3S, R5W–R7E; T4S, R5W–R7E; T5S, R5W–R7E; T6S, R5W–R7E; T7S, R5W–R7E; T8S, R5W–R7E; T9S, R5W–R7E; T10S, R5W–R7E; T11S, R5W–R7E; T12S, R5W–R7E; T13S, R5W–R7E; T14S, R5W–R7E; T15S, R5W–R7E; T16S, R5W–R7E; T17S, R5W–R7E; T18S, R5W–R7E; T19S, R5W–R7E; T20S, R5W–R7E; T21S, R5W–R7E; T22S, R5W–R7E; T23S, R5W–R7E; T24S, R5W–R7E; T25S, R3E–R7E. Within the boundaries of the Willamette River Hydrographic Basin, the Oregon Department of Fish and Wildlife's (ODFW) Western Pond Turtle Management Plan offers a system of nodes and corridors as potential mitigation lands. This proposal is called the Willamette Ecosystem Reserve Matrix (WERM). The major WERM nodes that include wetlands are: the Fern Ridge Reservoir area, the West Eugene Wetlands area, the Finley National Wildlife Refuge area, and the Buckhead Slough-Hospital Creek area. Land ownership within the project area includes the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the United States Forest Service, the United States Bureau of Land Management, the State of Oregon, Lane County, the Nature Conservancy, and several private parties. BPA proposes to fund implementation of the ODFW Western Pond Turtle Management Plan in order to protect, enhance and restore western pond turtle habitat in the Willamette River Hydrographic Basin. Enhancement activities could include control or removal of non-native fish and plant species, the restoration of native vegetation, coalescence and/or augmentations of western pond turtle populations in secure habitats, application of wire enclosures to protect nests, and/or alterations of current land management/use patterns.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on August 8, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94–20431 Filed 8–18–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

Cultural Resources Industry Outreach Training Course

August 15, 1994.

The Office of Pipeline Regulation (OPR) staff will convene another session of its cultural resources compliance training course. This is a result of the positive response to our first session held on August 2, 1994 in Washington, D.C., and to our survey for another date and location. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of:

- How the Commission gives the industry and the public an opportunity to assist the Commission in meeting its responsibilities under the National Historic Preservation Act (NHPA) and other historic preservation laws and regulations; and
- What cultural resources information the industry needs to file with the Commission before and after the Commission issues a certificate.

We encourage interested organizations and the public to take advantage of this course.

The course will include the following topics:

- Objectives and requirements of the Commission regarding compliance with § 106 of the NHPA and related historic preservation laws;
- Guidance for reporting on cultural resources investigations;
- Definition of cultural resources terms used by the Commission in the compliance process; and
- Efficient strategies for planning and conducting cultural resources investigations.

The one-day training course will be held on September 21, 1994, at the Wyndham Greenspoint Hotel, 12400 Greenspoint Drive, Houston, Texas 77060–1998. For hotel reservations, please call 1–713–875–2222 by September 9, 1994 and identify yourself as a cultural resources seminar attendee.

The OPR staff and Enserch Environmental, the Commission's environmental support contractor, will conduct the training. There is no fee for the course, but you must pre-register.

Additional outreach training may be offered later this year and in 1995 based on the level of interest. Please indicate whether you would like this course to be offered again, or if you are interested in any other courses with a different curriculum focus or for another target audience. Also indicate your preference for location. If other sessions or courses are planned, information will be published in the **Federal Register** and sent to you announcing the dates and locations.

If you would like to attend the September 21, 1994 session, or indicate your preference for other courses and locations, please call the telephone number listed below to obtain a registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Enserch Environmental Corporation, 211 Congress Street, Boston, MA 02110, Telephone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the training course.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20400 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–14–004]

Black Marlin Pipeline Company; Filing

August 15, 1994.

Take notice that on July 29, 1994, Black Marlin Pipeline Company (Black Marlin) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1]

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[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and*

Continued

and Order No. 566.[2] Black Marlin states that it is revising its standards of conduct to incorporate the changes required by Order No. 566.

Black Marlin states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 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. 94–20394 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–690–000]

Columbia Gulf Transmission Company; Application for Abandonment

August 15, 1994.

Take notice that on July 29, 1994, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed an application, as modified on August 10, 1994, pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing the abandonment and sale of natural gas facilities constructed pursuant to authorization granted in Docket No. CP84–551–000.[1]

Applicant seeks authorization for the abandonment of certain compression facilities and appurtenances purchased to facilitate the transportation of gas produced from the Eugene Island Block 309 G Platform, under terms of gas purchase contracts between Columbia Gas Transmission Corporation (Columbia Transmission), Applicant's affiliate, and Forest Oil Corporation (Forest Oil) and Columbia Gas Development Corporation (Columbia Development). Applicant states that Columbia Transmission has ceased purchasing from both companies and the facilities are no longer needed for system supply. Therefore, Applicant, Forest Oil and Columbia Development have entered into an agreement dated January 24, 1994, for the purchase and sale of Applicant's 50% interest in the facilities for the sum of $29,375. Forest Oil and Columbia Development would assume all responsibilities and liability for the future operation, maintenance and retirement of the facilities. Applicant states that none of its transportation in Eugene Island Block 309 would be affected.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 6, 1994, 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 385.211 and 385.214) 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 in any proceeding herein 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 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 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 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 to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20399 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–3–009]

Florida Gas Transmission Company; Filing

August 15, 1994.

Take notice that on July 29, 1994, Florida Gas Transmission Company (FGT) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] FGT states that it is revising its standards of conduct to incorporate the changes required by Order No. 566.

FGT states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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., 204276, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 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

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extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17 1994).

[1] *See*, 30 FERC ¶ 62,082 (1985).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G *order extending sunset date*, 59 FR 32884 (June 27 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17 1994).

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20397 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–709–000]

KN Interstate Gas Transmission Co.; Request Under Blanket Authorization

August 15, 1994.

Take notice that on August 10, 1994, K N Interstate Gas Transmission Co. (KN Interstate), P. O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP94–709–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add five new delivery points to serve two existing customers, Williams Field Services (Williams and K N Energy, Inc. (KN Energy), under KN Interstate's blanket certificate issued to KN Energy in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to Section 7 of the Natural Gas Act and transferred to KN Interstate by order issued in Docket No. CP93–41–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, KN Interstate proposes to install and operate the delivery points listed below. Delivery point (1) is to Williams and located in Hemphill County, Texas and delivery

	Deliveries		Cost of tap and valve
	Peak day (Mcf/d)	Annual (Mcf)	
(1)	11,250	1,825,000	$70,000
(2)	48	2,880	1,150
(3)	36	328	1,150
(4)	33	300	1,150
(5)	49	446	1,150

points (2) through (5) are to KN Energy in Rooks County, Kansas; Sherman County, Nebraska; Fillmore County, Nebraska and Howard County, Nebraska, respectively. KN Interstate states that the volumes of gas which will be delivered at each of the proposed delivery points will be within the current maximum daily transportation quantities in KN Interstate's transportation service agreements with Williams and KN Energy.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 94–20398 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–7–006]

Northern Natural Gas Company; Filing

August 15, 1994.

Take notice that on July 29, 1994, Northern Natural Gas Company (Northern Natural) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] Northern Natural states that it is revising its standards of conduct to incorporate the changes required by Order No. 566.

Northern Natural states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 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. 94–20396 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–9–008]

Transwestern Pipeline Company; Filing

August 15, 1994.

Take notice that on July 29, 1994, Transwestern Pipeline Company (Transwestern) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] Transwestern states that it is revising its standards for conduct to incorporate the changes required by Order No. 566.

Transwestern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994).

211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 30, 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. 94–20395 Filed 8–18–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4714–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 1, 1994 through August 5, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–L99004–AK Rating EC2, Exxon Valdez Oil Spill Restoration Plan, Implementation, Prince William Sound, Gulf of Alaska, AK.

Summary: EPA expressed environmental concerns based on the need to ensure that the Trustee Council and individual agencies are cooperating and coordinating each others management actions/objectives. EPA expressed concerns over uncertainties of habitat protection tradeoffs for each alternative. EPA recommended that the final EIS include additional information on incorporating agency management actions into the Restoration Plan and the difference of actual habitat protection afforded by each alternative.

ERP No. D–BLM–K60027–CA Rating EC2, Southeast Regional Wastewater Treatment Plant and Geysers Effluent Pipeline Injection Project, Improvements, Funding, COE Section 404 Permit and NPDES Permit, City of Clearlake, Lake County, CA.

Summary: EPA expressed environmental concerns regarding potential project impact to water quality, water supply, wetlands, riparian habitats, and fish and wildlife resources. EPA requested that these issues be addressed in the final EIS.

ERP No. D–DOI–L39051–AK Rating LO, Institute of Marine Science Infrastructure Improvement, Long-Term Research and Monitoring of the Ecosystem affected by the Exxon Valdez Oil Spill, Funding, Seward, AK.

Summary: EPA had no objections to the proposed action, but made the following suggestion: include a discussion on types of chemicals used in research laboratories and disposal methodology.

ERP No. D–NPS–K61130–HI Rating LO, Haleakala National Park General Management Plan and Conceptual Framework, Implementation, Island of Maui, Maui County, HI.

Summary: EPA expressed a lack of objections with the proposed action but requested that the final EIS assess potential project impacts to water quality caused by nonpoint source runoff and note the designated uses of water bodies in the project area under Hawaii water quality regulations.

ERP No. D–USN–F11026–IN Rating EC2, Great Lakes Naval Training Center Realignment of Naval Training Centers in Orlando, Florida; San Diego, California; Treasure Island and Combat Systems Technical Schools Command, Mare Island, California and Relocation of Commander Navy Recruiting Command, Washington, DC, Implementation, Lake County, IN.

Summary: EPA expressed environmental concerns regarding alternative sites.

Final EISs

ERP No. FA–COE–K32038–CA Oakland Outer and Inner Harbors, Deep Draft Navigation Improvements, Updated Information, Alcatraz Dredge Material Disposal Site Changed Conditions, Implementation, Alameda County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–USN–L11013–WA US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Updated Information concerning Dredging and Dredge Disposal at Pier D Naval Shipyard Puget Sound for the Berthing of (AOE–6 Class) Ships and Temporary Berthing of Deep-Draft Vessels, Sinclair Inlet, Bremerton, WA.

Summary: EPA provided no formal written comments. EPA had no objections to the preferred alternative as described in the final EIS.

Dated: August 16, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–20443 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4714–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed August 08, 1994 Through August 12, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940323, FINAL EIS, AFS, MT, Bear Timber Sales, Implementation, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT, Due: September 10, 1994, Contact: Rick Floch (406) 821–3913.

EIS No. 940324, DRAFT EIS, FHW, IL, FAP Route 340 Transportation Project, Construction from I–55 to I–80, Funding, US Coast Guard Permit and COE Section 404 Permit, Cook, Dupage and Will Counties, IL, Due: October 11, 1994, Contact: Lyle Renz (217) 492–4600.

EIS No. 940325, DRAFT EIS, AFS, CA, Eight Eastside Rivers, Wild and Scenic River Study, Suitability or Nonsuitability, Tahoe National Forest and Lake Tahoe Management Unit, Land and Resource Management Plans, Apline, El Dorado, Placer, Nevada and Sierra Counties, CA, Due: November 18, 1994, Contact: Terry Randolph (702) 882–3436.

EIS No. 940326, FINAL EIS, COE, DC, MD, Anacostia River and Tributaries Feasibility Study relating to Restoration of Fish and Wild Habitat, Implementation, Prince George's and Montgomery Cos., MD, and DC, Due: September 10, 1994, Contact: Mark E. McKevitt (410) 962–2650.

EIS No. 940327, DRAFT EIS, FHW, WI, US 12 Whitewater Bypass Improvements, Buckingham Road to Cox Road, Funding, Right-of-Way and COE Section 404 Permit, City of Whitewater, Jefferson, Rock and Walworth Counties, WI, Due: October 14, 1994, Contact: James Zavoral (608) 264–5944.

EIS No. 940328, REVISED DRAFT EIS, COE, CA, San Gabriel Canyon Sediment Management Plan, Dredging and Disposal of Sediments, Revised Information, COE Section 404 Permit, Special Use Permit and Right-of-Entry Issuance, Angeles National Forest,

San Gabriel River, Los Angeles County, CA, Due: October 18, 1994, Contact: Aaron Allen (213) 894–0349.

EIS No. 940329, DRAFT SUPPLEMENT, FHW, PA, US–22/322/PA–22/Section 002/River Route Improvements, Updated Information, Dauphin Borough to Speeceville and a Section of PA–225 through Dauphin Borough, Funding and COE Section 404 Permit, City of Harrisburg, Dauphin County, PA, Due: October 07, 1994, Contact: Manuel A. Marks (717) 782–4422.

EIS No. 940330, DRAFT EIS, AFS, ID, Salmon Wild and Scenic River Corridor, Implementation, Issuance of Special-Use-Permits for three Private Camps, Salmon National Forest, Salmon County, ID, Due: October 03, 1994, Contact: Steve Haydon (208) 865–2383.

EIS No. 940331, FINAL EIS, FHW, AZ, Red Mountain Freeway (Loop 202) Transportation Facility, Construction from Salt River between the Price Freeway on the west and AZ–87 on the east, COE Section 404 and NPDES Permits, Phoenix Metropolitan Area, Maricopa County, AZ, Due: September 18, 1994, Contact: Ken Davis (602) 379–3646.

EIS No. 940332, DRAFT EIS, AFS, AZ, NM, Southwestern Region Amendment of Forest Plans, Implementation, Standard and Guidelines for Northern Goshawk and Mexican Spotted Owl, AZ and NM, Due: December 01, 1994, Contact: Arthur S. Briggs (505) 842–3212.

EIS No. 940333, DRAFT EIS, USA, NM, White Sands Missile Range (WSMR), Implementation, Range-wide, Las Cruces, NM, Due: October 03, 1994, Contact: Ralph Holweck (707) 697–8995.

EIS No. 940334, FINAL EIS, JUS, TX, AZ, NM, CA, Joint Task Force (JTF)—Six Support Services Continuation Program, Implementation, Programmatic EIS, TX, NM, AZ, CA, U.S./Mexico Border and Texas Gulf Coast, Due: September 10, 1994, Contact: Eric Verwers (817) 334–3246.

EIS No. 940335, FINAL EIS, BLM, ID, Stone Cabin Open Pit Gold and Silver Mine Development and Operation, Plan of Operations Approval and NPDES Permit Issuance, Florida Mountain, Boise District, Owyhee County, ID , Due: September 19, 1994, Contact: Butch Peaugh (208) 384–3076.

Dated: August 16, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–20444 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5054–8]; General NPDES Permit No. AK–G52–0000]

Draft General NPDES Permit for Seafood Processors in Alaska in Waters of the United States

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Extension of the public comment period.

SUMMARY: On July 28, 1994, EPA provided notice of the draft general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–0000 for seafood processors in Alaska. The public comment period and public hearings were also published. At the request of interested parties, EPA is today providing notice that the public comment period has been extended.

ORIGINAL PUBLIC NOTICE ISSUANCE DATE: Monday, July 28, 1994.

EXTENDED PUBLIC NOTICE EXPIRATION DATE: Tuesday, September 13, 1994.

PUBLIC COMMENTS: Interested persons may submit written comments on the draft general NPDES permit to the attention of Burney Hill at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the extended expiration date of the public notice.

ADMINISTRATIVE RECORD: The complete administrative record for the draft permit is available for public review at the EPA Region 10 Library, 10th Floor, at the address listed below. Copies of the draft general NPDES permit, fact sheet, and the environmental assessment are available upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372).

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, Wastewater Management and Enforcement Branch (WD–137), 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Burney Hill, of EPA Region 10, at the address listed above or telephone (206) 553–1761.

Dated: August 11, 1994.

Janis Hastings,

Associate Director, Water Division.

[FR Doc. 94–20442 Filed 8–18–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2025]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 16, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed September 6, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Expanded Interconnection with Local Telephone Company Facilities. (CC Docket No. 91–141 Transport Phase II)

Number of Petitions Filed: 3

Subject: Amendment of Part 74 of the Commission's Rules Governing Use of Frequencies in the Instructional Television Fixed Service. (MM Docket No. 93–106)

Number of Petitions Filed: 3.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–20363 Filed 8–18–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.**

The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership

estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street NW., Washington, D.C. 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims.

The Early Bank, #2507
Early, Texas

Dated: August 15, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–20381 Filed 8–18–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

[Docket R–0846]

Federal Reserve Bank Services: Imputed Income on Clearing Balances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposal to modify the methodology for imputing clearing balance income to more closely parallel the practices of a private sector service provider. Specifically, the Board is requesting comment on a proposal to change the rate used to impute clearing balance income from the 90-day Treasury bill coupon equivalent yield to a longer term Treasury rate based on the earning asset maturity structure of the largest bank holding companies (BHCs). The intended effect of the proposal is to promote competitive equity with private sector practices by matching the maturity structure for investment of clearing balances to the structure revealed in bank holding company data on investments.

DATES: Comments must be submitted on or before September 21, 1994.

ADDRESSES: Comments, which should refer to Docket No. R–0846, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Greg Evans, Manager (202/452–3945), or Gwen Mitchell, Senior Accounting Analyst (202/452–3841), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Monetary Control Act (MCA) requires the Federal Reserve Banks to establish fees for their services on a basis similar to private sector service providers. In establishing fees, the Board considers objectives of fostering competition, improving the efficiency of the payments mechanism, and providing financial services nationwide.

Accordingly, the Federal Reserve imputes costs in the private sector adjustment factor (PSAF) that are intended to mirror private sector sales taxes, income taxes, cost of funds, and FDIC assessments. Capital structure, equity and debt rates, and an income tax rate are derived from a model of the largest (in asset size) 50 bank holding companies. The Federal Reserve uses the bank holding company model to place Reserve Bank payment service costs on an equal footing with those costs incurred by the private sector. The banking industry has accepted the BHC model as a proxy for determining Federal Reserve imputed costs.

In February 1981, the Federal Reserve established procedures to assist depository institutions with clearing arrangements at Reserve Banks, recognizing that the maintenance of an account relationship is necessary for (a) depository institutions that do not maintain reserve accounts but desire direct access to some or all Federal Reserve priced services and (b) depository institutions that do maintain a reserve account but find the reserve balance inadequate for their transactions.

Because clearing balances were established as a result of depository institutions wanting access to Federal Reserve priced services, it was determined that investment earnings attributable to clearing balances should be ascribed to the System's priced service operations, comparable to the use of these balances by other service providers. The 1982 annual financial report of the Federal Reserve reflected these earnings.

This priced service revenue factor, net income on clearing balances (NICB), is the difference between the income the Federal Reserve imputes on clearing balances held with the Federal Reserve System, less imputed reserve requirements, and the priced services cost of earnings credits granted to depository institutions, net of expired earnings credits. (Appendix A illustrates the current NICB calculation.) The private sector recognizes revenue from these balances in a similar way.

In 1982, under its delegated authority rules, the Board approved a rate of return equivalent to the yield on the short-term assets included in the System Open Market Account portfolio for calculating clearing balance income. The Federal Reserve selected the 90-day Treasury bill coupon equivalent yield to impute income on clearing balances.

A primary benefit of the 90-day Treasury rate, which is still used today, is that its yield is equivalent to the yield on short-term assets currently included in the Federal Reserve's System Open Market Account (SOMA) portfolio. Additionally, use of the short-term 90-day rate was viewed as more closely approximating what would have been realized had clearing balance funds been held and invested by a private business firm. Lastly, Treasury yield data are available to the public. This allows the earnings calculation to be replicated by the private sector.

The Reserve System recently reviewed the methodology used to impute income on clearing balances to determine the comparability of Federal Reserve practices in this area with practices of correspondent banks. A telephone survey of bank holding companies was conducted to determine the types of assets in which correspondent banks invest clearing balance funds.

Survey results showed that, although correspondent banks pay earnings credits based on a short-term rate (90-day Treasury bill), their investment of clearing balance funds is determined by the economic environment, their risk policies, and investment opportunities available. The survey participants identified a range of investment options including, loans, securities, and overnight funds.

It was observed that correspondent banks may exercise a broad range of investment opportunities whereas the Federal Reserve has adopted a more restrictive practice. Since Reserve Bank imputed investments do not reflect correspondent bank practices, the approach is inconsistent with other areas of priced service accounting. Other areas of priced service accounting either draw on actual Reserve Bank costs, or are imputed based on BHC data. More important, over time, by computing clearing balance income in the current fashion, the Federal Reserve may be understating clearing balance revenue, increasing costs of Federal Reserve priced services, and setting prices higher than necessary to promote effective competition and efficient payment services.

The proposal under consideration by the Board of Governors is to determine the maturity structure of short-, intermediate-, and long-term securities assets from the BHC model and impute income based on published matching term Treasury yields. The Board is considering the BHC structure/Treasury yields method because it promotes competitive equity with private sector practices by matching the maturity structure for investment of clearing balances to the structure revealed in bank holding company data on investments.

One problem with attempting to match the earnings realized by bank holding companies is that the risk premium for the private sector is difficult to manage and approximate. Also, the Federal Reserve could not determine administrative costs from available data. Therefore, the Board believes that the Treasury rate provides a reasonable proxy for the actual rate realized by bank holding companies on clearing balances, without the risk premium associated with holding company investments and administrative costs incurred managing portfolio risk. Bank holding company maturity structures and Treasury yields are publicly available so that the NICB calculation can be replicated by the private sector. The recommended approach provides longer term investments, which would produce higher earnings, assuming an upward sloping yield curve.

Proposed NICB Computation

An estimate of NICB is prepared annually. Under the recommended methodology, selected earning assets include Federal funds, repurchase agreements, and securities. These investments were chosen because they most closely represent the Treasury function investments of the private sector. The earning assets maturity structure of the BHC model would be defined as follows: less than one year (short-term), one -to -five years (intermediate-term) and greater than five years (long-term). The maturity structure would be calculated from the most recent four quarters of Y9 data. The Y9 is a quarterly BHC report filed with the Federal Reserve and is generally available to the public 50 to 60 days after the close of the quarter. For example, four quarters for 1992 would be used for the 1994 earnings rate estimate, which would be calculated in the fall of 1993. Similarly, 1992 BHC data are used for the 1994 PSAF calculation. Historical rates are used because the Board has decided in previous instances to avoid the appearance of forecasting interest rates.

Published matching-term Treasury yields would be applied to the maturity percentages and summed to develop the earnings rate. The Board intends initially to use shorter term Treasury rates. In this regard, a three-month Treasury yield would be used for the short-term rate maturity portion. A one-year Treasury yield would be used for the intermediate-term, and a five-year Treasury yield would be applied for the long-term portions. Current year-to-date (approximately four months) week-ending average Treasury yields from the Federal Reserve H.15 Statistical Release would be used for the estimate. The recommended maturity structure and applicable Treasury yields are shown below.

BHC maturity structure (A)	Treasury yield (B)	Weighted average rate (AxB)
% Investment < 1 year.	Three-month	%
% Investments 1–5 years.	One-year	%
% Investment 5+ years.	Five-year	%
Total	.....	Weighted average estimated rate.

Actual NICB results are imputed monthly. Under the recommended methodology, the maturity structure developed in the calculation of the estimate would be held constant for the year; however, current monthly Treasury yields would be applied to the percentages to develop the weighted average earnings rate. The week-ending average yields, as published in the Federal Reserve H.15 Statistical Release, would be used to calculate the monthly rate.

The following table illustrates the result of this recommendation compared with the current methodology using 1994 projections.

1994 NICB ESTIMATE ($ MILLIONS)

	Current Method	BHC structure and treasury yield
Clearing balance income:		
Investable funds	$5,417.8	$5,417.8
Earnings rate	3.0877%	4.1109%
Earnings on invested portion of clearing balances	167.3	222.7
Cost of earnings credits:		
Cost (Fed funds rate)	3.0079%	3.0079%
Net cost of earnings credits	141.9	141.9
Net Income on clearing balances	$25.4	$80.8

Had the recommended approach been in place for the 1994 estimate, clearing balance earnings would have increased $55.4 million or 33.1 percent, from $167.3 million using the current method to $222.7 million. This is due to a 102 basis points increase in the earnings rate, from 3.0877 percent in the current method to 4.1109 percent[1]. NICB would have increased from $25.4 million in the current method to $80.8 million.

Moreover, the Board believes that investment decisions made by BHCs are not static. Instead, these decisions are the result of several considerations, including the economic environment, their risk policies, and investment opportunities available. Consequently, the Board recognizes that the recommended methodology may require further adjustment based on economic situations or new investment opportunities. Prudent private sector investors would be aware of changing variables and would make the necessary investment changes to reflect market conditions.

Accordingly, the Board would propose to make such adjustments, without public comment, unless the adjustment entails a change in the methodology. Therefore, imputed investment income would be subject to the Board's approval as are fee schedules for Federal Reserve priced services and the PSAF.

[1] The imputed weighted average earnings rate is derived as follows (short, intermediate, and long-term, respectively): ((32.67% * 3.0877%) + (27.58% * 3.3889%) + (39.75% * 5.4526%)) = 4.1109%

In summary, the current short term nature of Federal Reserve clearing balance income is not representative of the behavior of most correspondent banks. Although the recommended methodology still does not purely match BHC activity, the Board believes that it more closely parallels the practices of a private sector service provider. The recommended methodology also complies with Federal Reserve pricing principles The Board also believes that the Treasury rate provides a reasonable proxy for the actual rate realized by bank holding companies on clearing balances. The Treasury rate is simpler to administer because it does not incorporate a risk premium or administrative costs of managing portfolio risk. The Board requests comments on the proposal to: (a) change the methodology for imputing clearing balance income to more closely parallel the practices of a private sector service provider and (b) change the rate used to impute clearing balance income from the 90-day Treasury bill coupon equivalent yield to a longer term Treasury rate based on the earning asset maturity structure of the largest BHCs.

By order of the Board of Governors of the Federal Reserve System, August 12, 1994.

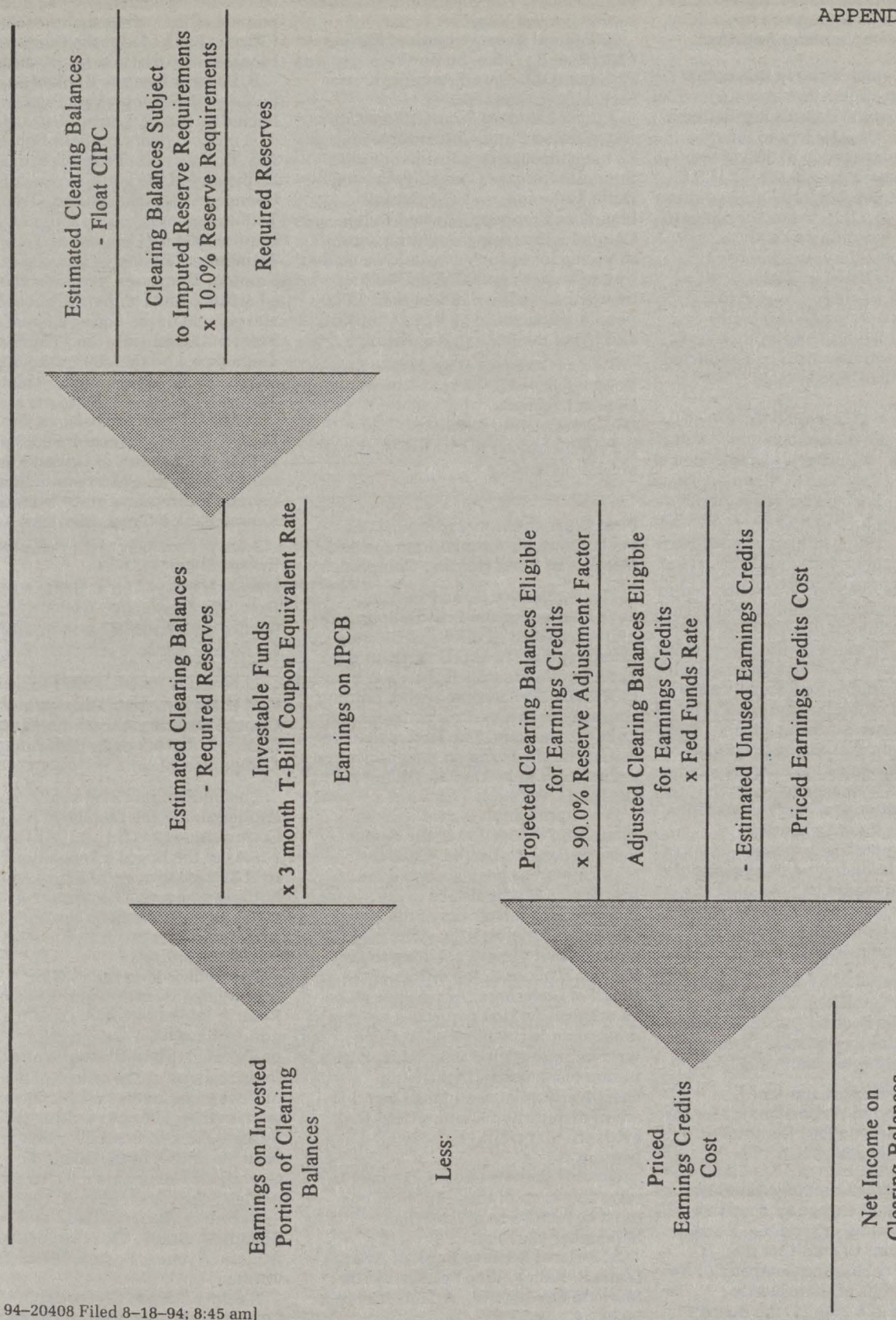
William W. Wiles,

Secretary of the Board.

BILLING CODE 6210-01-P

APPENDIX A

NICB ESTIMATION CALCULATION



[FR Doc. 94–20408 Filed 8–18–94; 8:45 am]
BILLING CODE 6210–01–C

City Holding Company, et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit for the account of City Holding Company or for the account of its affiliate banks, pursuant to § 225.25(b)(1) the Board's Regulation Y. The geographic area to be served is West Virginia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National Summit Bancshares, Inc., Crested Butte, Colorado; to engage *de novo* through its subsidiary First Summit Mortgage Company, Crested Butte, Colorado, and The Summit Insurance Company, Crested Butte, Colorado, in making, acquiring, and servicing loans such as would be made by a mortgage company, and selling insurance in a town of less than 5,000 people, pursuant to §§ 225.25(b)(i)(iii) and (A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-20409 Filed 8-18-94; 8:45 am]

BILLING CODE 6210-01-F

First Citizens Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Citizens Bancorp, Inc., Monroeville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Citizens Bank of Monroe County, Monroeville, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Independent Southern Bancshares, Inc., Brownsville, Tennessee; to acquire 25 percent of the voting shares of Commerce Bancshares, Inc., Trenton, Tennessee, and thereby indirectly acquire Bank of Commerce, Trenton, Tennessee. Commerce Bancshares, Inc., Trenton, Tennessee, proposes to become a bank holding company by acquiring 100 percent of the voting shares of Trenton Bancshares, Inc., Trenton, Tennessee, and thereby indirectly acquire Bank of Commerce, Trenton, Tennessee.

2. Mark Twain Bancshares, Inc., St. Louis, Missouri; to acquire 66.7 percent of the voting shares of United Kansas Bank Group, Inc., Merriam, Kansas, and thereby indirectly acquire United Kansas Bank & Trust, Merriam, Kansas.

Board of Governors of the Federal Reserve System, August 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-20410 Filed 8-18-94; 8:45 am]

BILLING CODE 6210-01-F

Karl L. Meyer, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 8, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Karl L. Meyer, Greenwich, Connecticut; to acquire, as the result of a stock redemption, 13.85 percent of the voting shares of Home Port Bancorp,

Inc., Nantucket, Massachusetts, and thereby indirectly acquire Nantucket Bank, Nantucket, Massachusetts.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John W. MacGregor, II, Drummond, Oklahoma; to acquire 61.45 percent of the voting shares of Drummond Bancshares, Inc., Drummond, Oklahoma, and thereby indirectly acquire Bank of Drummond, Drummond, Oklahoma.

Board of Governors of the Federal Reserve System, August 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-20411 Filed 8-18-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Time and Date: 9:00 a.m.–5:00 p.m., September 14, 1994.

Place. Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Status: Open.

Purpose: The Subcommittee will consider some examples of Federally-supported research in the area of minority health statistics as part of an overall effort to understand the current state of minority health research, which will serve as a basis for future recommendations.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 12, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-20415 Filed 8-18-94; 8:45 am]

BILLING CODE 4163-18-M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on State and Community Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., September 20, 1994.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will meet to discuss issues related to State and community statistics and to develop a work plan for the coming year.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 12, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–20414 Filed 8–18–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0257]

Betz Laboratories; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the copolymer of the sodium salt of acrylic acid with polyethyleneglycol allyl ether in paper mill boilers.

DATES: Written comments on the petitioner's environmental assessment by September 19, 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: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

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 4B4426) has been filed by Betz Laboratories, 4636 Somerton Rd., Trevose, PA 19053. The petition proposes that the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the copolymer of the sodium salt of acrylic acid with polyethyleneglycol allyl ether in paper mill boilers.

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: August 11, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–20450 Filed 8–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meetings of the Alternative Medicine Program Advisory Council and its Subcommittees

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council and its subcommittees. The full Council will meet on August 31 from 8:30 a.m. to recess and on September 1 from 8:30 a.m. to 12:15 p.m. in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The subcommittees will meet on September 1 from 2:15 p.m. to adjournment. The location of the meetings of the subcommittees will be announced during the full Council meeting.

The purpose of the meeting will be to familiarize Council members with the operations and programs of the Office of Alternative Medicine and to organize subcommittees. The agenda for the full Council meeting will include a discussion of the Council's duties and responsibilities and reports on the activities of the Office of Alternative Medicine and the sponsored research program. The agendas for the meetings of the subcommittees will include discussion of operations and future activities.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 6120 Executive Blvd., Suite 450, Rockville, MD 20892–9904, phone (301) 402–2467, fax (301) 402–4741, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than August 22, 1994.

Dated: August 12, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–20401 Filed 8–18–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–97]

Federal Property Suitable as Facilities To Assist the Homeless; Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David J. Pollack, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David J. Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this

Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: August 12, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 08/19/94

Suitable/Available Properties

Building (by State)

California

Bldg. 1200
Mather Air Force Base
intersection of Mather Dr. & W. Mather Dr.Co: Sacramento CA 95655–
Landholding Agency: Air Force-BC
Property Number: 199430001
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 81,970 sq. ft., 1-story concrete/river rock facade, most recent use—supermarket and warehouse

Bldg. 1400
Mather Air Force Base
N side of Airmen Way at DriscollCo: Sacramento CA 95655–
Landholding Agency: Air Force-BC
Property Number: 199430002
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 15,984 sq. ft., 1-story wood/brick veneer, most recent use club

Bldg. 1425
Mather Air Force Base
Corner of Airmen Way at DriscollCo: Sacramento CA 95655–
Landholding Agency: Air Force-BC
Property Number: 19940003
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 14,432 sq.ft., concrete/brick veneer, most recent use motion picture theater.

15 Sewage Pumping Facilities
Naval Station Treasure IslandCo: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420192
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: various sq. ft. sewage pumping station/sheds & industrial waste treatment bldgs., scheduled to be vacated 9/97

Indiana

Water Pumping Station
Jefferson Proving Ground (Off-Site)
West Main St.
Madison Co: Jefferson IN 47250–
Landholding Agency: COE-BC
Property Number: 329430005
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,809 sq. ft. brick pump station & 2—144 sq. ft. (each pump houses, possible lead base paint

Land (by State)

California

Land—667.81 Acres
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE-BC
Property Number: 329420001
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 667.81 acres, potential flooding when DOD vacates base and levees & pumps are inoperable, includes airport runway and airfield.

Land w/structures
Hamilton Army Airfield
Novato Co: Marin CA 94949
Landholding Agency: COE-BC
Property Number: 329430004
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: approx. 52.19 acres, land improved w/bldgs., bldgs. published on 6/3/94, potential flooding when DOD vacates base and levees/pumps are inoperable, potential access restrictions.

[FR Doc. 94–20249 Filed 8–18–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–950–94–4333–11:NV5–93–37; 3–00154]

Nevada: Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1994 "Gold Coast 300" Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1994 "GOLD COAST 300" race course on September 10, 1994. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, September 10, 1994, to 1700 hours, September 10, 1994, to protect persons, property, and public land resources on and adjacent to the SCORE International, 1994 "GOLD COAST 300" OHV race course. Spectators are restricted to the start/finish, and the area shown as the high speed test section, parallel the paved I–15 frontage road only.

These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1994 "GOLD COAST 300" OHV race course.

The following public lands restricted or closed are described as: The Hidden Valley Area, T. 23 S., R. 61. E., all of sections 1 through 36; T. 24 S., R. 61. E., all of sections 1 through 36. The Erie area, T. 24 S., R. 60. E., all of sections 1 through 36; T. 23 S., R. 60. E., all of section 36. The Jean area, T. 25 S., R. 59. E., all of sections 1 through 36. The Jean Lake area, T. 25 S., R. 60. E., all of sections 1 through 36; T. 25 S., R. 61. E., all of sections 1 through 36. The Roach Lake area, T. 26 S., R. 59. E., all of sections 1 through 36; T. 27 S., R. 59. E., all of sections 1 through 36. The Beer Bottle Pass area, T. 26 S., R. 60. E., all of sections 1 through 36. The Lucy Grey area, T. 27 S., R. 60. E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647–5000. Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7

Dated: August 12, 1994.

Colin P. Christensen,

Acting District Manager, Las Vegas District.

[FR Doc. 94–20459 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR–014–4333–04; GP4–260]

Emergency Road Closure and Restrictions; Wood River Ranch

AGENCY: Bureau of Land Management, Lakeview District, Klamath Falls Resource Area.

ACTION: Public notice.

SUMMARY: The north half of the Wood River Ranch, 1,680 acres, acquired by BLM in Klamath County is closed to motorized vehicular travel from the time of acquisition until completion of the Management Plan. The area will be open for day use only. Day use is defined as two hours before sunrise and once half hour after sunset. Overnight camping is prohibited. No fires of any

kind are permitted. No personal property such as hunting decoys, tents, etc., can remain on the Wood River Ranch during the overnight hours. Pit hunting blinds may not be dug on the property.

These restrictions are necessary to prevent resource damage to soil, roads, vegetation, including spread of noxious weeds and possible damage to cultural resources. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel. Vehicles used for administrative, emergency, and law enforcement will be exempt from the motor vehicle restrictions. Adjacent landowners, their agents and employees, with a right-of-way for access, may use vehicles on the dike roads only to gain access to adjacent private property, may not take vehicles off of the dike roads, and while on the Wood River Ranch, may not off-load personnel, personal property or equipment. Motorized boats are not considered motorized vehicles but their use is restricted to the permanently flooded marsh.

SUPPLEMENTARY INFORMATION: Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0–7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

For more information contact: Lakeview District, Klamath Falls Resource Area Manager, A. Barron Ball, 2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603; 503–883–6916.

Dated: August 2, 1994.

A. Barron Ball,

Klamath Falls Resource Area Manager.

[FR Doc. 94–20466 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–33–M

[MT–921–04–4120–03–P; NDM 83357]

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of invitation.

Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota

T. 146 N., R. 87 W., 5 p.m.
Sec. 31: NE¼.
160.00 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and The Coteau Properties Company, HC 3, Box 49, Beulah, North Dakota 58523. Such written notice must refer to serial number NDM 83357 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Beulah Beacon, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Beulah Beacon.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by The Coteau Properties Company, is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: August 10, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–20393 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–DN–P

[ID–010–04–406A–02; IDI–29233]

Stone Cabin Mine, ID; Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act and 43 CFR 3809 (Mining Regulations) the Bureau of Land Management (BLM) as lead agency has prepared, by a third party contract, a final environmental impact statement (EIS) on a Plan of Operations for the proposed Stone Cabin Mine. The Environmental Protection Agency (EPA) and the Corps of Engineers (COE) are cooperating agencies. The final EIS is now released and is available to the public.

DATES: Comments on the EIS will be accepted until September 19, 1994.

ADDRESSES: Copies of the final EIS are available from: Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Fred Minckler, Team Leader at the address above. Telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Stone Cabin Mine is a proposed open-pit gold and silver mine located in the Owyhee Mountains in Southwestern Idaho. The mine would be located on Florida Mountain, about 50 miles southwest of Boise, Idaho and about one mile west of the historic mining town of Silver City, Idaho. The Stone Cabin Mine would be operated as a satellite facility and would share some components of the existing Kinross DeLamar Mine located about five miles west of the proposed Stone Cabin Mine site.

The BLM will issue a Record of Decision on the Plan of Operations no sooner than 30 days following release of the final EIS.

Dated: August 10, 1994.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 94–20382 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–GG–M

[MT–930–4210–04; MTM 80893]

Notice of Conveyance of Certain Lands and Order Providing for Opening of Public Land in Yellowstone County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

SUPPLEMENTARY INFORMATION:

1. Under the authority of FLPMA, the following described surface estate has been transferred to Herman Thaut and Cora Lee Thaut:

Principal Meridian, Montana

T. 3 N., R. 27 E.,
Sec. 14, NE¼ and SW¼.
Containing 320.00 acres in Yellowstone County.

2. In the exchange, the following described surface estate has been reconveyed to the United States:

Principal Meridian, Montana

T. 3 N., R. 27 E.,
Sec. 1, Lots 1 to 4, inclusive, S½N½ and S½.
Containing 639.60 acres in Yellowstone County.

3. At 9 a.m. on September 23, 1994, the lands described in paragraph 2 above that were conveyed to the United

States will be opened only to the operation of the public land laws generally, subject to valid existing rights, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 23, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

Dated: August 10, 1994.

James Binando,

Acting Duty State Director, Division of Lands and Renewable Resources.

[FR Doc. 94–20389 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–DN–P

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 12, 1994.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park headquarters, Acadia National Park, Rt. 233, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 20, 1994.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (202) 288–33338.

Dated: August 12, 1994.

Chrysandra L. Walter,

Acting Regional Director.

[FR Doc. 94–20355 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–70–M

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Thursday, September 22, 1994. The meeting will convene at 7:00 P.M. at the Van Buren Secondary School, Van Buren, Aroostook County, Maine. The school is located on U.S. Route 1 in Van Buren.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Reports of Maine Acadian Culture Preservation Commission working groups.
2. Report of the National Park Service planning team.
3. Presentation by the Maine State Historic Preservation Officer on religious architecture of the Upper St. John Valley, Maine.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Dated: August 12, 1994.

Chrysandra L. Walter,

Acting Regional Director.

[FR Doc. 94–20356 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–70–M

Agenda for the September 7, 1994 Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park Public Meeting Fort Mason, Building F (Firehouse) 9:00 AM–3:30 PM

9:00 am Welcome—William G. Thomas, Superintendent
Opening Remarks—Patrick Flanagan, Chairman
Old Business—
Approval of Minutes
9:15 am Update—Museum Accreditation
San Francisco Maritime National Historical Park
Marc Hayman—Chief, Interpretation and Resource Management
10:00 am Report—Strategic Planning
National Maritime Museum Association
George Fleharty, President
Kathy Lohan, Executive Director
10:45 am Break
11:00 am Report/Synopsis—Statement for Management
San Francisco Maritime National Historical Park
—Major Issues
—Legislative Restraints/Constraints
William G. Thomas, Superintendent
Stephen Canright, Curator of History
11:45 am Public Comments and Questions
Noon Lunch
1:00 pm Review—Report to the Secretary of the Interior regarding the Condition of the Park
2:15 pm Break
2:30 pm Public Comments and Questions
3:00 pm Agenda Items/Date for next meeting
3:15 pm Adjournment

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–20354 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–70–P

Sleeping Bear Dunes National Lakeshore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Friday, October 14, 1994; 9:30 a.m. until 12 noon.

ADDRESS: Sleeping Bear Dunes National Lakeshore Headquarters Empire, Michigan

The agenda for the meeting consists of the Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the Commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630, (616)–326–5134.

Dated: August 9, 1994.

Ivan D. Miller,

Acting Regional Director, Midwest Region

[FR Doc. 94–20358 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–70–P

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 85 Stat, 770, 5 U.S.C. App. 1 section 10), that there will be a meeting of the Sudbury, Assebet and Concord Rivers Study Committee on Thursday, September 8, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Subbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, September 8, 1994, at the Great Meadows National Wildlife Refuge Headquarters, Weir Hill Road, Sudbury, MA. Directions: From south—take Rte. 27 to Water Row Road in Sudbury, turn right at end on the Lincoln Road, left on Weir Hill Road, follow signs to GMNWR Headquarters. From north—from Concord Road turn left on Lincoln Road in Sudbury, left on Weir Hill Road, follow signs to GMNWR Headquarters. Or, take Rte. 126 north or south to Sherman's Bridge Rd., cross Sudbury River, turn right on Weir Hill Rd.

The agenda is as follows:

1. Welcome and introductions, approval of minutes from 05/26/94 and 7/21/ meetings
2. Brief questions and comments from public
3. Brief Subcommittees Updates
   A. Water Resources Subcommittee
   B. Public Involvement Subcommittee
   C. River Conservational Subcommittee
4. Issues of Local Concern
5. Other Business—Next meeting dates and locations
6. Adjornment

Dated: August 11, 1994.

Chrysandra L. Walter,

Acting Regional Director.

[FR Doc. 94–20357 Filed 8–18–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent Corporation name and address of principal office: Laidlaw Environmental Services, Inc., 220 Outlet Pointe Blvd., Columbia, South Carolina 29210.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of Incorporation.

Corporation and State of Incorporation

Bryson Industrial Services, Inc.—South Carolina
Laidlaw Environmental Services (Northeast), Inc.—New Hampshire
Laidlaw Environmental Services of California, Inc.—California
Laidlaw Environmental Services (TG), Inc.—Delaware
Laidlaw Environmental Services (FS), Inc.—Delaware
Laidlaw Environmental Services of Illinois, Inc.—Illinois
Laidlaw Environmental Services (TS), Inc.—Delaware
Corsan Trucking, Inc.—Louisiana
Laidlaw Environmental Services (Recovery), Inc.—Louisiana
Laidlaw Environmental Services (WT), Inc.—Ohio
Laidlaw Environmental Services of Chattanooga, Inc.—Tennessee
Laidlaw Environmental Services (TES), Inc.—Texas
Laidlaw Environmental Services of Bartow, Inc.—Florida

B.1. Parent Corporation: Lo Nidy Company, Inc., 3385 S. Hwy. 149, Eagan, Minnesota 55121. State of Incorporation: Minnesota

2. Wholly Owned Subsidiaries:

Gopher Smelting & Refining Co., Inc.—Minnesota
Resource Plastics, Inc.—Minnesota
GSR Transportation, Inc.—Minnesota

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20435 Filed 8–18–94; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32544] [1]

Consolidated Rail Corporation—Purchase, Lease and Operation—CSX Transportation, Inc.—Rail Lines in Jefferson and Indiana Counties, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed July 21, 1994, by Consolidated Rail Corporation (Conrail) and CSX Transportation, Inc. (CSX), for approval and authorization of Conrail's purchase, lease, and acquisition of trackage rights with respect to certain railroad lines of CSX in Pennsylvania, and for the grant back of trackage rights to CSX from Conrail. Under 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Commission no later than September 19, 1994, and concurrently served on applicants' representatives, the United States Secretary of Transportation (Secretary of Transportation), and the Attorney General of the United States (Attorney General). Comments from the Secretary of Transportation and the Attorney General must be filed by October 3, 1994. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated

[1] Embraced are two simultaneously filed notices of exemption: *Consolidated Rail Corporation—Trackage Rights—CSX Transportation, Inc.*, Finance Docket No. 32544 (Sub-No. 1); and *CSX Transportation, Inc.—Trackage Rights—Consolidated Rail Corporation*, Finance Docket No. 32544 (Sub-No. 2).

individuals and organizations on the service list have been properly served. Applicant's reply is due by October 24, 1994.

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32544, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the Secretary of Transportation, the Attorney General, and applicants' representatives: (1) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St., SW, Washington, DC 20590; (2) Attorney General of the United States, United States Department of Justice, 10th St. & Constitution Ave., NW, Washington, DC 20530; (3) John J. Paylor, Consolidated Rail Corporation, 2001 Market Street—16A, P.O. Box 41416, Philadelphia, PA 19101; and (4) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J-150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: By application filed July 21, 1994, Conrail and CSX, collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Conrail to purchase, lease, and acquire trackage rights with respect to certain CSX lines entirely within Pennsylvania. Conrail will grant back trackage rights to CSX.

In Finance Docket No. 32544, Conrail proposes to lease from CSX, for a 30-year term with an option to renew for an additional 30 years, a portion of the Indiana Subdivision from the connection with Buffalo & Pittsburgh Railroad, Inc. (B&PR), at DC Tower (milepost 0.0 at Cloe) to the connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.74).[2] Conrail also proposes to purchase from CSX a portion of the Ridge Subdivision, from its connection with the Indiana Subdivision at milepost 0.0 to the rail switch into the Keystone electric generating plant at milepost 5.83 near Shelocta.

In Finance Docket No. 32544 (Sub-No. 1), Conrail will acquire overhead trackage rights from CSX on the portion of the Indiana Subdivision from its connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.6)[3] near Creekside to a connection to be established at a point to be mutually agreed upon between milepost 41.5 and milepost 44.7 near Josephine. The trackage rights will be for a 30-year term with an option to renew for an additional 30 years. They are limited to the movement of limestone, limestone substitutes, ammonia, rail materials, transformers, and coal terminating at Shelocta.

In Finance Docket No. 32544 (Sub-No. 2), Conrail will grant back to CSX trackage rights over the Indiana and Ridge Subdivisions that are being acquired and leased, for a coextensive period of time. The trackage rights on the Indiana Subdivision are overhead. The trackage rights on the Ridge Subdivision are both overhead and local, but the local trackage rights are restricted to limestone, limestone substitutes, ammonia, transformers and coal terminating at the Keystone electric generating plant. The limestone and coal transportation will be further restricted to commodities originating at quarries or mines served by CSX or short line railroads connecting solely with CSX, or originating or transloading on The Three Rivers Railway, B&PR, Allegheny Railroad, Beech Mountain Railroad, West Virginia Northern Railroad, Elk River Railroad, or Strouds Creek & Muddlety Railroad. No traffic originating on lines owned or leased by Conrail may be transported by CSX in local service under these trackage rights. The overhead trackage rights are restricted to movements to the portion of the Ridge Subdivision between Shelocta and Clarksburg and will terminate if CSX abandons that portion of track.

Although these trackage rights are sought under agreements with the track owner, and therefore, fall within the class exemption procedures of 49 CFR 1180.2(d)(7), Conrail and CSX seek their approval as related transactions because the trackage rights and the other acquisitions are part of one integral transaction.

Conrail will reach Cloe via trackage rights to be obtained for this purpose. Simultaneously with the filing of this application, Conrail filed for trackage rights over a line owned by Pittsburg & Shawmut Railroad from the connection with Conrail at Freeport to a connection with B&PR at West Mosgrove[4] and trackage rights over B&PR from West Mosgrove to Cloe.[5]

CSX is a class I rail carrier operating a rail system comprising over 19,000 miles of track in 19 States, the District of Columbia, and the Province of Ontario, Canada. CSX is a wholly-owned subsidiary of CSX Corporation, a noncarrier holding company that owns and controls several carriers subject to Commission regulation, including: CSX; American Commercial Barge Line Company (an inland barge carrier); CSX Intermodal, Inc. (a motor carrier); and various other wholly owned carrier affiliates. The proposed purchase, lease, and trackage rights involve only CSX's rail operations in Pennsylvania. The carrier operations of CSX's other Commission regulated affiliates are not affected by the proposed transaction.

Conrail is a class I rail carrier operating a rail system comprising over 17,000 miles of track in 13 States, the District of Columbia, and the Province of Quebec, Canada. Conrail is the wholly owned subsidiary of Conrail Inc.; it is not part of a larger railroad system.

Applicants state that all rail service over the Indiana and Ridge Subdivisions has been previously discontinued.[6] The Ridge Subdivision provides rail access to the Keystone electric generating plant located at milepost 5.83 near Shelocta. The plant has never received regular shipments of coal by rail. Prior to the discontinuance of service the plant occasionally used rail service for shipments of miscellaneous materials, heavy generating equipment for repair or replacement, and some test shipments of coal. The plant burns approximately 4.5 million tons of coal annually. It is primarily supplied by coal mined at or near the facility and delivered by conveyor belt or truck, but this coal is relatively high in sulphur content. Because the plant in the future must comply with the emission standards of the amended Clean Air Act[7], it must obtain either lower sulphur coal, limestone for scrubbing, or both. Rail is the preferred mode to deliver these commodities to the Keystone plant, as these commodities

[2] Applicants request that milepost 0.0 at Cloe be changed to milepost 2.0 once the request by B&PR to reopen in Docket No. AB-39 (Sub-No. 2X), *see infra*, is granted and the milepost of the discontinuance is amended from milepost 0.0 at Cloe to milepost 2.0 south of DC Tower near Cloe.

[3] Applicants refer to milepost 26.74 rather than milepost 26.6 in Finance Docket No. 32544 (Sub-No. 1).

[4] *Consolidated Rail Corporation—Trackage Rights Exemption—The Pittsburg & Shawmut R.R. Co.*, Finance Docket No. 32349, (I.C.C. served Aug. 1, 1994).

[5] *Consolidated Rail Corporation—Trackage Rights Exemption—Buffalo & Pittsburgh Railroad, Inc.*, Finance Docket 32503, (I.C.C. served Aug. 2, 1994).

[6] *Buffalo & Pittsburgh Railroad Inc.—Discontinuance and Abandonment Exemption—in Jefferson and Indiana Counties, PA*, Docket No. AB-369 (Sub-No. 2X), and *CSX Transportation—Discontinuance of Service Exemption—In Jefferson and Indiana Counties, PA*, Docket No. AB-55 (Sub-No. 457X), (ICC served Nov. 17, 1994).

[7] Pub.L. 101-549, 104 Stat. 2399 (1990).

are not available in quantity from local sources.[8]

Conrail serves origins that produce both lower sulphur content coal and limestone. This transaction will give the Keystone plant the option of receiving coal or limestone in single-line service from Conrail. Because Conrail is granting back to CSX trackage rights over the line segments being acquired and leased, CSX will also be able to provide single-line delivery of coal, limestone, and other products to the Keystone plant. Therefore, Keystone will acquire competitive single-line rail service, an advantage that did not previously exist.

Conrail expects coal to begin moving to Keystone as soon as service to the plant is authorized. It estimates that approximately 150,000 tons a year will move for the first 3 years of service. It does not expect to move limestone until after the year 2000, when a scrubber is installed.

Conrail states that the proposed transaction involves only about 31 miles of track and one potentially major rail shipper. Assertedly, the transaction will have no significant impact on other carriers. No interchange points are located on the lines, and no additional through routes will be created. Nor do the lines contain any connections that could be used for overhead traffic or to construct new through routes.

Applicants contend that the transaction will have no adverse impact on their employees because no rail service is presently conducted on the line. They do not object to the imposition of conditions for the protection of employees affected by the purchase, as set forth in *New York Dock Ry.—Control— Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), modified, 7 I.C.C.2d 60 (1990), *aff'd sub nom. Rail Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991) (*Wilmington*); for the protection of railroad employees adversely affected by the proposed lease, as set forth in *Mendocino Coast Ry.— Lease & Operation*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980) (*Mendocino*), as clarified in *Wilmington, supra;* and for the protection of railroad employees adversely affected by the proposed trackage rights in the related transactions, as set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino*.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor or exempt. The proposal here does not involve the control or merger of two or more class I railroads and has no regional or national significance.

The transaction involves Conrail's purchase, lease, and acquisition of trackage rights and Conrail's grant back of trackage rights on the lines now owned by CSX in Pennsylvania. Because service on these lines has been discontinued, there is no actual, current competition to be lessened. Indeed, were it not for this transaction these lines apparently would be candidates for abandonment. While CSX's grant back of trackage rights is restricted as to certain types of traffic, the restrictions introduce the potential for market and geographic competition, if not direct head-to-head competition, a potential that would not otherwise exist for the Keystone electric generating plant. Because the proposed transaction would restore rail service, and the potential for rail competition, it clearly represents a benefit to the public. Accordingly, we find the proposal a minor transaction as defined in 49 CFR 1180.2(c). *See RR. Consolidation Proced. of Significant Transactions*, 9 I.C.C.2d 1198 (1993). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration.[9]

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested person, including government entities, may participate in the proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) the docket number and title of the proceeding;

(b) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) the commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) a statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) if desired, a request for oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).[10]

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

Decided: August 16, 1994.

By the Commission, Chairman McDonald, Vice-Chairman Phillips, Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20544 Filed 8–18–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 486)]

CSX Transportation, Inc.—Abandonment—Between Bloomingdale and Montezuma—in Parke County, IN

The Commission has issued a decision and certificate of interim trail use and abandonment authorizing CSX Transportation, Inc. (CSX), to abandon 7.34 miles of rail line between milepost BD–184.07 at Bloomingdale and milepost BD–191.41 at Montezuma, in Parke County, IN. The abandonment certificate will become effective September 18, 1994 unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through

[8] The lines also provide access to an electric generating plant at Homer City. This plant also burns locally-mined coal delivered directly by conveyor belt or truck. While it does not use rail service for the receipt of any significant amount of fuel, it also wishes to preserve rail access for the movement of machinery and equipment.

[9] While the application's market impact information is complete, the operating data (concerning operating plans for minor transactions) submitted in compliance with 49 CFR 1180.8(b) (Exhibit 15) appear incomplete. This shortcoming, however, is inconsequential in this case.

[10] Applicants have requested expedited handling. The procedural schedule we have established accommodates their request.

subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days after publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 16, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20436 Filed 8–18–94; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 522]

Report on Interstate Commerce Commission Functions

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Pending legislation, the "Trucking Industry Regulatory Reform Act of 1994," requires the Commission to submit a report to the Congress and to the Secretary of Transportation within 60 days of enactment, identifying and analyzing all regulatory responsibilities of the agency and recommending specific statutory and regulatory functions that could be eliminated or restructured. As part of its analysis, the Commission seeks public comment on its current regulatory responsibilities and any recommended changes.

DATES: Comments are due on September 8, 1994.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 522 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 or Elizabeth Nightingale, (202) 927–5276. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: On August 11, 1994, the Trucking Industry Regulatory Reform Act of 1994 was passed by the United States Senate. Section 210(a) provides:

The Interstate Commerce Commission shall prepare and submit to the Secretary of Transportation and to each Committee of the Congress having jurisdiction over legislation affecting the Commission a report identifying and analyzing all regulatory responsibilities of the Commission. The Commission shall make recommendations concerning specific statutory and regulatory functions of the Commission that could be eliminated or restructured. The Commission shall submit the report within 60 days after the date of enactment of this Act.

Given the short period of time provided for the preparation of the report, we are seeking public comment in anticipation of the enactment of the legislation. If the legislation is not enacted, we intend to undertake a review of our current responsibilities and issue a report recommending any changes that appear warranted, pursuant to our authority at 49 U.S.C. 10311. We seek public comment to assist the Commission in analyzing its current regulatory responsibilities and in recommending any elimination or restructuring of responsibilities. Public comments are due within 20 days of publication of this notice.

For the convenience of those preparing comments, the following list reflects the Commission's primary areas of responsibility:

Regulation of Rail Freight Transportation
Regulation of Rail Passenger Transportation
Regulation of Trucking
Trucking Undercharge Oversight
Regulation of Household Goods Carriers and Freight Forwarders
Regulation of Intercity Bus Transportation
Regulation of Brokers
Regulation of Certain Water Carriage
Regulation of Certain Pipelines

North American Free Trade Agreement

In addition, upon request the Commission will make available a document addressing these areas in more detail entitled "Principal Areas of ICC Regulatory Responsibility". Requests should be directed to the Commission's Office of Public Services at (202) 927–7597.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 16, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20437 Filed 8–18–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Proposed Final Judgment and Competitive Impact Statement; United States of America vs. Microsoft Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* vs. *Microsoft Corporation*, Civ. No. 94–1564 (SS). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

The Complaint alleges that Microsoft uses exclusionary and anticompetitive contracts to market certain of its personal computer operating system software products. By these contracts Microsoft has unlawfully maintained its monopoly of personal computer operating systems and has unreasonably restrained trade thereby violating Sections 1 and 2 of the Sherman Act, as amended, 15 U.S.C. §§ 1, 2.

The proposed Final Judgment not only bans Microsoft's unlawful practices, but also contains additional provisions which are prophylactic in nature, and are intended to ensure that the anticompetitive effects of those practices are not replicated through use by Microsoft of other exclusionary practices.

The proposed Final Judgment includes four categories of limitations on Microsoft's contracting practices. First, it limits the duration of license agreements for operating system software between Microsoft and personal computer manufacturers. Microsoft is prohibited from entering into any such license with a term exceeding one year, except that a license may include a term permitting the computer manufacturer to renew the agreement for up to one additional year on the same terms and conditions as those applicable in the original license period.

Second, the proposed Final Judgment restricts the manner in which Microsoft may charge royalties for the distribution of its operating system software with personal computers. Microsoft may not enter into any "per processor" license (i.e., license requiring the computer manufacturer to pay a royalty for each computer shipped with a specified microprocessor). Microsoft's revenue from a license may not be calculated on

anything other than a per copy basis (i.e., royalty for each unit of Microsoft operating system software licensed, sold or distributed) or a per system basis (i.e., a royalty for each computer system bearing a particular model name or number). Should Microsoft enter into a per system agreement with a licensee it must provide a statement, the text of which is set forth in the Final Judgment, advising the licensee of its rights under the license.

Third, the proposed Final Judgment bans Microsoft from entering into license agreements that prohibit or restrict a personal computer manufacturer from licensing, selling, or distributing competing operating system products. Microsoft may neither condition the licensing of its operating systems on the licensing or use of other products, nor may it enter into any license containing a minimum commitment, nor may it use lump sum pricing.

Fourth, the proposed Final Judgment places limits on Microsoft's use of non-disclosure agreements for its operating system products. Microsoft is prohibited from entering into any non-disclosure agreement whose duration extends beyond (a) the commercial release of the covered product, (b) any prior public disclosure of information covered by the agreement authorized by Microsoft, or (c) one year from the date of disclosure of information covered by the agreement to a person subject to the non-disclosure agreement, whichever comes first. Also, non-disclosure agreements may not restrict persons subject to the agreement from developing software products that will run on competing operating systems, provided that such development does not entail the disclosure or use of Microsoft proprietary information during the term of the agreement. Nor may any non-disclosure agreement restrict the activities of persons subject to the agreement to whom no information covered by the agreement has been disclosed.

Computer manufacturers that currently have licenses that are inconsistent with any provision of the Final Judgment may, without penalty, terminate the license or negotiate with Microsoft to amend the inconsistent provisions. Otherwise, Microsoft may enforce the license, subject to the following restrictions: (a) if the license is a per processor license, it must be treated as a per system license; and (b) Microsoft may not enforce prospectively any minimum commitment.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Richard L. Rosen, Chief, Communications & Finance Section, Antitrust Division, Room 8104, 555 Forth Street NW., Washington, D.C. 20001 (202–514–5621). Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington. D.C. 20530 (202–633–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue NW., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Mark C. Schechter,

Deputy Director of Operations, Antitrust Division.

In The United States District Court For The District of Columbia, United States of America, Plaintiff, v. Microsoft Corporation, Defendant. Civil Action No. 94–1564, Judge Charles R. Richey
July 15, 1994.

Complaint

(For Violations of Sections 1 & 2 of the Sherman Act)

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to prevent and restrain the defendant Microsoft Corporation ("Microsoft") from using exclusionary and anticompetitive contracts to market its personal computer operating system software. By these contracts, Microsoft has unlawfully maintained its monopoly of personal computer ("PC") operating systems and has unreasonably restrained trade.

Virtually all major PC manufacturers find it necessary to offer Microsoft operating systems on most of their PCs. Microsoft's monopoly power allows it to induce these manufacturers to enter into anticompetitive, long-term licenses under which they must pay royalties to Microsoft *not only* when they sell PCs containing Microsoft's operating systems, *but also* when they sell PCs containing non-Microsoft operating systems.

These anticompetitive contracts help Microsoft maintain its dominance in the PC operating system market. By inhibiting competing operating systems' access to PC manufacturers, Microsoft's exclusionary contracts slow innovation and deprive consumers of an effective choice among competing PC operating systems.

These contracts outlined below constitute illegal monopolization and unlawful restraints of trade, and the United States seeks this Court's order declaring Microsoft's anticompetitive contracts illegal and otherwise remedying the unlawful effects of Microsoft's anticompetitive conduct.

Jurisdiction, Venue and Commerce

1. This Court has jurisdiction over this matter pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337.

2. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because defendant Microsoft transacts business and is found within this district.

3. Microsoft sells and licenses operating systems for PCs throughout the United States and the world. Microsoft delivers copies of its operating systems to PC manufacturers and retail customers across state lines and international borders. Thus, Microsoft is engaged in, and its activities substantially affect, interstate and foreign commerce. The major developers of other PC operating systems are exclusively U.S. companies.

The Defendant Microsoft and Its Products

4. Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington.

5. Microsoft develops, licenses, sells and supports several types of software products for PCs, including "operating systems" and "applications."

6. PC operating systems control the operation of a computer by managing the interaction between the computer's microprocessor, memory and attached devices such as keyboards, display screens, disk drives, and printers. A PC operating system functions as the "central nervous system" of the PC. PC operating system software is designed to work with specific microprocessors, the integrated circuits that function as the "brain" of the computer.

7. Most of the personal computers in the world today use the x86 class of microprocessors, originally designed by Intel Corporation. The x86 class includes Intel 286, 386, 486, and Pentium microprocessors, as well as microprocessors manufactured by other companies that use a substantially similar architecture and instruction set. Unless otherwise specified, the term

"PC" refers to personal computers that use the x86 class of microprocessors.

8. In 1980, Microsoft licensed from another company a PC operating system which it modified and introduced in 1981 as the Microsoft Disk Operating System ("MS–DOS"). According to Microsoft's 1993 Annual Report, as of June 30, 1993, approximately 120 million PCs in the world utilized MS–DOS.

9. In 1985, Microsoft introduced a more sophisticated PC operating system product it calls "Windows." Windows has a "graphical user interface" which allows users to give instructions by pointing and clicking on their computer screen with a "mouse" or other similar device. Windows also allows users to run more than one application at a time. All versions of Windows released to date require the presence of an underlying operating system, either MS–DOS or a close substitute. Microsoft estimates that over 50 million PCs now use Windows.

10. Applications are software programs that work "on top of" PC operating systems to enable users to perform a broad range of functions. Applications communicate through the PC operating system with the computer's hardware. Commonly used applications include word processors and spreadsheets, such as WordPerfect, Lotus 1–2–3, and Quattro Pro among others. At least 50,000 applications now run on MS–DOS and over 5,000 have been written to run on Windows. Microsoft sells a variety of its own very successful and profitable applications.

11. Microsoft markets its PC operating system primarily through original equipment manufacturers ("OEMs"), which manufacture PCs. It also markets through independent, non-exclusive distributors. Microsoft has agreements with virtually all of the major microcomputer OEMs.

12. Microsoft generally distributes MS–DOS *only* to OEMs. To retail customers, Microsoft generally offers only upgrades for MS–DOS. In the first half of 1994, the share of Windows units sold by Microsoft through the OEM channel was approximately 80%.

The Relevant Market and Microsoft's Monopoly Power

13. The relevant product market is personal computer operating systems for the x86 class of microprocessors (hereinafter the "PC operating system market"). Because operating systems written for other microprocessors will not work on machines with an x86 class microprocessor, OEMs who sell x86 machines and customers who buy such machines cannot use other operating systems.

14. The relevant geographic market is the world.

15. Microsoft has monopoly power in the relevant market and has had monopoly power since at least the mid-1980s. For almost a decade Microsoft has retained an extremely high market share—consistently in excess of 70%.

16. Substantial barriers to entry and expansion exist in the relevant market. One barrier to entry and expansion is the considerable time and expense required to develop, test, and market a new PC operating system. Other interrelated barriers to entry and expansion include:

a. the absence of a variety of high quality applications that run on a new operating system, and the difficulty of convincing independent software vendors ("ISVs") to develop such applications;

b. the lack of a sizable installed base of users; and

c. the difficulty in convincing OEMs to offer and promote a non-Microsoft PC operating system, particularly one with a small installed base and relatively few applications designed to run on it.

17. These barriers magnify and reinforce each other because the value of an operating system to a consumer is directly related to two factors: the availability of a variety of high quality applications that run on that system, and the number of users who use that operating system and thus are able to share information and work with the system without additional training. ISVs, in turn, tend to develop applications for operating systems with a large installed base of users, and consumers gravitate towards operating systems with a large base of applications.

18. Microsoft's anticompetitive contracting practices described below significantly increase the already high barriers to entry and expansion facing competitors in the PC operating system market. These practices reduce the likelihood that OEMs will license and promote non-Microsoft PC operating systems, make it more difficult for Microsoft's competitors to persuade ISVs to develop applications for their operating systems, and impede the ability of a non-Microsoft PC operating system to expand its installed base of users.

Microsoft's Exclusionary and Anticompetitive OEM Licenses Foreclose Access to the OEM Channel by Microsoft's PC Operating System Competitors

19. In 1980, IBM agreed to license the original version of MS–DOS from Microsoft for IBM's PC, which experienced considerable success. Other OEMs also used MS–DOS in order better to emulate the IBM PC. Microsoft quickly dominated and gained a monopoly in the market for PC operating systems. It then entered into a series of exclusionary and anticompetitive contract terms to maintain its monopoly.

20. Because of Microsoft's monopoly position in the marketplace, OEMs believe that they must offer MS–DOS and Windows to their customers. Profit margins in the computer hardware industry are very thin and OEMs want to obtain MS–DOS and Windows at the lowest possible cost. Microsoft has induced many OEMs to execute anticompetitive "per processor" contracts for MS–DOS and Windows, even though many would prefer to preserve their freedom to offer PCs with non-Microsoft operating systems.

Microsoft's Licenses Impose a Penalty or Tax Paid to Microsoft on OEMs' Use of Non-Microsoft PC Operating Systems

21. Microsoft's licenses impose a penalty or "tax" paid to Microsoft upon OEMs' use of competing PC operating systems. "Per processor" licenses require OEMs to pay a royalty for each computer the OEM sells containing a particular processor (*e.g.*, an Intel 386 microprocessor) whether or not the OEM has included a Microsoft operating system with that computer.

22. Microsoft's per processor contracts penalize OEMs, during the life of the contract, for installing a non-Microsoft operating system. OEMs that have signed per processor contracts with Microsoft are deterred from using competitive alternatives to Microsoft operating systems.

The Contract Length of Microsoft's Anticompetitive Per Processor Contracts Magnifies Its Exclusionary Effects

23. Microsoft further impedes PC operating system competitors by executing long-term contracts with major OEMs, and by requiring minimum commitments and crediting unused balances to future contracts, which effectively extends the contract term and makes it economically unattractive for an OEM to install a non-Microsoft operating system.

24. Microsoft's exclusionary licenses are often for a duration of three years or

more—a period of time equal to, or exceeding, the product life cycle of most PC operating system products. Microsoft often extends the term of its OEM licenses through amendment. Thus, Microsoft's anticompetitive per processor contracts can extend to beyond five years.

Microsoft's Exclusionary Contracts Foreclose Other PC Operating System Vendors From a Substantial and Critically Important Segment of the Market

25. Access to the OEM channel is critical to the success of a competing operating system. The overwhelming majority of PCs are sold with a pre-installed operating system. Thus, to reach the ultimate consumer of an operating system, it is important that competitors have access to OEMs. Operating system vendors, as well as OEMs, confirm that successful entry is extremely difficult in the absence of "proper support" in the OEM channel in the form of public commitments to sell a new operating system.

26. Since 1988, Microsoft has induced major OEMs to execute per processor contracts, many of which extend for several years. These OEMs are critical to the success of a new operating system entrant; it would be virtually impossible for a new entrant to achieve commercial success solely through license agreements with small OEMs that are not covered by Microsoft's per processor agreements. According to Microsoft, in fiscal year 1993, per processor agreements accounted for an estimated 60% of Microsoft's MS–DOS sales to OEMs and 43% of Window sales to OEMs.

27. Competing operating system developers, finding the largest OEMs contractually bound by Microsoft's exclusionary licenses, are disadvantaged in their efforts to bring to the consumer less expensive and/or better quality operating system products.

28. The effect of Microsoft's licensing practices has been to exclude competitors by unreasonable and anticompetitive means and to lessen competition in the relevant market. Microsoft's practices deter OEMs from entering into licensing agreements with competing operating system providers, discourage OEMs who agree to sell non-Microsoft operating systems from promoting those products, and raise the price of computers sold with competing operating systems, thereby depressing the demand and restricting the output of these products. Microsoft's licensing practices have effectively foreclosed a substantial share of the relevant market; they are exclusionary, anticompetitive, and not justified by legitimate business considerations.

Microsoft's Anticompetitive Non-Disclosure Agreements

29. ISVs develop applications, which motivate consumers to purchase PCs. Microsoft has sought to have several commercially important ISVs and their employees agree to non-disclosure agreements that would restrict their ability to work with competing PC operating systems as well as restrict their ability to develop competitive products.

30. Microsoft moved to impose these restrictions in connection with its "beta tests" of its new operating system, the next version of Windows, code-named Chicago. Microsoft anticipates commercially releasing Chicago in late 1994 or early 1995. Beta tests of new versions of an operating system, which are conducted prior to the commercial release of that new version, help both Microsoft and the ISVs.

31. For the ISVs, the beta tests provide, among other things, critical information about the interfaces in the operating system that connect with applications—information which the ISVs need to write applications that run on the operating system. Early access to the beta tests is especially valuable to the ISVs if they are to be able to release their applications within a short time after the commercial release of a new Microsoft operating system, such as Chicago.

32. For Microsoft, the beta tests enable ISVs, informed experts, and selected members of the media to provide important feedback about the advantages ad drawbacks of the operating system. In addition, the demand for Microsoft's operating systems depends to a significant extent on the availability of applications designed to work with it. Accordingly, it is in Microsoft's interest to provide ISVs early access to beta tests.

33. At the same time, because Microsoft necessarily must disclose certain confidential information during the course of the beta tests, it has legitimate interests in maintaining that confidentiality. In the past, Microsoft has protected its interests through non-disclosure agreements that prohibit those participating in the beta tests from disclosing such confidential information.

34. In connection with its beta tests of Chicago, however, Microsoft sought to impose on certain leading software companies far more restrictive non-disclosure agreements than it had previously used. The terms of these non-disclosure agreements would preclude developers at these companies from working with operating system companies, other competitors of Microsoft, and competing technologies for an unreasonably long period of time.

The Anticompetitive Effects of Microsoft's Conduct

35. Microsoft's exclusionary contracting practices have had the effect of excluding competitors on a basis other than competition on the merits and have thereby allowed Microsoft illegally to perpetuate its monopoly in the PC operating system market.

36. Through the unlawful acts and practices described above Microsoft has harmed competition, consumers and innovation:

a. Microsoft has unlawfully maintained a monopoly in the PC operating system market.

b. Microsoft's exclusionary conduct has significantly impeded the ability of rival operating systems to compete in the PC operating system market. Competitors find it more difficult to convince OEMs to offer and/or promote their product and must incur greater marketing expenses to penetrate the market. Microsoft raised hurdles to fair competition even higher through unreasonably restrictive non-disclosure agreements.

c. Microsoft's exclusionary licenses deprive rival PC operating systems of a significant number of sales that they might otherwise secure. These lost sales impede the ability of PC operating systems to develop an installed base sufficient to convince OEMs to bundle the new system with their hardware, to convince ISVs to write applications that run on the new system, and to convince users that the system is, and will remain, a viable alternative to the existing MS–DOS and Windows standard.

d. Microsoft's conduct also substantially lengthens the period of time required for competitors to recover their development costs and earn a profit, and increases the risk that an entry attempt will fail. In combination, all of these factors deter entry by competitors and thus harm competition.

37. The harm to competition caused by Microsoft's unlawful conduct harms consumers. OEMs that do offer customers a choice of operating systems may charge customers a higher price for PCs with non-Microsoft operating systems in order to be able to pay the double royalty necessitated by the Microsoft per processor agreements. Thus, users who do not receive a Microsoft operating system are still, indirectly, paying Microsoft.

38. In addition, Microsoft's unlawful conduct has deterred the development of competing operating systems, depriving consumers of a choice of systems with possibly superior features. Similarly, the slower growth of competing operating systems has slowed the development and diffusion of applications designed to work on non-Microsoft operating systems and has limited choices of consumers and users of PCs.

39. Those injured by Microsoft's conduct will continue to suffer such injury unless the relief prayed for herein is granted.

First Claim for Relief—Sherman Act § 2

40. Plaintiff realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 39 above.

41. By engaging in the acts and practices described above, Microsoft has monopolized the market for PC operating systems in the United States.

42. Such conduct constitutes monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

Second Claim for Relief—Sherman Act § 1

43. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39 above.

44. The licensing agreements and unnecessarily restrictive non-disclosure agreements described above constitute contracts and combinations which unreasonably restrain trade in the market for PC operating systems, which affect interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Prayer for Relief

Wherefore, Plaintiff Prays For Relief As Follows:

1. That the Court adjudge and decree that Microsoft has monopolized the interstate trade and commerce in the market for PC operating systems in violation of Section 2 of the Sherman Act.

2. That the Court adjudge and decree that Microsoft has entered into unlawful contracts and combinations which unreasonably restrain the trade in interstate commerce in PC operating systems, in violation of Section 1 of the Sherman Act.

3. That Microsoft and all persons, firms and corporations acting on its behalf and under its direction or control be permanently enjoined from engaging in, carrying out, renewing or attempting to engage, carry out or renew, any contracts, agreements, practices, or understandings in violation of the Sherman Act.

4. That plaintiff have such other relief that the Court may consider necessary or appropriate to restore competitive conditions in the markets affected by Microsoft's unlawful conduct.

5. That the plaintiff recover the cost of this action.

Dated: July 15, 1994.

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Mark C. Schechter,

Richard L. Rosen,

James D. Bates,

Assistant U.S. Attorney, Chief, Civil Division, District of Columbia, Washington, DC 20001.

Samuel R. Miller,

Donald J. Russell,

Joyce Bartoo,

Robert J. Zastrow,

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Justin M. Dempsey,

Gilad Y. Ohana,

Lawrence M. Frankel,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 4th Street NW., (202) 514–2401.

United States District Court for the District of Columbia, United States of America, Plaintiff vs. Microsoft Corporation, Defendant. Civil Action No. 94–1564. July 15, 1994.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendant and by filing that notice with the Court; and

3. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated This 15th day of July 1994.

For The Plaintiff The United States Of America.

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

For The Defendant Microsoft Corporation.

William H. Neukom,

Senior Vice President, Law and Corporate Affairs, Microsoft Corporation.

In the United States District Court for the District of the District of Columbia. United States of America, Plaintiff, v. Microsoft Corporation, Defendant. Civil Action No. 94–1564 (SS). Competitive Impact Statement.

Received: July 27, 1994, Clerk, U.S. District Court, District of Columbia.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendant Microsoft Corporation in this civil antitrust proceeding.

Nature and Purpose of the Proceeding

On July 15, 1994, the United States filed a civil antitrust Complaint to prevent and restrain Microsoft Corporation ("Microsoft") from using exclusionary and anticompetitive contracts to market its personal computer operating system software, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2. As alleged in the Complaint, Microsoft has used these contracts to restrain trade and to monopolize the market for operating systems for personal computers using the x86 class of microprocessors, which comprise most of the world's personal computers. As used herein, "PC" refers to personal computers that use this class of microprocessor.

The Complaint alleges that Microsoft has used its monopoly power to induce PC manufacturers to enter into anticompetitive, long-term licenses under which they must pay Microsoft not only when they sell PCs containing Microsoft's operating systems, but also when they sell PCs containing non-Microsoft operating systems. These anticompetitive, long-term licenses have helped Microsoft to maintain its monopoly. By inhibiting competing operating systems' access to PC manufacturers, Microsoft's exclusionary licenses slow innovation, raise prices, and deprive consumers of an effective

choice among competing PC operating systems.

The Complaint also alleges that in connection with pre-release testing of a new Microsoft operating system code-named "Chicago," Microsoft sought to impose unreasonably restrictive and anticompetitive non-disclosure agreements on a number of leading developers of applications software products. These non-disclosure agreements would have unreasonably restricted the ability of software developers to work with competing operating systems or to develop competitive products or technologies.

The Complaint seeks to prevent Microsoft from continuing or renewing any of the anticompetitive practices alleged to violate the Sherman Act, and thus to provide fair opportunities for other firms to compete in the market for PC operating systems.

The United States and Microsoft have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act.[1] Entry of the Final Judgment will terminate this civil action, except that the Court will retain jurisdiction for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

Description of the Practices Involved in the Alleged Violations

If this case were to proceed to trial, the United State would prove the following:

Microsoft develops, licenses, sells, and supports several types of software products for personal computers, including operating systems and applications. An operating system is software that controls the basic operations of the personal computer. Applications software, such as word processing programs and spread sheets, runs "on top of" an operating system to enable the computer to perform a broad range of useful functions. Operating systems are designed to work with specific microprocessors, the integrated circuits that function as the "brain" of the computer. Most of the personal computers in the world today use the x86 class of microprocessors, originally designed by Intel, and now including microprocessors manufactured by other companies that use a substantially similar architecture and instruction set. Original equipment manufacturers ("OEMs") that sell PCs and customers who buy such machines cannot use operating systems written for other microprocessors.

In 1981, Microsoft introduced a PC operating system called the Microsoft Disk Operating System ("MS–DOS"), the original version of which Microsoft licensed to IBM for use in IBM's PC. As IBM's PC experienced considerable commercial success, other OEMs also used MS–DOS in order better to emulate the IBM PC. In 1985, Microsoft introduced "Windows," a more sophisticated PC operating system product designed for use in conjunction with MS–DOS. Windows allowed users to give instructions with a "mouse" or similar device and also to run more than one application at a time. Microsoft quickly gained a monopoly in the market for PC operating systems worldwide. For almost a decade, Microsoft's market share has consistently exceeded 70%.[2]

Development, testing, and marketing of a new PC operating system involves considerable time and expense. A new operating system faces additional barriers to entry, including the absence of a variety of high quality applications to run on the system; the small number of people trained on and using the system, which discourages customers from buying it and software companies from writing applications to run on it; and, since the overwhelming majority of PCs are sold with a pre-installed operating system, the difficulty of convincing OEMs to offer and promote the system.

Microsoft has used exclusionary and anticompetitive contract terms to maintain its monopoly. OEMs believe that a substantial portion of their customers will want a PC with MS–DOS and Windows, and therefore feel that they must be able to offer their customers MS–DOS and Windows. With thin profit margins, OEMs want to obtain these products at the lowest possible cost.

Beginning in 1988, and continuing until July 15, 1994, Microsoft induced many OEMs to execute anticompetitive "per processor" licenses. Under a per processor license, an OEM pays Microsoft a royalty for each computer it sells containing a particular microprocessor, whether the OEM sells the computer with a Microsoft operating system or a non-Microsoft operating system. In effect, the royalty payment to Microsoft when no Microsoft product is being used acts as a penalty, or tax, on the OEM's use of a competing PC operating system. Since 1988, Microsoft's use of per processor licenses has increased. In fiscal year 1993, per processor licenses accounted for an estimated 60% of MS–DOS sales to OEMs and 43% of Window sales to OEMs.[3] Collectively, the OEMs who have such per processor contracts are critical to the success of competing operating system vendors, but those OEMs effectively are foreclosed to Microsoft's competitors.

Microsoft has further foreclosed the OEM channel through the use of long-term contracts with major OEMs, some expiring as long as five years from their original negotiation date. In some cases, these contracts have left OEMs with unused balances on their minimum commitments, which Microsoft can allow to be used if the contract is extended, but which would be forfeited if the OEM does not extend the contract. These practices have allowed Microsoft to extend the effective duration of its OEM contracts, further impeding the access of PC operating system competitors to the OEM channel.

In addition to using anticompetitive OEM licenses, Microsoft has also employed anticompetitive restrictions in certain of its non-disclosure agreements ("NDAs"). Microsoft anticipates commercially releasing Chicago, the next version of Windows, in late 1994 or early 1995. In preparation for its release, Microsoft has allowed certain third parties, including independent software vendors ("ISVs") who write applications, to have access to pre-release versions of Chicago, a process known in the software industry as "beta testing." This permits Microsoft to receive feedback from the beta testers, and the ISVs to begin writing applications for Chicago prior to its release.

In connection with beta testing Chicago, Microsoft employed, as it has in prior beta tests, NDAs prohibiting disclosure of confidential information. In this instance, however, Microsoft

[1] The proposed Final Judgment that was filed with the Complaint on July 15, 1994 contained several omissions and inconsistencies in the numbering of paragraphs and subparagraphs. With the Defendant's consent, a corrected version of the Final Judgment is being filed with this Competitive Impact Statement. *See* Attachment. Paragraph and sub-paragraph numbers in this Competitive Impact Statement refer to the numbers used in the corrected version of the Final Judgment.

[2] In 1993, Microsoft's MS–DOS operating system constituted approximately 79% of the operating systems sold to PC manufacturers. PC–DOS accounted for approximately 13% of such sales, OS/2 constituted approximately 4%, DR–DOS constituted approximately 3%, and Unix operating systems constituted approximately 1%. A chart showing these market shares is attached as Exh. 1.

[3] Per processor licenses accounted for an increasing proportion of Microsoft's operating system sales in the 1988–1993 period. Twenty per cent of all units of MS–DOS that were sold to OEMs in FY 1989 were sold pursuant to per processor licenses. That percentage increased to 22% in FY 1990; 27% in FY 1991; 50% in FY 1992; and to 60% in FY 1993. A chart showing this increasing use of per-processor licenses is attached as Exh. 2.

sought to impose on certain leading software companies far more restrictive NDAs than it had previously used. These NDAs would have precluded developers from working on competitive products and technologies for an unreasonably long period of time.

Through these practices, Microsoft has excluded competitors by unreasonable and anticompetitive means, thereby lessening competition and maintaining a monopoly in the PC operating system market. Microsoft's licensing practices deter OEMs from entering into licensing agreements with operating system rivals and discourage OEMs who agree to sell non-Microsoft operating systems from promoting those systems. By depriving rivals of a significant number of sales that they might otherwise secure, Microsoft makes it more difficult for its rivals to convince ISVs to write applications for their systems, for OEMs to offer and promote their systems, and for users to believe that their systems will remain viable alternatives to MS–DOS and Windows.

Microsoft's exclusionary contracts harm consumers. OEMs that sign Microsoft's exclusionary licenses but offer consumers a choice of operating systems may charge a higher price, in order to cover the double royalty, for PCs using a non-Microsoft operating system. Even consumers who do not receive a Microsoft operating system still pay Microsoft indirectly. Thus, Microsoft's licensing practices have raised the cost of personal computers to consumers.

Microsoft's conduct also substantially lengthens the period of time required for competitors to recover their development costs and earn a profit, and thereby increases the risk that an entry attempt will fail. In combination, all these factors deter entry by competitors and thus harm competition. By deterring the development of competitive operating systems, Microsoft has deprived consumers of a choice of potentially superior products. Similarly, the slower growth of competing operating systems has retarded the development of applications for such systems.

Explanation of the Proposed Final Judgment

The proposed Final Judgment will end Microsoft's unlawful practices that restrain trade and perpetuate its monopoly power in the market for PC operating systems. In addition, the proposed Final Judgment contains provisions that are remedial in nature and designed to assure that Microsoft will not engage in the future in exclusionary practices designed to produce the same or similar effects as those set forth in the Complaint.

In particular, Sections IV (A), (C), and (F) prohibit Mirosoft's use of the specific exclusionary practices alleged in the complaint—"per processor" contracts, lengthy terms, and minimum commitments—that foreclose competing PC operating system vendors from much of the OEM channel. Sections IV (K)–(L) prohibit the use of anticompetitive non-disclosure agreements in conjunction with Mirosoft's distribution of pre-commercial releases of operating system software products. Sections IV (B), (E), (G), and (H) impose prohibitions that go beyond the alleged exclusionary practices in order to ensure that Microsoft's future contracting practices—not challenged here because not yet used—do not unreasonably impede competition. Sections IV (J) and (M) are designed to bring existing contracts into immediate compliance with the proposed Final Judgment.

Scope of the Final Judgment

The injunctions in Section IV generally apply to "covered products" which are defined, in Section II(A), as the binary code of MS–DOS 6.22; Microsoft Windows 3.11; Windows for Workgroups 3.11; predecessor versions of those products; the product currently code-named "Chicago" (the planned successor to Microsoft Windows 3.11); and other successor versions of or products marketed as replacements for the aforementioned products. This definition includes all Microsoft's PC operating system products in which the defendant currently possesses a substantial degree of market power. The definition does not encompass and specifically excludes, Windows NT Workstation and Windows NT Advanced Server, neither of which has a significant share of a relevant market at this time.

The definition of "covered product" was drafted with the recognition that Microsoft will continue to modify its operating system products throughout the duration of the Final Judgment. The prohibitions in the decree will apply to the successor and replacement products of those existing operating system products that have substantial market power. The decree will govern the licensing of such products if they are made available as stand-alone products to OEMs pursuant to license agreements, or as unbundled products that perform operating system software functions now embodied in the specifically listed existing products. Moreover, the decree will govern the licensing of successor versions of or products marketed as replacements for MS–DOS 6.22, Microsoft Windows 3.11, Windows for Workgroups 3.11, and "Chicago," even if such successor or replacement products could also be characterized as successors or replacements of operating system software products that are not covered, such as windows NT Workstation or Windows NT Advanced Server.

Prohibition of the Licensing Violations

The three anticompetitive factors of Microsoft's license agreements that are challenged in the complaint—the excessive duration of those agreements, the requirement of royalty payments on a "per processor" basis, and large minimum commitments—are addressed principally in Sections IV(A), IV(C) and (IV)(F) of the Final Judgment.

Duration: Section IV(A) limits the duration of Microsoft's license agreements with OEMs to one year, with OEMs having the option to renew a license for one additional one year term on the same terms and conditions as in the first year. This limitation on the duration of license agreements, along with the safeguards provided in Section IV(G), will ensure that vendors of competing operating systems will have regular and frequent opportunities to attempt to market their products to OEMs. Absent such opportunities, Microsoft's competitors might be unable to reach the level of market penetration needed for profitable operation in a reasonable period of time, even if they are offering products that are deemed superior by those customers who have an opportunity to buy them.

Per Processor Licenses: Section IV(C) prohibits the use of per processor licenses.[4] Section II(K) defines per processor licenses as licenses that require the OEM to pay a royalty for all personal computer systems that contain specified microprocessors. As noted above, the requirement to pay a royalty to Microsoft on the sale of a PC that has a non-Microsoft operating system is comparable, in its economic effect, to the imposition of a "tax" on the competing operating system. Per processor licenses are also very similar to exclusive dealing or requirements contracts; the OEM in effect is obtaining the right to use Microsoft's operating system, and is paying an operating system royalty, for all of its operating system "requirements" for use on PCs using the designated microprocessors.

[4] Section IV(J)(1) converts all per processor licenses to per system licenses, except those models which an OEM excludes, which will thereafter be subject to the limitations imposed on Microsoft by Section IV(G).

Minimum Commitments: Section IV(F) will bar Microsoft from entering into any license agreement containing a minimum commitment.[5] While minimum commitments are not in and of themselves illegal, they can be used to achieve a similar effect as that accomplished through per processor licenses or exclusive dealing contracts. If the minimum commitment is greater than the number of units of Microsoft software that the OEM expects or would otherwise desire to use at any time during the term of the contract, the minimum commitment creates a disincentive for an OEM to make incremental purchases of non-Microsoft operating systems. In that context, the minimum commitment also operates in effect to require a royalty payment to Microsoft, even for PCs that use a non-Microsoft operating system. This effect will be ended by Section (IV)(F).

Restoring Competition to the Market Through Prophylactic Additional Relief

The proposed Final Judgment not only bans Microsoft's unlawful practices, but also contains additional provisions which are prophylactic in nature, and are intended to ensure that the anticompetitive effects of those practices are not replicated through use by Microsoft of other exclusionary practices.

Microsoft Prohibited From Limiting OEM Sales of Competing Operating System Products: Section IV (B) bars Microsoft from entering into license agreements that prohibit or restrict an OEM from licensing, selling, or distributing competing operating system products. In addition, Section IV (E) prohibits Microsoft from expressly or impliedly conditioning its licenses of operating systems on the licensing, purchase, use or distribution not only of other covered products, but also any other Microsoft product, or non-Microsoft product. Without these provisions Microsoft could force OEMs to purchase covered products and thus accomplish anticompetitive effects similar to those achieved through its unlawful licensing practices, or attempt to extend or protect its monopoly in any covered product by conditioning its licensing, purchase or use of other products.

Microsoft Limited to Per Copy and Per System Licenses: Sections IV (D) and IV (G) require Microsoft to use either "per copy" or "per system" licenses. Per copy licenses, if used in conjunction with pro-competitive volume discounts, pose few competitive concerns. Per system licenses, if not carefully fenced in, could be used by Microsoft to accomplish anticompetitive ends similar to "per processor" licenses. However, if an OEM easily can designate models not subject to a per system license, it can use non-Microsoft operating systems on those models without incurring a royalty obligation to Microsoft. If an OEM need not pay a royalty to Microsoft for anything but the number of copies of the Microsoft operating system that it actually uses, that OEM will not be deterred from licensing, purchasing or using competing operating system products.

Restriction on Per System Licenses: The Final Judgment also places restrictions on the use of per system licenses to ensure that they are not used in an exclusionary manner. In particular, Section IV (G) specifies that per system licenses must allow the licensee to create "new systems" that can be sold without incurring a royalty obligation to Microsoft if they do not utilize a Microsoft product. Under Section IV (G), an OEM need only designate a new model name or number to create a "new system." Microsoft may not require the OEM even to notify Microsoft of the creation of a new system; nor may Microsoft impose requirements relating to the marketing or advertising of a new system, or penalize an OEM for creating a new system. Section IV (G)(4) requires Microsoft to notify within 30 days following entry of this Final Judgment all existing OEM licensees under per system licenses and all OEM licensees with per processor licenses who choose to let them to be converted to per system licenses (a provision discussed below) of their rights to create new systems that will not be subject to any existing per system license. This notice provision ensures that existing licensees promptly know of their rights to avoid royalty payments under per system contracts if they choose to create new systems.

Microsoft Prohibited From Using Lump Sum Pricing: Section IV (H) also serves a prophylactic function, prohibiting the use of lump sum pricing in license agreements for covered products. As defined in Section II (F), lump sum pricing is any royalty payment that does not vary with the number of copies of the covered product (under per copy licenses) or the number of personal computer systems (under per system licenses) that are licensed, sold, or distributed by the OEM. This restriction, like the prohibitions on minimum commitments and requirements contracts, restricts conduct that could be used by Microsoft to achieve effects comparable to the effects of the conduct challenged by the government, and for that reason is enjoined.[6]

Neither Section IV (H) nor any other provision of the proposed Final Judgment prohibits the use of royalty rates, including rates embodying volume discounts, agreed upon in advance with respect to each individual OEM, each specific version or language of a covered products, and each designated personal computer system model. Nothing in the Final Judgment, however, in any way sanctions Microsoft structuring any volume discount whose purpose or effect is to impose de facto requirements contracts or exclusive arrangements on the OEM. As discussed below in connection with alternatives to the proposed Final Judgment, given Microsoft's monopoly power in operating systems, such practices can violate the antitrust laws.

Transition Rules

In the Stipulation consenting to the entry of the proposed Final Judgment, Microsoft agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, *i.e.*, as of July 15, 1994. Among other things, the transition provisions described herein will require Microsoft to abide by the foregoing limitations and prohibitions when entering into any license agreements with OEMs after July 15, 1994. Certain additional provisions of the proposed Final Judgment also apply to existing license agreements that are inconsistent with the proposed Final Judgment's requirements for new license agreements.

Under Section IV (I), existing OEM licensees may terminate or negotiate with Microsoft to amend their agreements to make them consistent with the requirements of the Final Judgment.

Section IV (J) provides that if an OEM chooses not to exercise either of these

[5] Section IV(J)(2) prohibits Microsoft from prospectively enforcing minimum commitments in existing license agreements.

[6] If a license agreement established a minimum commitment greater than the OEM's requirements for operating systems (an agreement that would be prohibited under this decree), the minimum commitment would constitute, in effect, a lump sum payment. Regardless of the number of copies distributed by the OEM, its royalty payment to Microsoft would not vary. A lump sum pricing arrangement imposed by a monopolist that allowed unlimited use of the licensed product for a single fee calibrated to the anticipated total operating system needs of a particular OEM would also produce a similar economic effect as a requirements contract or a per processor license: the OEM would owe the same royalty to Microsoft whether it chose to use a Microsoft operating system on all of the PCs it sold, or only on some of the PCs it sold, and would, in effect, "pay twice" if it chose to purchase a non-Microsoft operating system for some of its PCs.

options, Microsoft must abide by the following rules. First, under Section IV (J)(1), a per processor license must be treated as a "per system" license' OEM models that contain the microprocessor(s) specified in such a per processor license will be considered to be covered by the "per system" license unless the OEM opts in writing to exclude such model from coverage. As already noted, OEMs may freely sell PCs with non-Microsoft operating systems, and avoid any obligation to pay royalties to Microsoft under a per system license, simply by designating such PCs as a new system with a separate model number or name. Second, under Section IV (J)(2), Microsoft may not enforce any minimum commitment in an existing license agreement.

These provisions further two consistent goals. Opportunities for competition in the PC operating system market are fostered by a rapid end to the unlawful practices embodied in existing licenses. At the same time, the transition rules avoid creating hardships for OEMs by not unnecessarily disrupting established commercial relationships with Microsoft. Indeed, OEMs are not required to terminate or amend their existing contracts with Microsoft; the choice to do so is theirs alone. Microsoft, however, may not enforce the per processor or minimum commitment features of any existing contract. Providing OEMs with this choice minimizes the costs of the transition from existing license agreements that are inconsistent with the decree to new license agreements, while ensuring that any unavoidable transition costs be borne largely by Microsoft.

To ensure that existing licensees learn of their rights under the proposed Final Judgment, Section IV (M) requires Microsoft to provide a copy of the Final Judgment to all OEMs with which it has license agreements, except for those who have licenses only under Microsoft's Small Volume Easy Distribution program or the Delivery Service Partner program.

Non-Disclosure Agreements

Finally, the proposed Final Judgment contains provisions that prevent Microsoft from imposing unlawfully restrictive NDAs on developers of applications software.

Sections IV(K)(1) limits the duration of any NDA to the earliest of (a) the commercial release of the product covered by the NDA, (b) an earlier public disclosure of the information covered by the NDA, or (c) one year after the information is disclosed to the person subject to the NDA. Section IV(K)(2) provides that NDAs may not restrict subject parties from developing software products that will run on competing operating systems, if such development does not entail the use or disclosure of Microsoft proprietary information during the term of the NDA.

In combination, these provisions recognize that whatever Microsoft's legitimate interest in protecting the confidentiality of proprietary information covered by the NDAs, the need for any such protection must be balanced against the competitive consequences of any restriction imposed on others concerning disclosure and use of the information. The proposed Final Judgment ensures that any NDA imposed by Microsoft will not extend beyond the point that the information has been released to the public or has otherwise been in the hands of parties for more than one year.

Section IV(L) requires that the form of all standard NDAs must be approved by a Microsoft corporate officer, and that non-standard language in an NDA relating to matters covered in Section (K) must be approved by a Microsoft senior attorney. These provisions are designed to ensure that NDAs will be reviewed by company officials mindful of the requirements of the Final Judgment.

Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Microsoft related to its compliance with the Final Judgment.

In particular, Section V(D) contains provisions under which the Department can obtain information and documents relating to any Undertaking by or Decision against Microsoft arising from parallel antitrust proceedings of the Directorate-General for Competition of the European Commission ("DG–IV"). This provision will allow the Department to coordinate its monitoring and enforcement of compliance of the Final Judgment with DG–IV's monitoring and enforcement of parallel provisions contained in an Undertaking with DG–IV signed by Microsoft on July 15, 1994.

Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the seventy-eighth month after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuit that may be brought against the defendant in this matter.

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Richard L. Rosen, Chief, Communications and Finance Section, United States Department of Justice, Antitrust Division, 555 4th Street N.W., Room 8104, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. If the Department does not withdraw its consent to the proposed Final Judgment, it will file with the Court a Certificate of Compliance after the requirements of the Antitrust Procedures and Penalties Act have been satisfied. The Court then must determine whether the proposed decree is in the public interest, pursuant to Section 5(e) of the Clayton Act, 15 U.S.C. § 16(e).[7]

[7] In making this public interest determination, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'" United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981) (citations and internal quotations omitted). *Accord* United States v. Western Electric Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993); United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

Alternatives to the Proposed Final Judgment

In addition to the remedies provided in the proposed Final Judgment, the Department also considered whether to require limitations on the manner in which Microsoft could structure volume discount pricing arrangements for covered products. While the Department recognizes that volume discount pricing can be and normally is pro-competitive, volume discounts also can be structured by a seller with monopoly power (such as Microsoft) in such a way that buyers, who must purchase some substantial quantity from the monopolist, effectively are coerced by the *structure* of the discount schedule (as opposed to the level of the price) to buy all or substantially all of the supplies they need from the monopolist. Where such a result occurs, the Department believes that the volume discount structure would unlawfully foreclose competing suppliers from the marketplace—in this case, competing operating systems—and thus may be challenged.

The Department ultimately concluded that it would not require provisions in the Final Judgment to attempt to proscribe in advance the various means by which Microsoft could attempt to structure volume discounts as a means to thwart competition rather than as a means of promoting competition. The Department reached this conclusion because it does not have evidence that Microsoft has, to date, in fact structured its volume discounts to achieve anticompetitive ends. The Department did, however, communicate to Microsoft its concern and stated its intent to initiate an investigation and antitrust enforcement proceeding, if warranted, should Microsoft adopt anticompetitive volume discount structures in its future license agreements. Given the procompetitive impact of the provisions of the proposed Final Judgment, the normally procompetitive nature of volume discount pricing, and the absence of any evidence that Microsoft has used volume discounting in an anticompetitive manner to date, the Department believes that this resolution is appropriate on the record at this time.

Another alternative to the proposed Final Judgment would be a full trial of this case. The Department of Justice believes that such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all of the relief that the United States seeks in its Complaint and includes substantial additional prophylactic measures as well

Determinative Materials and Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Dated: July 27, 1994.

Respectfully submitted,

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division.

Donald J. Russell,

U.S. Department of Justice, Antitrust Division, Communications & Finance Section, Judiciary Center Building, 555 Fourth Street, N.W., Washington, DC 20001, (202) 514–5814.

United States District Court for the District of Columbia, United States of America, Plaintiff, v. Microsoft Corporation, Defendant. Civil Action No. 94–1564 (SS)

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on July 15, 1994, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

Now, Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of the Defendant, Microsoft Corporation ("Microsoft"). The Complaint states a claim upon which relief may be granted against the Defendant under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

II. Definitions

(A) *Covered Product(s)* means the binary code of (1) MS–DOS 6.22, (2) Microsoft Windows 3.11, (3) Windows for Workgroups 3.11, (4) predecessor versions of the aforementioned products, (5) the product currently code-named "Chicago," and (6) successor versions of or replacement products marketed as replacements for the aforementioned products, whether or not such successor versions or replacement products could also be characterized as successor versions or replacement products of other Microsoft Operating System Software products that are made available (a) as stand-alone products to OEMs pursuant to License Agreements, or (b) as unbundled products that perform Operating System Software functions now embodied in the products listed in subsections (1) through (5). The term "Covered Products" shall not include "Customized" versions of the aforementioned products developed by Microsoft; nor shall it apply to Windows NT Workstation and its successor versions, or Windows NT Advanced Server.

(B) *Customized* means the substantial modification of a product by Microsoft to meet the particular and specialized requirements of a final customer of a computer system. It does not include the adaptation of such a product in order to optimize its performance in connection with a Personal Computer System manufactured by an OEM.

(C) *Duration* means, with respect to a License Agreement, the period of time during which an OEM is authorized to license, sell or distribute any of the Covered Products.

(D) A *License Agreement* means any license, contract, agreement or understanding, or any amendment thereto, written or oral, express or implied, pursuant to which Microsoft authorizes an OEM to license, sell or distribute any Covered Product with its Personal Computer System(s).

(E) A *Minimum Commitment* means an obligation of an OEM to pay Microsoft a minimum amount under a License Agreement, regardless of actual sales.

(F) *Lump Sum Pricing* means any royalty payment for a Covered Product that does not vary with the number of copies of the Covered Product that are licensed, sold or distributed by the OEM or of Personal Computer Systems distributed by the OEM.

(G) *New System* means a system not included or designated in a Per System License.

(H) *NDA* means any non-disclosure agreement for any pre-commercial release of a Covered Product that imposes any restriction on the disclosure or use of any such pre-commercial release of any Covered Product or any information relating thereto.

(I) *OEM* means an original equipment manufacturer or assembler of Personal Computer Systems or Personal Computer System components (such as motherboards or sound cards) or peripherals (*e.g.*, printers or mice) that is a party to a License Agreement.

(J) *Per Copy License* means any License Agreement pursuant to which

the OEM's royalty payments are calculated by multiplying (1) the number of copies of each Covered Product licensed, sold or distributed during the term of the License Agreement, by (2) a per copy royalty rate agreed upon by the OEM and Microsoft, which rate may be determined as provided in Section IV (H).

(K) *Per Processor License* means a License Agreement under which Microsoft requires the OEM to pay Microsoft a royalty for all Personal Computer Systems that contain the particular microprocessor type(s) specified in the License Agreement.

(L) *Per System License* means a License Agreement under which Microsoft requires the OEM to pay Microsoft a royalty for all Personal Computer Systems which bear the particular model name(s) or number(s) which are included or designated in the License Agreement by the OEM to Microsoft, at the OEM's sole option and under the terms and conditions as set forth herein.

(M) *Personal Computer System* means a computer designed to use a video display and keyboard (whether or not the video display and keyboard are actually included) which contains an Intel x86, or Intel x86-compatible microprocessor.

(N) *Operating System Software* means any set of instructions, codes, and ancillary information that controls the operation of a Personal Computer System and manages the interaction between the computer's memory and attached devices such as keyboards, display screens, disk drives, and printers.

III. Applicability

This Final Judgment applies to Microsoft and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Microsoft is enjoined and restrained as follows:

(A) Microsoft shall not enter into any License Agreement for any Covered Product that has a total Duration that exceeds one year (measured from the end of the calendar quarter in which the agreement is executed).

Microsoft may include as a term in any such License Agreement that the OEM may, at its sole discretion, at any time between 90 and 120 days prior to the expiration of the original License Agreement, renew such License Agreement for up to one additional year on the same terms and conditions as those applicable in the original license period.

The License Agreement shall not impose a penalty or charge of any kind on an OEM for its election not to renew all or any portion of a License Agreement. In the event that an OEM does not exercise the option to renew a License Agreement as provided above, and a new License Agreement is entered between Microsoft and the OEM, the arm's length negotiation of different terms and conditions, specifically including a higher royalty rate(s), will not by itself constitute a penalty or other charge within the meaning of the foregoing sentence.

The Duration of any License Agreement with an OEM not domiciled in the United States or the European Economic Area that will not be effective prior to regulatory approval in the country of its domicile may be extended at the option of Microsoft or the OEM during the time required for any such regulatory approval.

License Agreement provisions that do not bear on the licensing or distribution of the Covered Products may survive expiration or termination of the License Agreement.

(B) Microsoft shall not enter into any License Agreement that by its terms prohibits or restricts the OEM's licensing, sale or distribution of any non-Microsoft Operating System Software product.

(C) Microsoft shall not enter into any Per Processor License.

(D) Except to the extent permitted by Section IV (G) below, Microsoft shall not enter into any License Agreement other than a Per Copy License.

(E) Microsoft shall not enter into any License Agreement in which the terms of that agreement are expressly or impliedly conditioned upon:

(1) the licensing of any other Covered Product, Operating System Software product or other product (provided, however, that this provision in and of itself shall not be construed to prohibit Microsoft from developing integrated products); or

(2) the OEM not licensing, purchasing, using or distributing any non-Microsoft product.

(F) Microsoft shall not enter into any License Agreement containing a Minimum Commitment. However, nothing contained herein shall prohibit Microsoft and any OEM from developing non-binding estimates of projected sales of Microsoft's Covered Products for use in calculating royalty payments.

(G) Microsoft's revenue from a License Agreement for any Covered Product shall not be derived from other than Per Copy or Per System Licenses, as defined herein. In any Per System License:

(1) Microsoft shall not explicitly or implicitly require as a condition of entering into any License Agreement, or for purposes of applying any volume discount, or otherwise, that any OEM include under its Per System License more than one of its Personal Computer Systems;

(2) Microsoft shall not charge or collect royalties for any Covered Product on any Personal Computer System unless the Personal Computer System is designated by the OEM in the License Agreement or in a written amendment. Microsoft shall not require an OEM which creates a New System to notify Microsoft of the existence of such a New System, or to take any particular actions regarding marketing or advertising of that New System, other than creation of a unique model name or model number that the OEM shall use for internal and external identification purposes. The requirement of external identification may be satisfied by placement of the unique model name or model number on the machine and its container (if any), without more. The OEM and Microsoft may agree to amend the License Agreement to include any new model of Personal Computer System in a Per System License. Nothing in this clause shall be deemed to preclude Microsoft from seeking compensation from an OEM that makes or distributes copies of a Covered Product in breach of its License Agreement or in violation of copyright law;

(3) The License Agreement shall not impose a penalty or charge on account of an OEM's choosing at any time to create a New System. Addition of a New System to the OEM's License Agreement so that Covered Products are licensed for distribution with such New System and royalties are payable with respect thereto shall not be deemed to constitute a penalty or other charge of any kind within the meaning of the foregoing sentence;

(4) All OEMs with existing Per System Licenses, or Per Processor Licenses treated by Microsoft under Section IV (J) as Per System Licenses, will be sent within 30 days following entry of this Final Judgment in a separately mailed notice printed in bold, boxed type which shall begin with the sentence "You are operating under a Microsoft Per System License," and shall continue

with the language contained in the first four quoted paragraphs below. All new or amended Per System Licenses executed after September 1, 1994 shall contain a provision that appears on the top half of the signature page in bold, boxed type shall begin with the sentence "This is a Microsoft Per System License," and which shall continue with the language contained in the first four quoted paragraphs below.

"As a Customer, you may create a 'New System' at any time that does not require the payment of a royalty to Microsoft unless the Customer and Microsoft agree to add it to the Licensing Agreement."

"Any New System created may be identical in every respect to a system as to which the Customer pays a Per System royalty to Microsoft provided that the New System has a unique model number or model name for internal and external identification purposes which distinguishes it from any system the Customer sells that is included in a Per System License. The requirement of external identification may be satisfied by placement of the unique model name or model number on the machine and its container (if any), without more."

"If the customer does not intend to include a Microsoft operating system product with a New System, the Customer does not need to notify Microsoft at any time of the creation, use or sale of any such New System, nor does it need to take any particular steps to market or advertise the New System."

"Under Microsoft's License Agreement, there is no charge or penalty if a Customer chooses at any time to create a New System incorporating a non-Microsoft operating system. If the Customer intends to include a Microsoft operating system product with the New System, the Customer must so notify Microsoft, after which the parties may enter into arm's length negotiation with respect to a license to apply to the New System."

In the case of OEMs with Per Processor Licenses treated as Per System Licenses pursuant to Section IV (J), the notice shall include the following paragraph at the beginning of the notice:

"All models covered by your Per Processor License are now treated as subject to a Per System License. You may exclude any such model from being treated as subject to a Per System License by notifying Microsoft in writing. Such notice to Microsoft must include the model designation to be excluded from the Per System License. Such exclusion shall take effect on the first day of the calendar quarter next following Microsoft's receipt of such notice."

(H) Microsoft may not use any form of Lump Sum Pricing in any License Agreement of Covered Product(s) executed after the date of this Final Judgment. It is not a violation of this Final Judgment for Microsoft to use royalty rates, including rates embodying volume discounts, agreed upon in advance with respect to each individual OEM, each specific version or language of a Covered Product, and each designated Personal Computer System model subject to the License Agreement.

(I) OEMs that currently have a License Agreement that is inconsistent with any provision of this Final Judgment may, without penalty, terminate the License Agreement or negotiate with Microsoft to amend the License Agreement to eliminate such inconsistent provisions. An OEM desiring to terminate or amend such a License Agreement shall give Microsoft ninety (90) days written notice at any time prior to January 1, 1995.

(J) If an OEM has a License Agreement that is inconsistent with any provision of this Final Judgment, Microsoft may enforce that License Agreement subject to the following:

(1) if the License Agreement is a Per Processor License, Microsoft shall treat it as a Per System License for all existing OEM models that contain the microprocessor type(s) specified in the License Agreement except those models that the OEM opts in writing to exclude and such exclusion shall take effect on the first day of the calendar quarter net following Microsoft's receipt of such notice, and

(2) Microsoft may not enforce prospectively any Minimum Commitment.

(K) Microsoft shall not enter into any NDA:

(1) whose duration extends beyond (a) commercial release of the product covered by the NDA, (b) an earlier public disclosure authorized by Microsoft of information covered by the NDA, or (c) one year from the date of disclosure of information covered by the NDA to a person subject to the NDA, whichever comes first; or

(2) that would restrict in any manner any person subject to the NDA from developing software products that will run on competing Operating System Software products, provided that such development efforts do not entail the disclosure or use of any Microsoft proprietary information during the term of the NDA; or

(3) that would restrict any activities of any person subject to the NDA to whom no information covered by the NDA has been disclosed.

(L) The form of standard NDAs will be approved by a Microsoft corporate officer and all non-standard language in NDAs that pertains to matters covered in Section (k) above will be approved by a Microsoft senior corporate attorney.

(M) Within thirty (30) days of the entry of this Final Judgment, Microsoft will provide a copy of this Final Judgment to all OEMs with whom it has License Agreements at that time except for those with licenses solely under the Small Volume Easy Distribution (SVED) program or the Delivery Service Partner (DSP) program.

V. Reporting

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendant at its principal office, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendant, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, employees, or agents of Defendant, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendant at its principal office, subject to any lawful privilege, Defendant shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

(D) Defendant shall produce to plaintiff, within forty-five (45) days, any documents provided to the Directorate-General for Competition of the European Commission ("DG–IV") in connection with its monitoring or securing of compliance with any Undertaking by or Decision against Microsoft that relates to Microsoft's licensing of any Covered Product. In addition, Defendant shall not object to disclosure to Plaintiff by DG–IV of any other information provided by defendant to DG–IV, or to cooperation between DG–IV and Plaintiff in the enforcement of this Judgment, provided that Microsoft shall receive in advance a detailed description of the information to be

provided and the Plaintiff will accord any Microsoft information received from DG–IV the maximum confidentiality protection available under applicable law. Specifically, Plaintiff will treat Microsoft information that it receives from DG–IV as "confidential business information" within the meaning of the Freedom of Information Act, 5 U.S.C. § 552, with Microsoft deemed a "submitter" of the information under the statute. Plaintiff shall take precautions to ensure the security and confidentiality of Microsoft information provided in electronic form.

(E) If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendant is not a party.

VI. Further Elements of Judgment

(A) This Final Judgment shall expire on the seventy eighth month after its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. Public Interest

Entry of this Final Judgment is in the public interest.

Entered: _____

United States District Judge

Page 15 of the Final Judgment

Section VII Public Interest

Entered and United States District Judge should be printed as is. This is not an omission.

Cynthia Preston,

Office of Operations.

[FR Doc. 94–20216 Filed 8–18–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–25]

Charles A. Buscema, M.D.; Continuance of Registration

On December 21, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles A. Buscema, M.D. (Respondent), of Albany, New York, proposing to revoke his DEA Certificate of Registration, BB0636021, and deny any pending applications for registration on grounds that he had been convicted of a felony related to controlled substances, was not currently licensed to handle controlled substances in the state in which he practices, and that his continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 824(a)(2), (3), and (4) and 823(f). The Order to Show Cause alleged that: (1) On January 13, 1989, before the Albany County Court of the State of New York, Respondent was convicted of one felony count of a violation of falsifying business records in the first degree, which falsification referred to the dispensation of controlled substances, and Respondent was sentenced to five years probation which included a provision that he not dispense any controlled substances from his office; (2) on November 12, 1990, Respondent voluntarily surrendered his DEA Certificate of Registration, AB7544314, for cause; (3) on May 29, 1991, the New York State Board of Health entered a stipulation and order which found that during the period February 1983 through November 1987, Respondent dispensed 9,850 dosage units of Schedule II controlled substances without preparing a prescription, failed to make records of dispensing 5,060 dosage units of controlled substances, and made 32 false entries regarding controlled substances in patient records, and as a result Respondent was assessed a civil penalty and his ability to use official New York State prescription forms was revoked for two years; (4) on January 22, 1992, the Commissioner, New York Education Department, Board of Regents, granted Respondent's application for a consent order with the State Board for Professional Medical Conduct, which consent order suspended his medical license for a period of six years, stayed execution for five years and placed his license on five years probation. As a result, Respondent was not licensed to practice medicine in the State of New York for a period of one year beginning January 27, 1992.

Respondent, through counsel, filed a request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Albany, New York on January 13, 1994. On April 18, 1994, in his findings of fact, conclusions of law and recommended ruling, the administrative law judge recommended that Respondent's DEA Certificate of Registration not be revoked and that his application for renewal be granted. The Government filed exceptions to Judge Tenney's opinion. On May 23, 1994, the administrative law judge transmitted the record to the Deputy Administrator.

The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent received a medical degree from Albany Medical College in 1967. After a surgical internship in Connecticut, he entered a psychiatric residency at Albany Medical Center Hospital and was subsequently made chief of psychiatry at Saint Peter's Hospital in Albany.

The administrative law judge found that in 1986, a review of controlled substance order forms by New York State officials indicated that Respondent was receiving large quantities of the Schedule II controlled substance, amphetamine. In response to a request for medical records, Respondent provided the state with order forms indicating his purchases and a tabulation to account for his disposal of these drugs. Under New York State law, a practitioner is required to complete a triplicate prescription form whenever he dispenses any Schedule II controlled substance, and to maintain a patient record with evidence of examination, complaint, illness, and therapy. Respondent executed no such prescriptions to account for his disposition of controlled substances. In response to a state request for more documentation, Respondent claimed that his records were on computer. Respondent subsequently presented an extract of records for 17 patients. State investigators were unable to locate nine of these patients, four others claimed they had received no such medication, and one was a relative of Respondent's spouse. Investigators subsequently interviewed 40 other patients, of which only five patients, all relatives of Respondent, verified that they had

received the controlled substances that Respondent attributed to them.

The administrative law judge found that on January 13, 1989, before the Albany County Court of the State of New York, Respondent was convicted of one felony count of a violation of falsifying business records in the first degree, which falsification referred to the dispensation of controlled substances. Respondent was sentenced to five years probation which included a provision that he not dispense any controlled substances from his office. Subsequently, on November 12, 1990, Respondent voluntarily surrendered his DEA Certificate of Registration, AB7544314, for cause.

On May 29, 1991, Respondent and the New York State Board of Health entered a stipulation and order which found that during the period February 1983 through November 1987, Respondent dispensed 9,850 dosage units of Schedule II controlled substances without preparing a prescription; failed to make records of dispensing 5,060 dosage units of controlled substances, and had made 32 false entries regarding controlled substances in nine patient care records. Respondent was assessed a civil penalty of $30,000, of which $15,000 was stayed. On January 22, 1992, the Commissioner, New York Education Department, Board of Regents, granted Respondent's application for a consent order with the State Board for Professional Medical Conduct. The consent order suspended Respondent's medical license for a period of six years, stayed execution for five years and placed his license on five years probation. As a result, Respondent was not licensed to practice medicine in the State of New York for a period of one year beginning January 27, 1992. Respondent's medical license was restored on January 28, 1993.

At the hearing in this matter, Respondent testified that after his state conviction, he was concerned that his wife not be prosecuted or charged with any violation of law. He stated that his wife, who had also been his office employee, had been sick and was having problems with drugs. There was no indication that Respondent used drugs himself. Respondent claimed that he voluntarily submitted to random drug testing and monitoring, that he never tested positive for drugs; and that he will continue to be monitored for another four years. Respondent stated that it was his opinion that his wife had taken the amphetamines, but he did not know how much. Respondent testified that he attempted to counsel his wife for chemical dependency, and he did not get her help earlier due to the fact that he had a very high profile psychiatric practice in town. His wife subsequently got involved with a rehabilitative program, now holds a top nursing job, and has been "clean" from drugs for a number of years. Respondent conceded that he made a mistake in the way he handled things and stated that it was an error in judgment to stonewall or attempt to cover up his wife's abuse of controlled substances. Respondent felt that he paid for this mistake and is still doing so.

The administrative law judge found that Respondent is currently employed as a staff psychiatrist for the State of New York. Respondent presented testimony from his peers and supervisor that he was well-liked, extremely motivated, hard-working, knowledgeable, and that he was considered exceptionally competent, an excellent clinician, and made positive contributions to the state institution and his patients. Respondent's supervisor was of the opinion that Respondent could competently assume the responsibilities of a DEA registration.

Under 21 U.S.C. 824(a)(4), the Deputy Administrator may revoke a registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Paul Stepak, M.D.*, 51 FR 17556 (1986).

The administrative law judge found that all five factors were relevant in determining whether Respondent's registration should be revoked. As to the first factor, the administrative law judge found that Respondent has a current license to practice medicine and handle controlled substances. As to the second factor, Respondent failed to execute prescriptions to account for the disposition of Schedule II controlled substances, and attributed controlled substances to patients who had not received them. As to the third factor, Respondent was convicted of one felony count of falsifying records related to the dispensing of controlled substances. As to the fourth factor, Respondent violated New York State laws relating to controlled substances, and surrendered his previous DEA Certificate of Registration for cause. As to the fifth factor, the administrative law judge found that there was no indication that Respondent himself has abused drugs, but Respondent inferred that his wife took the amphetamines due to her own drug problems.

The administrative law judge found that Respondent's guilty plea to the felony was motivated by his desire to spare his wife from prosecution. The administrative law judge also found Respondent's testimony to be sincere, and gave substantial weight to the fact that the State of New York had exacted full and fair retribution for Respondent's conviction. Respondent was discharged from probation two and one-half years early, and has accepted responsibility for his conduct and failures regarding his wife's chemical dependency, which has now been successfully treated. Consequently, the administrative law judge recommended that Respondent's registration not be revoked.

The Government filed exceptions to the recommendation of the administrative law judge contending that Respondent's testimony had failed to respond to the issue of diversion of the controlled substances and his subsequent cover-up activity; that Judge Tenney had applied undue weight to the character evidence presented by Respondent; and that, in any event, Respondent has not shown that he does not pose a continuing threat to diversion, especially with regard to Schedule II controlled substances.

The Deputy Administrator concurs with the administrative law judge's findings of fact, conclusions of law, and recommended ruling in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, BB0636021, issued to Charles A. Buscema, M.D., be and it hereby is, continued, and that any pending applications, be, and they hereby are, granted. This order is effective on August 19, 1994.

Dated: August 15, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–20426 Filed 8–18–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,694]

Fort Vancouver Plywood, Vancouver, WA; Notice of Revised Determination on Reconsideration

On July 15, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 26, 1994 (59 FR 37993).

Investigation findings show that the subject firm is an employee-owned company operating as a cooperative which produces softwood plywood.

New findings on reconsideration show a substantial decline in employment in fiscal year (FY) 1994 compared to FY 1993. Sales and production declines occurred in FY 1994 compared to FY 1993.

The subject firms's fiscal year runs from July 1 to June 30. U.S. aggregate imports of soft plywood increased substantially in 1993 compared to 1992.

On reconsideration, the Department conducted a survey of Fort Vancouver Plywood's customers to determine whether the "contributed importantly" test of Group Eligibility Requirements of the Trade Act was met. The Department's survey shows that customers accounting for a major portion of the subject firm's sales decline in FY 1994 increased their imported purchases of plywood while decreasing their purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers of Fort Vancouver Plywood in Vancouver, Washington were adversely affected by increased imports of articles that are like or directly competitive with the softwood plywood produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination for workers of Fort Vancouver Plywood in Vancouver, Washington.

"All workers of Fort Vancouver Plywood in Vancouver, Washington who became totally or partially separated from employment on or after March 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 10th day of August 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–20471 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than August 29, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 29, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of August, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
International Paper (UPIU)	Presque Isle, ME	08/08/94	07/28/94	30,173	Corrugated Containers.
HH Rosinsky & Co., Inc (Wkrs)	Philadelpia, PA	08/08/94	07/29/94	30,174	Ladies' Sportswear, and Maternity Dresses.
Bayeux Fabric, Inc (Wkrs)	Lincoln Park, NY	08/08/94	07/29/94	30,175	Curtains, Draperies.
IBM (Wkrs)	Rochester, MN	08/08/94	07/21/94	30,176	Computers.
Warnaco Men's Apparel (ACTWU)	Waterville, ME	08/08/94	07/25/94	30,177	Men's Dress Shirts.
Tubeline Co (USWA)	Union, NJ	08/08/94	07/27/94	30,178	Steel Fittings.
Powell Mountain Coal Co (Wkrs)	Big Stone Gap, VA	08/08/94	07/28/94	30,179	Steam Coal.
Magne Tek (Wkrs)	Hungtington, IN	08/08/94	07/26/94	30,180	Electronic Ballasts.
Howes Leather Co (Wkr)	Bartow, TX	08/08/94	07/19/94	30,181	Leather.
Exxon Co, USA (Wkrs)	Midland, TX	08/08/94	07/27/94	30,182	Crude Oil, Natural Gas.
The Benstock CO (Wkrs)	Buffalo, NY	08/08/94	07/23/94	30,183	Jewelry Manufacturer.
Markwest Hydrocarbon Partners (Co)	Englewood, CO	08/08/94	07/21/94	30,184	Fractionated Liquefied Petroleum
General Dynamics (Wkrs)	Sterling Heights, MI	08/08/94	07/21/94	30,185	Military Tanks.
Owens Illinois (Wkrs)	Waco, TX	08/08/94	07/24/94	30,186	Glass Containers.
Eddie Haggar, Ltd (Wkrs)	Nahunta, GA	08/08/94	07/19/94	30,187	Ladies' Pants.
Cenex, Inc (Co)	Billings, MT	08/08/94	07/25/94	30,188	Crude Oil, Natural Gas.
Baxter Healthcare Corp (Wkrs)	North Reading, MA	08/08/94	07/27/94	30,189	Electronic Infusion Devices.
Vought Aircraft Co (UAW)	Dallas, TX	08/08/94	07/20/94	30,190	Structural Parts for Aircraft Bodies.
AT&T Network Cable Systems (CWA)	Phoenix, AZ	08/08/94	07/25/94	30,191	Cooper Cable and Cords.
Stone Container Corp (Wkrs)	Hodge, LA	08/08/94	07/20/94	30,192	Paper Bags.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
New Colonial Corp (Wkrs)	Sevierville, TN	08/08/94	07/25/94	30,193	Men's Pants and Shorts.
National Garment Co (Wkrs)	Russelville, AR	08/08/94	07/26/94	30,194	Children's Activewear.
Julie Fashions II (ILGWU)	Tuscarora, PA	08/08/94	07/25/94	30,195	Ladies' Sportswear.
First Image Management Co (Wkrs)	Houston, TX	08/08/94	07/14/94	30,196	Microfilm.
Allen Drilling Co (Co)	Englewood, CO	08/08/94	07/25/94	30,197	Oil, Gas Exloration, Drilling.
KCA Apparel (Wkrs)	Lawton, OK	08/08/94	07/23/94	30,198	Ladies' Pants.
Normak International/Int'l Fashions (Wkrs).	Knoxville, TN	08/08/94	07/29/94	30,199	Ladies' Suits and Pants.

[FR Doc. 94–20469 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,904]

J&G Shake, Forks, WA; Notice of Revised Determination on Reopening

On August 3, 1994, the Department on its own reopened its investigation for workers and former workers of the subject firm. The initial investigation resulted in a denial for workers of J&G Shake, Forks, Washington. The denial notice will soon be published in the **Federal Register.**

New investigation findings on reopening show a major customer increased its reliance on imported cedar shakes and shingles in the relevant period. The customer accounted for the preponderance of the subject firm's sales decline in the relevant period.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with cedar shakes and shingles produced by J&G Shake, Forks, Washington contributed importantly to the decline in sales and production and to the total or partial separation of workers at J&G Shake, Forks, Washington.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers and former workers of J&G Shake, Fork, Washington who became totally of partially separated from employment on or after April 21, 1993 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974"

Signed in Washington, D.C. this 8th day of August, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–20472 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,756]

Ucar Carbon Company, Inc. Robinson, IL; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated July 28, 1994, a former worker requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 23, 1994 and published in the **Federal Register** on July 19, 1994 (59 FR 36792).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former worker stated that increased imports of aluminum ingot adversely affected workers at UCAR Carbon Company producing calcined petroleum coke which is used to make carbon anodes for the production of aluminum.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act was not met. Aluminum is not interchangeable with calcined petroleum coke.

Investigation findings show that UCAR Carbon in Robison, Illinois closed on May 1, 1994. The workers produced calcined petroleum coke. The findings show that calcined petroleum coke at UCAR Carbon is used to make (1) Carbon anodes which are used up in the production of aluminum and (2) graphite electrodes used in electric arc furnaces for steelmaking.

Articles which are consumed in the making of a finished article are not like or directly competitive with the finished article. Calcined petroleum coke and aluminum are not interchangeable. Accordingly, imported aluminum is not like or directly competitive with calcined petroleum coke within the meaning of Section 222(3) of the Trade Act. Therefore, aluminum imports cannot be considered in determining import injury to workers engaged in employment related to the production of calcined petroleum coke.

The Trade Act did not intend to provide TAA benefits for everyone who is in some way affected by foreign competition, but only for those workers of a firm which has experienced increased imports of articles that are like or directly competitive with those produced at the subject firm. The increased imports must have "contributed importantly" to worker separations and decreased sales or production at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 10th day of August 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–20470 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume I

Massachusetts
MA940020 (Aug. 19, 1994)
MA940021 (Aug. 19, 1994)

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenteses following the decisions being modified.

Volume I

Massachusetts
MA940001 (Feb. 11, 1994)
MA940003 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940005(Feb. 11, 1994)
PA940006 (Feb. 11, 1994)
PA940007 (Feb. 11, 1994)
PA940008 (Feb. 11, 1994)
PA940009 (Feb. 11, 1994)
PA940010 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940015 (Feb. 11, 1994)
PA940019 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940023 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940025 (Feb. 11, 1994)
PA940026 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
PA940029 (Feb. 11, 1994)
PA940030 (Feb. 11, 1994)
PA940031 (Feb. 11, 1994)
PA940040 (Feb. 11, 1994)
PA940052 (Feb. 11, 1994)
PA940063 (Feb. 11, 1994)
Virginia
VA940039 (Feb. 11, 1994)
VA940063 (Feb. 11, 1994)

Volume III

Florida
FL940006 (Feb. 11, 1994)
FL940011 (Feb. 11, 1994)

Volume IV

Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940034 (Feb. 11, 1994)
MI940040 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
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MI940059 (Feb. 11, 1994)
MI940060 (Feb. 11, 1994)
Ohio
OH940001 (Feb. 11, 1994)
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OH940026 (Feb. 11, 1994)
OH940027 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
Wisconsin
WI940011 (Feb. 11, 1994)

Volume V

Kansas
KS940004 (Feb. 11, 1994)
KS940009 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940013 (Feb. 11, 1994)
KS940016 (Feb. 11, 1994)
KS940017 (Feb. 11, 1994)
KS940020 (Feb. 11, 1994)
KS940025 (Feb. 11, 1994)
KS940029 (Feb. 11, 1994)
KS940061 (Feb. 11, 1994)
New Mexico
NM940001 (Feb. 11, 1994)
Oklahoma
OK940013 (Feb. 11, 1994)
OK940014 (Feb. 11, 1994)
OK940016 (Feb. 11, 1994)
OK940017 (Feb. 11, 1994)
OK940024 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Feb. 11, 1994)
AK940003 (Feb. 11, 1994)
California
CA940002 (Feb. 11, 1994)
Colorado
CO940001 (Feb. 11, 1994)
Hawaii
HI940001 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1994)
WA940002 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940006 (Feb. 11, 1994)
WA940010 (Feb. 11, 1994)
WA940011 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 12th Day of August 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–20194 Filed 8–18–94; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94–463.

DATES: Friday, September 23, 1994; 9:00 a.m. to 1:00 p.m.

ADDRESSES: West Dining Room, James Madison Building, Library of Congress, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Alan Jabbour, Director American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707–6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Alan Jabbour,

Director, American Folklife Center.

[FR Doc. 94–20390 Filed 8–18–94; 8:45 am]

BILLING CODE 1410–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1994; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the first quarter of CY 1994, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 17, No. 1, ("Report to Congress on Abnormal Occurrences: January-March 1994"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

94–1 Inoperable Main Steam Line Isolation Valves at Perry Nuclear Power Plant

One of the AO reporting guidelines notes that a major reduction in the degree of protection to public health and safety from a major degradation of essential safety-related equipment can be considered an AO.

Date and Place—March 1992; Perry Nuclear Power Plant, a General Electric-designed boiling water reactor (BWR), operated by Cleveland Electric Illuminating Company and located about 11 kilometers (7 miles) northeast of Painesville, Ohio.

Nature and Probable Consequences—The main steam isolation, leakage control and outboard drain valves in three of four main steam lines penetrating containment failed to meet the Technical Specifications limiting condition of operation (LCO) for leak tightness.

For many BWRs, the LCO for leakage of each main steam isolation valve (MSIV) is 0.326 standard cubic meters (11.5 standard cubic feet) per hour. Because it is difficult to measure the leakage of each valve individually, a maximum combined allowed leakage is specified for the inboard and outboard MSIVs, and the associated control and drain valves. This LCO is 0.71 standard cubic meters (25 standard cubic feet) per hour. During testing at Perry in 1992, the leakages through the MSIVs were approximately 12 times allowable. Due to a history of poor performance and multiple main steam line valve leakage, a detailed analysis of the 1992 MSIV leakage was performed. The analysis is required obtaining detailed information from the licensee; a number of calculations, reviews, and subsequent reanalyses; and multiple meetings among the staff to determine the impact on safety.

MSIVs are designed to close and limit the release of radioactivity to the environment in the unlikely event of an accident. When the Perry facility was issued an operating license, there was reasonable assurance that the MSIVs would operate as intended, and the potential off-site doses resulting from postulated accidents, which includes assumptions regarding fuel damage and fission product release, would be below the guideline values for release to the general public. Because of the excessive leakage, the NRS staff, using conservative assumptions, calculated the potential off-site doses to the general public that might result from a postulated loss-of-coolant accident. Using the very conservative licensing basis calculational methodologies, the calculated dose exceeded the guidelines for release to the general public. A more realistic calculation using the new approach presented in draft NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants" (U.S.

Nuclear Regulatory Commission, NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," Draft Report for Comment, June 1992) showed that the potential off-site doses would not exceed the limits for release to the general public; however, additional measures would be needed to minimize exposure of control room personnel.

Cause or Causes—The licenses determined the reason for the excessive MSIV leakage during the 1992 tests to be excessive friction from oxide buildup, which caused end-of-stroke angular misalignment resulting in non-360-degree seat contact (Licensee Event Report 50–440/92–006–01, "Local Leak Rate Test Results Exceed Allowable Primary Containment Leakage for Main Steam Lines A, B, and D," August 14, 1992). The reason for the difficulty of the Perry MSIVs to meet test leakage limits is design geometry. The MSIVs are "Y" pattern valves with the valve stem at 45 degrees to the piping axis. To seat properly, translational motion of the poppet at the moment of impact must change from the direction of the stem to a direction parallel to the axis of the pipe. Seating is made more difficult because of the large size of the valves (66 centimeters [26 inches] diameter) and the weights involved (4500 kilograms [10,000 pounds]).

Actions Taken to Prevent Recurrence

Licensee—In the early 1980s, Atwood & Morrill, suppliers of the MSIVs, and the BWR Owners Group recognized the need for better maintenance and for modification of the MSIVs. Modifications included improved poppet nose guides to overcome eccentricity during seating and poppet anti-rotation devices. During the 1992 refueling outage, these modifications were installed by the licensee on the six (out of eight) MSIVs which have had leakage problems (Licensee Event Report 50–440/92–006–01, "Local Leak Rate Test Results Exceed Allowable Primary Containment Leakage for Main Steam Lines A, B, and D," August 14, 1992). Based on leakage tests performed in 1993 and 1994, the modifications were successful in significantly reducing MSIV leakage.

NRC—NRC is closely monitoring the licensee's program and progress in reducing the leak rate through the MSIVs.

* * * * *

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

94–2 Medical Brachytherapy Misadministration at Hospital Metropolitano in Río Piedras, Puerto Rico

One of the AO reporting guidelines notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place—December 11, 1993; Hospital Metropolitano; Río Piedras, Puerto Rico.

Nature and Probable Consequences—On December 9, 1993, at 5:20 p.m., a patient began a gynecological low-dose-rate brachytherapy treatment. The patient was prescribed a treatment of 3000 centigray (cGy) (3000 rad) by a 48-hours exposure to approximately 2.3 gigabecquerel (61.3 millicurie [mCi]) of cesium–137 (Cs–137).

On December 11, 1993, at approximately 7:30 a.m. (about 10 hours before the end of the prescribed treatment), the patient intervened with the procedure by removing the implant containing three Cs–137 sources of approximately 730 megabecquerel (20.4 mCi) each, and placed it next to her thigh. Shortly after removing the implant, the patient showed the device to the floor nurse. The nurse recognized the implant and understood the need for concern. She did not take the device from the patient but reported the situation to her supervisor. The patient apparently returned the device next to her thigh beneath the bed linen.

At the time of being informed, the nursing supervisor was experiencing difficulty with another patient, and was involved in shift turnover. Due to these distractions, the supervisor failed to realize the urgent nature of the situation and did not make required notifications.

On several occasions that morning, other licensee personnel entered the patient's room without realizing that the radioactive source was exposed because it was covered by bed linen; the patient did not notify any additional staff members that she had removed the implant. Approximately 2½ hours after the estimated time of the source removal, the attending physician attempted to perform a routine check of the implant and discovered that it had been removed and placed next to the patient's thigh.

After properly accounting for and storing the sources, the physician examined and interviewed the patient. Based on discussions with the patient and review of the exposure received, the attending physician terminated the treatment. This decision was based on the physician's determination that the treatment received was clinically adequate and his concern that the patient was a threat to herself and others.

The actual dose delivered to the intended treatment site was calculated to be 2270 cGy (2270 rad). The written directive was revised to reflect the lower dose delivered. The licensee's evaluation of the incident indicated that assuming the implant remained in the same location for three hours, the maximum dose to the skin of the patient's thigh (the wrong treatment site) was 572 cGy (572 rad). The licensee reported that no adverse effects to the patient are expected.

The patient was notified verbally at the time the misadministration was discovered and then notified in writing on January 13, 1994.

Cause or Causes

The initial cause of the misadministration was the patient's removal of the implant which was compounded by the failure of the two nurses to follow emergency procedures. The nurses' failure to respond to the emergency resulted in approximately 2½ hours of unnecessary exposure.

Actions Taken to Prevent Recurrence

Licensee—The licensee determined that the nursing supervisor's failure to make the required notifications was due to the lack of familiarity with established radiation safety procedures to which he/she had been trained. The licensee's investigation of the event revealed that the lack of familiarity with radiation safety procedures was caused by the infrequent handling of patients undergoing therapy with licensed materials (Letter from Hospital Metropolitano, to Héctor Bermúdez, Senior Inspector, NMI Section, NRC Region II, Forwarding a Misadministration Report dated December 29, 1993, and an Addendum to the Misadministration Report dated January 11, 1994, Docket No. 030–11155, Licensee No. 52–16033–01). The licensee held a Radiation Safety Committee meeting in which the incident and corrective actions to prevent recurrence were discussed.

The licensee decided to dedicate one floor of the hospital for all therapies involving NRC-licensed materials. This will provide additional controls to allow the licensee to better ensure that nurses assigned to the floor are kept current and familiar with operating and emergency procedures. The licensee is also evaluating the need to increase

patient awareness regarding non-intervention of procedures.

The licensee is revising its procedures for responding to radiological emergencies involving patients undergoing radiopharmaceutical or sealed source therapy. As a minimum, the procedures will define what is a radiological emergency and will provide examples of situations which must be considered radiological emergencies or which could result in misadministrations. The licensee also committed to developing and implementing a retraining program based on the revised emergency procedures for all hospital employees who may be involved in handling patients receiving radiation therapy.

NRC—A special inspection was conducted on December 15 and 17, 1993, to review the circumstances surrounding the misadministration and the licensee's Quality Management program. A Confirmatory Action Letter (CAL) was issued to the licensee on December 30, 1993 (Letter from J. Philip Stohr, Director, Division of Radiation Safety and Safeguards, NRC Region II, to Hospital Metropolitano, Attn: Mr. Víctor Marrero, Administrator, forwarding a Confirmatory Action Letter, CAL No. 2–93–14, Docket No. 030–11155, License No. 52–16033–01, dated December 30, 1993). The CAL confirmed that the licensee would revise its emergency procedures and implement a training program, based on new procedures, for all licensee employees who may handle patients undergoing radiation therapy. An NRC medical consultant has been retained to perform a clinical assessment of this misadministration. The medical consultant's report is expected to be available in time to discuss his findings in the second quarter AO Report. As of the issuance of this report, NRC is pursuing escalated enforcement action against the licensee.

* * * * *

94–3 Teletherapy Misadministration at Triangle Radiation Oncology Associates in Pittsburgh, Pennsylvania

One of the AO reporting guidelines notes that a therapeutic misadministration that affects two or more patients at the same facility, regardless of any health effects, can be considered an abnormal occurrence.

Date and Place—December 20, 1993; Triangle Radiation Oncology Associates; Pittsburgh, Pennsylvania.

Nature and Probable Consequences—On December 20, 1993, Triangle Radiation Oncology Associates in Beaver, Pennsylvania, notified NRC of two potential teletherapy misadministrations that occurred between December 13 and 17, 1993, at the licensee's Pittsburgh, Pennsylvania, facility. The potential misadministrations were identified during a review of patient records on December 17, 1993, when the licensee observed calculation errors involving the depth of the dose given to each of the two patients.

Both cases involved breast treatments where the original treatment plan prescribed 28 treatments of 180 centigray (cGy) (180 rad) from a cobalt-60 teletherapy source (using 2 parallel opposed fields) for a total absorbed dose of 5040 cGy (5040 rad). The primary breast treatments were concluded on December 10, 1993. The physician wrote separate written directives for each patient to receive an additional 1000 cGy (1000 rad) to the scar in 5 treatments of 200 cGy (200 rad) per day. One of the written directives indicated that the absorbed dose was to be delivered at d_{max}, the maximum extension of the teletherapy unit, which, as stated by the physicist, is typically a depth of 0.5 centimeter (cm) (0.2 inch). The other written directive did not indicate a depth; however, the physician stated that the intended depth was d_{max}.

As described above, such a treatment plan would typically have been calculated by the teletherapy technologist at the Pittsburgh facility and communicated by telephone to the teletherapy physicist at the Beaver facility to be checked. However, this procedure changed when the computer at the Pittsburgh facility was taken out of service on December 1, 1993.

On December 9, 1993, the teletherapy technologist hand wrote a paraphrased request of the written directive for the two breast-treatment patients needing scar booster dose calculations. Rather than writing d_{max}, the technologist stated the tumor dose at a depth of 5 cm (2 inch) and sent the request, via facsimile transmission, to the teletherapy physicist at the Beaver facility. Hand calculations were performed for 200 cGy (200 rad) treatments at a 5 cm (2 inch) depth, checked by a certified physicist, and sent back to the technologist, via facsimile transmission, on December 9, 1993.

The patients were treated from December 13 to 17, 1993, and received doses of 1300 and 1320 cGy (1300 and 1320 rad) respectively, rather than the 1000 cGy (1000 rad) intended. This resulted in misadministrations of 30 and 32 percent greater than the intended dose. The licensee's physician stated that no adverse clinical effects are expected as a result of the overexposures.

After the initial report, the licensee told NRC in subsequent telephone conversations that a recalculation of the dose averaged over the entire tumor volume did not exceed 30 percent and, therefore, the licensee no longer thought the definition of a misadministration applied in this case.

NRC performed a special inspection on December 28 and 29, 1993, to review the potential misadministrations. Information gathered during this inspection, including the calculations of the administered doses, was given to an NRC scientific consultant to evaluate. The scientific consultant, in his report to NRC, stated that "the dose prescription was to d_{max} (i.e., 0.5 cm [0.2 inch] depth on the central axis) and a misadministration can only be judged by considering the dose given to this point. * * * clearly in both cases a misadministration has taken place." On March 25, 1994, the licensee was informed that the doses to both patients were deemed to be misadministrations. The licensee submitted its report of misadministrations in a letter dated April 7, 1994.

After receiving the scientific consultant's report, an NRC medical consultant was retained to perform a clinical evaluation of the patients. The medical consultant is still reviewing the potential health effects to the patients. The consultant's report is expected to be completed in time to update this writeup in the next AO report to Congress.

The referring physician was notified and determined that, based on medical judgment, informing the patients of the misadministrations would be harmful.

Cause or Causes—The technologist incorrectly transposed the treatment depth on the facsimile used to prepare the treatment plan. The technologist failed to make reference to d_{max} and entered the depth value incorrectly as 5.0 cm (2 inch) instead of the intended 0.5 cm (0.2 inch).

Actions Taken to Prevent Recurrence

Licensee—The licensee implemented a requirement for a stamp to be placed on all written directives that prompts a clear documentation of key treatment parameters such as site, method, daily dose, fractions, total doses, depth of calculation, spinal blocks, other blocks, and date. Previously, key parameters had been informally handwritten directives on patients's treatment charts. The licensee also formalized its requirement to include the written directive for all dosimetry calculation requests from the Beaver facility, and

revised its "weekly chart check" procedure to increase chart reviews from once a week to twice a week, as was the practice prior to December 1, 1993.

NRC—NRC is reviewing the licensee's April 7, 1994, misadministration report and the findings of the December 28 to 29, 1993, NRC inspection. Once the NRC medical consultant's report is received, enforcement action will be considered.

* * * * *

94–4 Lost Reference Sources at Brooks Air Force Base in San Antonio, Texas

One of the AO reporting guidelines notes that any serious deficiency in management or procedural controls in a major area can be considered an abnormal occurrence.

Date and Place—1993; Armstrong Laboratory, Brooks Air Force Base (AFB); San Antonio, Texas.

Nature and Probable Consequences—As prescribed by the licensees's Compliance Accountability and Control Procedures, in 1993, the licensee performed an audit of all licensed sources at Armstrong Laboratory. During this audit, the licensee identified four missing strontium-90 (Sr–90) reference sources of approximately 14.8 megabecquerel (400 microcurie) each. The licensee conducted an extensive physical search for the sources and reviewed all radioactive material permits issued to other organizations at Brooks AFB. When the disposition of the Sr–90 sealed sources could not be determined, the licensee reported the loss of the four sealed sources to NRC by telephone on September 22, 1993. The licensee informed NRC that the United States Air Force (USAF) Inspector General would review this incident. The licensee suspected that the sources had been inadvertently discarded and transported to a sanitary landfill.

The licensee evaluated possible radiation exposure to members of the general public and concluded that unless the sources were removed from the container, the radiation levels from the sources would be near background level. Furthermore, unless a deliberate effort was made to open the source capsules, an individual handling the sources would receive less exposure than allowed by regulatory limits for the general public.

Cause or Causes—During 1991, the timeframe during which the sources were apparently lost, a number of individuals were responsible for the radiation safety program at Brooks AFB. These individuals were temporary or part-time Radiation Safety Officers (RSOs), and had extensive, temporary duties at other sites.

The results of the USAF Inspector General's investigation determined that "programmatic issues started to plague radiation safety at Brooks AFB after the dismantling of the base/clinic program and the inception of additional duty RSOs." The report explained that in 1986, the radiation safety function and responsibility was transferred to the base clinic at Brooks AFB. Almost simultaneously, a Joint Military Medical Command (JMMC) was established and the base clinic became a part of JMMC. JMMC was a medical command established to service all branches of the Armed Forces in the San Antonio, Texas, area. With this action, the radiation safety program was managed by an organization that was not responsible to any management level at Brooks AFB. Furthermore, the report stated that JMMC dismantled the clinic's radiation safety program, and "requested that all organizations previously under the clinic's program establish and run their own radiation safety program." Exacerbating the problem was the appointment of the additional duty RSOs, who had "limited to general knowledge of radiation safety," and no directives or other guidance to assist them. Additionally, "the additional duty RSOs received little management oversight after they had been appointed to the RSO position."

The investigation concluded that from 1986 through 1991, there had been a lack of commitment to management oversight, and a serious disregard for radiation safety issues.

Actions Taken to Prevent Recurrence

Licensee—In 1991, Armstrong Laboratory was placed under a new Air Force Command. The Command committed to increased management oversight of the radiation safety programs. Additionally, physical inventory procedures were revised.

NRC—NRC conducted an inspection (Letter from Dwight D. Chamberlain, Acting Director, Division of Radiation Safety and Safeguards, NRC Region IV, to Lt. Colonel Joseph J. Donnelly, chief of USAF Radioisotope Committee Secretariat, forwarding Inspection Report No. 030–28641/93–10, Docket No. 030–28641, License No. 42–23539–01AF, dated January 19, 1994) at Brooks AFB on December 21, 1993, to review the circumstances associated with the loss of licensed material, after receiving a written report from the licensee on December 10, 1993. NRC also held an Enforcement Conference with the licensee on February 3, 1994, to review the findings of the inspection and to determine enforcement action.

On February 11, 1994, NRC issued a Notice of Violation (Letter from L.J. Callan, Regional Administrator, NRC Region IV, to Department of the Air Force, USAF Radioisotope Committee, forwarding Notice of Violation, Docket No. 030–28641, License No. 42–23539–01AF, dated February 11, 1994) for violations involving (1) a failure to secure licensed material and (2) failure to include in one USAF permit a requirement to conduct a periodic physical inventory of all licensed materials.

These violations were categorized as a Severity Level III and a Severity Level IV, respectively (Severity Level I through V range from the most significant to the least significant, respectively). No civil penalty was assessed because of the Air Force's discovery of this violation and the promptness and comprehensiveness of the corrective actions. The licensee has responded in writing to the Notice of Violation and no additional actions are required.

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94–5 Medical Brachytherapy Misadministration at the University of Cincinnati in Cincinnati, Ohio

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place—January 7, 1994; University of Cincinnati; Cincinnati, Ohio.

Nature and Probable Consequences—On January 14, 1994, NRC was notified by telephone of a misadministration involving a leaking iodine-125 (I–125) brachytherapy implant seed. On January 7, 1994, 16 I–125 seeds, each ranging from 370 to 1110 megabecquerel (MBq) (10 to 30 millicurie (mCi)) activity, were implanted in the brain of a 30-year-old male patient. Following the explant procedure on January 14, 1994, the licensee identified radioactive contamination in the surgical room and bathroom used by the patient. Personnel from the licensee's radiation safety office identified the contamination to be I–125 and confirmed that at least one seed was leaking. Further analysis by the licensee determined that one seed was damaged during the implant procedure by a surgical staple. The seed originally contained 758 MBq (20.5 mCi) of I–125 and, based on an assay of the explanted source, the licensee estimated that the loss was approximately 74 MBq (2.0 mCi).

Thyroid monitoring of the patient's visitors and hospital employees involved in the care of the patient was performed by the licensee. One of the licensee's employees was determined to have received a committed dose equivalent to the thyroid of 50 microsievert (μSv) (5 millirem [mrem]). In addition, a visitor was determined to have received a committed dose equivalent to the thyroid of 540 μSv (54 mrem), or a total effective dose equivalent of 160 μSv (1.6 mrem), which is less than the annual limit for members of the general public of 1000 μSv (100 mrem).

Through patient monitoring, the licensee estimates that approximately 5 percent of the free I–125 was taken up in the patient's thyroid. (In a normally functioning, unblocked thyroid, approximately 25 percent of the free iodine would be taken up in an individual's thyroid.) The licensee estimates that the uptake would result in a radiation dose to the thyroid of approximately 300 centigray (300 rad). The licensee does not expect any adverse medical effects to the patient as a result of the misadministration. An NRC medical consultant concluded that the non-radioactive iodinated contrast agent used during an imaging procedure performed on the patient prior to the implant blocked the absorption of the I–125. He also concluded that exposure to the radiation levels described has resulted in an increased probability of developing thyroid tumor(s) in the future.

The licensee notified the referring physician, the patient, and the patient's family of the misadministration.

Cause or Causes—The seed leaked after being inadvertently crushed by a surgical staple used to secure the catheters during the implant procedure.

Actions Taken to Prevent Recurrence

Licensee—For future procedures, the licensee plans to ensure that the implanted seeds are located further down the catheter in order to reduce the likelihood of seed damage from surgical staples. The licensee also plans to examine each I–125 seed for leakage following each explant procedure.

NRC—NRC dispatched two inspectors on January 16, 1994, to monitor the licensee's decontamination efforts and to obtain more details on the misadministration. NRC also obtained the services of a medical consultant to review the medical implications of the incident. A followup NRC inspection (Letter from W.L. Axelson, Director, Division of Radiation Safety and Safeguards, to Donald Harrison, M.D., Senior Vice President and Provost for Health Affairs, University of Cincinnati, forwarded Inspection Report No. 030–02764/94001, Docket No. 030–02764, License No. 34–06903–05, dated March 10, 1994) was conducted from February 7 to 11, 1994. On March 16, 1994, NRC held a telephone Enforcement Conference with the licensee to discuss the safety inspections conducted in January and February 1994, at the University of Cincinnati.

A Notice of Violation was issued by NRC on March 25, 1994, which imposed a fine of $5000 for a violation not associated with this misadministration. In the Notice of Violation, NRC determined that the inadvertent opening of the I–125 sealed source did not constitute a violation of the University of Cincinnati's license.

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94–6 Medical Brachytherapy Misadministration at Keesler Medical Center at Keesler Air Force Base in Biloxi, Mississippi

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body scheduled to receive radiation such that the actual dose received is greater than 1.5 5imes the prescribed dose can be considered an abnormal occurrence.

Date and Place—January 13, 1994; Keesler Medical Center, Keesler Air Force Base; Biloxi, Mississippi.

Nature and Probable Consequences—A patient was prescribed a lung brachytherapy treatment delivered by an Omnitron 2000 high-dose-rate (HDR) remote afterloader system. The prescribed tumor treatment plan included 1000 centigray (cGy) (1000 rad) absorbed doses at 5 treatment positions using a 144.3 gigabecquerel (3.9 curie) iridium-192 source within a special needle. At the end of fifth and last treatment, the source wire retracted 0.5 centimeter (cm) (0.2 inch) and stopped. Alarms immediately alerted Keesler staff that the source remained inside the patient's body. Licensee personnel followed emergency procedures, entered the therapy room and removed the needle from the patient. Once outside the patient's body, the radioactive source retracted to the stored position.

The licensee determined that the source remained stuck at 0.5 cm (0.2 inches) above the fifth position for approximately 2½ minutes. The treatment plan called for the delivery of 1000 centigray (cGy) (1000 rad) at 1cm from each of the 5 treatment positions. As a result of the additional 2½ minutes exposure, the last treatment position received 1732 cGy (1732 rad) absorbed dose, or 73.2 percent over the prescribed dose. The treatment plan also predicted an 800 cGy (800 rad) absorbed dose at 0.5cm (0.2 inch) from each of the 5 treatment positions. The point 0.5 cm (0.2 inch) above the last treatment position, where the movement of the source stopped, received approximately 1400 cGy (1400 rad), or 75 percent greater than the absorbed dose stipulated in the prescribed treatment plan. The failure of the source to retract resulted in a single overexposure, causing an overall absorbed dose of 75 percent greater than that prescribed, for all the tissue surrounding the position 0.5cm (0.2 inch) above the last treatment site.

The licensee reported that no adverse health effects to the patient are expected. The patient was immediately notified of the misadministration.

Cause or Causes

The patient had made a sudden move near the end of the treatment causing the special needle to bend at the point where it extended beyond the biopsy needle. The bend prevented the radioactive source from retracting to the stored position, causing the misadministration.

Actions Taken to Prevent Recurrence

Licensee—The licensee immediately stopped the use of the HDR device pending a complete check of the system by the manufacturer (Letter from Omnitron International, Inc. to NRC Document control Desk, forwarding a Report of HDR misadministration, Part 21– Reporting of Defects and Noncompliance, Omnitron Report No. 102, dated January 19, 1994, Docket No. 030–26841, License No. 42–23539–01AF; and Letter from Omnitron International, Inc. to John W. Lubinski, Mechanical Engineer, Nuclear Material Safety and Safeguards, NRC Washington, D.C., forwarding a report of Inspection of Source Wire, dated April 6, 1994, Docket No. 030–26841, License No. 42–23539–01AF). The licensee also evaluated the practice of extending special needles beyond biopsy needles and the probability of patient movement causing damage, and decided to discontinue this practice (Letter from Department of the Army, HQ AFMOA/SGPR, Brooks AFB, TX to NRC Region IV, forwarding the 15-Day Report of Misadministration at Keesler AFB, MS, dated February 1, 1994, Docket 030–26841, License No. 42–23539–01AF; and Letter from Department of the Army, HQ AFMOA/SGPR, Brooks AFB, TX to NRC Region IV, responding to a NRC Confirmatory Action Letter (dated January 18, 1994), dated March 8, 1994,

Docket 030–26841, License No. 42–23539–01AF).

NRC—A special inspection was conducted from January 19 to 21, 1994, to review the circumstances surrounding the misadministration and the licensee's Quality Management program. A representative of the U.S. Food and Drug Administration (FDA) also participated in this inspection. No violations of regulatory requirements were identified during the inspection, but NRC initiated the following actions: (1) A Confirmatory Action Letter (Letter from James L. Milhoan, Regional Administrator, Region IV, to Department of the Army, USAF Radioisotope Committee, HQ AFMOA/SGPR, Brooks AFB, TX, forwarding a Confirmatory Action Letter, CAL No. 4–94–01, Docket No. 030–28641, License No. 42–23539–01AF, dated January 18, 1994) was issued to the licensee on January 18, 1994, which prohibited the use of the HDR unit until serviced by the manufacturer; (2) a medical consultant was contracted to evaluate the clinical effects and to assess the events that led to this misadministration; (3) the manufacturer was asked to analyze the source wire involved in the misadministration for damage as a result of the stresses experienced during this event; (4) Southwest Research Institute was contracted to analyze the special needle for mechanical failure; (5) a generic communication is being developed to notify other HDR users of the results of the inspection and related research; and (6) NRC is coordinating with FDA an evaluation of the generic implications surrounding this event.

* * * * *

94–7 Medical Brachytherapy Misadministration at Alexandria Hospital in Alexandria, Virginia

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place—January 27, 1994; Alexandria Hospital; Alexandria, Virginia.

Nature and Probable Consequences—On January 27, 1994, a patient was scheduled to receive a 500 centigray (cGy) (500 rad) brachytherapy treatment to the trachea using a Nucletron high-dose-rate (HDR) remote afterloader system. A single catheter was used for this endobronchial treatment and the licensee performed a routine simulated treatment. During this simulation, the oncologist established a 3 centimeter (cm) (1.2 inch) tumor treatment site and added a 1 cm (0.4 inch) margin on both ends of the tumor site.

Normally, at this time the medial physicist and the dosimetrist plot distances, measured in centimeters along the length of the catheter shown in the simulation film, in order to program the HDR for precise treatment at the prescribed treatment site. This step was not performed and the procedure was initiated without the HDR being properly programmed. The unprogrammed source was allowed to travel beyond the treatment site into the left lung area where the catheter ended. The treatment resulted in the prescribed 500 cGy (500 rad) effective dose equivalent being delivered to the left lung instead of the trachea target site. Prior to administering the dose, the treatment plan and treatment console printout were reviewed by the dosimetrist, the medical physicist, and the oncologist. All three individuals failed to identify the failure to plot the treatment site. Immediately following the treatment, the licensee's medical physicist realized that the plotting and programming of the treatment site were not performed. After discovery of the treatment error, the oncologist determined that the patient should be treated again using the correct treatment parameters.

The licensee has advised NRC that no adverse effects to the patient are anticipated as a result of this misadministration. The licensee has informed the patient of the misadministration.

Cause or Causes—The licensee's radiation therapy staff failed to follow the licensee's normal protocol for treatment with the HDR remote afterloader. The failure to administer the treatment as prescribed resulted from performing the treatment planning and independent verification in the vicinity of the HDR console, where there were a number of distractions.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included immediate retraining of all personnel involved in brachytherapy treatments and the addition of a checklist for each step in the treatment process. The licensee also added steps to its Quality Management program for HDR brachytherapy. These steps now require the use of the treatment planning computer with manual verification of the input parameter and the use of the treatment parameter card generated by the planning computer to program the HDR rather than programming the HDR treatment parameters manually.

NRC—NRC conducted a special inspection from February 2 to 4, 1994, to review the circumstances associated with the misadministration, the licensee's Quality Management program, and the licensee's immediate corrective actions. In addition, on February 25, 1994, NRC employed a medical consultant to provide an assessment of the potential clinical effects of this misadministration and the events that led to it.

The inspection report, medical consultant's assessment, and enforcement actions for the misadministration are being completed.

Dated at Rockville, MD this 15th day of August, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–20423 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements, Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new revision, or extension: Revision (Expedited OMB review requested within 30 days).

2. The title of the information collection: Operator Licensing Examination Data

3. The form number if applicable: NRC Form 536.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: All holders of operating licenses or construction permits for nuclear power reactors.

6. An estimate of the number of responses: 80 annually.

7. An estimate of average burden per response: 1 hour.

8. An estimate of the total number of hours needed to complete the requirement or request: 80.

9. An indication of whether Section 3504(h), Pub. Law 96–511 applies: Not applicable.

10. Abstract: Each year, the NRC requests nuclear power plant licensees to provide: (1) The estimated number of candidates and dates for operator licensing initial examinations, and (2) the estimated number of individuals that will participate in the Generic

Fundamentals Examination (GFE) for that fiscal year. Except for the GFE, this information is requested for four fiscal years, commencing with the upcoming fiscal year. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 12th day of August, 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–20421 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Parts 20, Radiological Criteria for Decommissioning.

3. The form number if applicable: N/A.

4. How often is the collection required: A one-time notification is required when licensees seeking license termination under restricted conditions submit a decommissioning plan or a notification of intent to decommission. A one-time notification is also required from applicants for new licenses.

5. Who will be required or asked to report: Part 30, 40, 50, 70 and 72 NRC and Agreement State licensees seeking license termination under restricted conditions and applicants for new licenses.

6. An estimate of the number of responses: 19 per year.

7. An estimate of the number of hours needed annually to complete the requirement or request: 600 (31.6 hours per response).

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

9. Abstract: The proposed amendments to 10 CFR 20 will require (1) That licensees required to submit to the Commission a decommissioning plan or a notification of intent to decommission provide additional information to the Commission in these submissions when seeking license termination under restricted conditions, and (2) applicants for new licenses describe in the application how facility design and procedures for operation will minimize contamination, facilitate decommissioning, and minimize generation of radioactive waste. Those licensees proposing license termination under restricted conditions must submit a plan for establishing and supporting a Site Specific Advisory Board, and develop operating procedures for the Board. All records generated or reviewed by the SSAB become a part of the license docket. The rulemaking would ensure that decommissioning will be carried out without undue impact on public and occupational health and safety and the environment and would enhance the existing regulatory framework by providing a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be decommissioned. The additional recordkeeping requirements would document the role of public participation in the licensing process and that sites have been decommissioned in accordance with the regulations.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 415–7230.

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

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–20420 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, 50–530; License Nos. NPF–41, NPF–51, NPF–74]

Arizona Public Service Company (Palo Verde Nuclear Generating Station); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Thomas J. Saporito, Jr., (Petitioner) on February 1, 1994. The Petition requested that the NRC: (1) Institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke the Licensee's operating licenses for Palo Verde Generating Station (Palo Verde); (2) initiate "appropriate actions" to cause the Licensee to recognize the Buckeye, Arizona Regional Office of the National Whistleblower Center, as an agency to which Licensee employees may raise safety concerns about operations a Palo Verde without fear of retaliation by the Licensee; (3) initiate "appropriate actions" to cause the Licensee to encourage employees at Palo Verde to contact the Buckeye, Arizona Regional Office of the National Whistleblower Center, to identify safety concerns about operations at the facility as part of its procedural requirements to ensure a working environment which is free of hostility and promotes the raising of safety concerns by employees without fear of retaliation; and (4) initiate "appropriate actions" to cause the Licensee to encourage employees at Palo Verde to contact the NRC to identify safety concerns about operations at the facility as part of its procedural requirements to ensure a working environment which is free of hostility and promotes the raising of safety concerns by employees without fear of retaliation.

On May 18, 1994, Petitioner supplemented his Petition by requesting that the NRC require Licensee contractors: (1) To provide information regarding filing complaints with the Department of Labor (DOL) to their employees "as part of their normal employment package", and (2) to properly post the NRC Form 3 in and around the contractor's place of business and site business trailers and offices.

After due consideration of Petitioner's assertions, the Licensee's response, and

Petitioner's supplemental information, the Director, Office of Enforcement, has denied the Petition. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–94–08) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 12th day of August 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–20419 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License Nos. DRP–53 and DRP–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (the facilities). The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter the effect.

The facilities are pressurized water reactors located at the licensee's site in Calvert County, Maryland.

II

The Code of Federal Regulations at 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

The Code of Federal Regulations at 10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that, "the licensee shall control all points of personnel and vehicle access into a protected area." The Code of Federal Regulations at 10 CFR 73.55(d)(5) also requires that, "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, "receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area * * *."

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Calvert Cliffs site.

By letter dated March 23, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5). Specifically, the requested exemption would allow contractors who have unescorted access to retain possession of their picture badges instead of returning them as they exit the protected area.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may upon application of any interested person or upon its own initiative, grant such exemption in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The Code of Federal Regulations at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same "high assurance" objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges offsite. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges offsite.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Calvert Cliffs site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91–0276 UC–906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Calvert Cliffs site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Calvert Cliffs site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (59 FR 38214).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of July.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20418 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–266 and 50–301]

Wisconsin Electric Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendments would modify Point Beach Nuclear Plant Technical Specifications (TS) 15.3.4, "Steam and Power Conversion System," and 15.3.7, "Auxiliary Electrical Systems," to increase the allowed outage times for one motor driven auxiliary feedwater pump and for the standby emergency power for the Unit 1 Train B 4160 Volt safeguards bus (A06) from 7 to 12 days. The proposed amendments would also modify TS 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray," to provide the clarification that the service water pump (P–32E) operating with power supplied by the Alternative Shutdown System is operable from offsite power. The changes are one-time extensions of specific allowed outage times.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not; (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the license has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

Operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of an accident previously evaluated will not be significantly increased because no changes are being made to the facility or to its operation which can significantly affect the potential for an accident. The only change is an extension of an already acceptable allowed outage time. The consequences of an accident previously evaluated will not be significantly increased because the licensee is taking compensatory measures to offset the increased outage time. These measures include verified operability of the gas turbine generator, cessation of maintenance and test activities that could cause loss of required equipment, assurance of at least three offsite power sources, and on-call status of a senior reactor operator with detailed knowledge of the planned evolutions.

Operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The amendment only extends the allowed outage time. The changes do not affect the manner in which equipment can fail such that a new or different kind of accident can occur.

Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because compensatory measures are being taken (discussed above) to compensate for the increase in the allowed outage time.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written

comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John Hannon, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 9, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 15th day of August.

For the Nuclear Regulatory Commission.

Allen Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20417 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station, Unit 1); Exemption

I

On June 4, 1985, the Commission issued Facility Operating License No. NPF–42 to Wolf Creek Nuclear Operating Corporation (the licensee) for Wolf Creek Generating Station, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

Section III.D.1(a) of Appendix J to 10 CFR Part 50 requires, "* * * a set of three Type A tests [Overall Integrated Containment Leakage Rate Tests, or ILRTs] shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." By letter dated October 27, 1993, the licensee requested an exemption from this requirement of the Commission's regulations.

The NRC may grant exemptions from the requirements of the regulations, pursuant to 10 CFR 50.12, that (1) Are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2) of 10 CFR Part 50 describes special circumstances as including cases that would not serve the underlying purpose of the rule or are not necessary to achieve the underlying purpose of the rule.

In a letter also dated October 27, 1993, the licensee applied for an amendment to Facility Operating License No. NPF–42 to change related provisions of the Wolf Creek Generating Station Technical Specifications.

III

The Type A test is defined in 10 CFR Part 50, Appendix J, Section II.F, as a "test intended to measure the primary reactor containment overall integrated leakage rate (1) After the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter." The licensee conducted ILRTs during October 1988 and September 1991 that satisfied the requirements of Appendix J and related technical specifications. The measured leakage rates during these tests were well below the acceptance criteria with the majority of leakage being from containment penetrations and not the containment barrier itself. The requested exemption does not affect the performance of local leakage rate testing which would be expected to detect the most probable sources of containment leakage.

In order to schedule the next ILRT such that it coincides with the 10-year inservice inspections, as required by Appendix J, the licensee has requested a one-time exemption and related technical specification changes to perform the test during the eighth refueling outage. The eighth refueling outage is currently scheduled for Spring 1996 and would result in a test interval of approximately 54 months with the test being performed approximately six months after the end of the first 10-year service period. In the absence of the exemption and related technical specification changes, the licensee would be required to perform an ILRT during both the seventh and eighth refueling outages. This discrepancy results from the circumstances related to the operating cycle schedules and their correlation with the end of the 10-year service period. Performance of a fourth ILRT coincident with the 10-year inservice inspections is clearly beyond the intent of the regulations or technical specifications which specifically require three tests during 10-year service intervals.

For the reasons set forth above, the NRC staff concludes that this one-time relief from the requirement to perform the third ILRT within a 10-year service is not significant in terms of complying with the intent of Appendix J, Section III.D.1(a). Accordingly, the staff finds that the performance of ILRTs during both the seventh and eighth refueling outages would not result in a commensurate increase in the confidence of containment integrity. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12, in that the fourth test is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12. Further the staff also finds that extending the schedule for the third ILRT to beyond the 10-year service period will not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12, this exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Wolf Creek Nuclear Operating Corporation an exemption from the requirements of 10 CFR part 50, Appendix J, Section III.D.1(a).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 27076).

Dated at Rockville, Maryland this 10th day of August 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20422 Filed 8–18–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 92–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 92–22, Annuity Supplement Earnings Report, is used to annually obtain the amount of personal earnings from annuity supplement recipients to determine if there should be a reduction in benefits paid to the annuitant.

Approximately 1,500 RI 92–22 forms are completed annually. The form requires approximately 15 minutes to complete. The annual burden is 375 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September 19, 1994.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Chief, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 4429, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–20376 Filed 8–18–94; 8:45 am]

BILLING CODE 6325–01–M

National Partnership Council; Notice of Meeting

SUMMARY: The Office of Personnel Management (OPM) announces the tenth meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet September 14, 1994, 1 p.m., in the OPM Conference Center, Room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

Type of Meeting: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

Point of Contact: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

Supplementary Information: The Council will receive reports on and discuss activities contained in its work plan calendar year 1994, Strategy To Promote Change, which was adopted at the April 12, 1994, meeting.

Public Participation: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by September 9, in order to be considered at the September 14, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–20375 Filed 8–18–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA/FTA Docket No. 94–19]

Publication of Guidance on Certification of Metropolitan Planning Processes; Notification of FY 94 Reviews

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: On April 28, 1994, the FHWA and the FTA Administrators jointly issued guidance to their respective regional administrators on the implementation of the Federal certification of the metropolitan planning organizations (MPO) (transportation management area (TMA)) planning process. This guidance outlines the principles and interim procedures that will be utilized in implementing the certification process required under the Intermodal Surface Transportation Efficiency Act (ISTEA) and as further articulated in the US DOT regulations.

This notice also announces the schedule of FY 1994 reviews as known at this time. As indicated in the attached certification guidance, the FHWA and FTA are planning approximately twenty reviews for FY 1994, approximately half of which will be pilots for the purpose of testing and refining the review process. Interested parties are invited to submit comments on the individual planning processes to be reviewed.

DATES: Comments on metropolitan planning processes under review must be received within thirty (30) days of the scheduled review in order to be considered during the certification review process. Where reviews have already been held by the publication of this notice, individuals interested in commenting on them should immediately contact Sheldon Edner (see following paragraph for phone number and address and further instructions below). Where dates are to be announced, a supplemental notice announcing these dates will be issued when the specific dates are confirmed.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, Planning Operations Branch (HEP–21), (202) 366–4066 (metropolitan planning) or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Resource Management Division (TGM–21), (202) 366–6385 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC–40), (202) 366–4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025, and 3012 of the ISTEA, Pub. L. 102–240, 105 Stat. 1914, 1955, 1962, and 2098, amended title 23, U.S.C., and the Federal Transit Act by revising sections 134 and 135 of title 23 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. The FHWA and the FTA revised their previous metropolitan planning regulations to implement these changes and published the final regulations on October 28, 1993 (58 FR 58040).

As part of an ongoing commitment to public involvement in the planning process, the FHWA and FTA are soliciting comments on this guidance. As the agencies conduct certification reviews in FY 1994 we will be looking at possible modifications based both on the experience of having conducted the reviews and on the comments received on the guidance and during the reviews. Specifically, the FHWA and FTA are interested in comments regarding the process of review, appropriate sources of information to be considered during the review, and the role of key government officials and the public in providing input to the review

General

Additional Public Involvement in Certification Process

The FHWA and FTA are soliciting public comment on the planning processes of the FY 1994 certification review sites identified below. The agencies are particularly interested in input regarding the strengths and weaknesses of the planning process in light of the requirements identified in 23 CFR 450 Subpart C. Additionally, the views of local officials and the public are welcomed regarding the use of the planning process in transportation investment decisions.

Schedule of FY 1994 Certification Reviews

The following schedule is subject to revision. Changes will be announced in the Federal Register. Parties interested in providing comments on the metropolitan transportation planning processes in the identified areas should submit them directly to the Docket 94–

19 identified above, clearly identifying the metropolitan area that the comments address. Except where the certification review was completed prior to this **Federal Register** Notice, comments on metropolitan planning processes under review must be received within 30 days of the scheduled review in order to be considered during the certification review process. Where the review was completed prior to publication of this notice, interested parties wishing to make comments on a particular certification, must contact Sheldon Edner within two weeks of the date of this notice to assure that their comments will be considered. Where dates for a planned certification review have not been established, please contact Sheldon Edner for the dates.

The site visits are intended to provide an opportunity for the FHWA and FTA review team to solicit information from the MPO, State DOT and transit agency regarding the implementation of the planning process. In addition, the team will be experimenting with alternative mechanisms for soliciting public and local official input. The relevant MPO is being asked to provide public notice, through its regular public notice processes, of the review and the opportunity to provide public input to the review team. Public officials should contact the MPO to identify processes set up to solicit local government input.

The results of the certification reviews will be made public through the regular MPO public information process at a time to be set by the MPO policy board.

Region	Pilot reviews	Second review
½	Albany, NY: August 9–12, 1994.. Worcester, MA: August 2–3, 1994	Both reviews in this region will be pilot reviews because of the geographic difference in FTA and FHWA regions.
3	Richmond, VA: September 12–15, 1994.	Allentown, PA: Dates TBA but probably the week of September 22–23, 1994.
4	Nashville, TN: July 11–13, 1994.. Louisville, KY: September 6–8, 1994.. Orlando, FL: August 22–24, 1994	All reviews in this region will be pilots because of the diversity of MPOs and the large number of TMAs in the region.
5	Indianapolis, IN: August 29-September 2, 1994.	None selected at this time.
6	Albuquerque, NM: August 10–12, 1994.	San Antonio, TX: August 29–30, 1994.
7	Omaha, NE: July 18–20, 1994.	Wichita, KS: TBA.
8	Provo, UT: August 9–12, 1994.	Denver, CO: TBA.
9	San Diego, CA: August 1–4, 1994.	Santa Barbara, CA: September 13–15, 1994.
10	Spokane, WA: July 25–27, 1994.	Portland, OR: TBA.

Text of Certification Transmittal Memorandum and Guidance

The text of the transmittal memorandum and guidance follow.

ACTION: Federal Certification of the MPO (TMA) Planning Process

To: FTA Regional Administrators; FHWA Regional Administrators

From: Federal Transit Administrator; Federal Highway Administrator

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) has significantly enhanced the stewardship role of the FTA and FHWA in the implementation of the changes it mandates in the transportation planning process. Inherent within the approval of Statewide Transportation Improvement Programs (STIP), planning findings, conformity determinations and certification of the transportation planning process in Transportation Management Areas (TMA) is the fundamental leadership responsibility of FTA and FHWA in ensuring that the transportation planning process addresses the policy goals of the ISTEA. This memorandum articulates our general agency expectations with regard to this planning stewardship and the specific function that certification plays within this broader framework. While certification of the Metropolitan Planning Organization (MPO) TMA planning processes falls within the purview of the metropolitan planning regulations, the basic principles apply to both the statewide and metropolitan planning requirements.

We view certification of the planning process within TMAs as one of a number of the critical mechanisms for ensuring the satisfactory implementation of the planning requirements identified in 23 U.S.C. 134 and 49 U.S.C. 1602. It is perhaps most critical in the sense that it will be a very visible action and formal indication that we have exercised our legal responsibility in meeting this stewardship function. However, the individual planning findings, necessary conformity determinations and STIP approvals provide critical input to this triennial action. We expect our regions to establish procedures for implementing this joint responsibility. While the substance of these decisions must remain consistent across regions, the variation in workload posed by the distribution of TMAs will dictate procedural accommodations by region.

The attached statement of principles and guidance provides a framework for addressing the implementation of the certification requirement. We expect the responsibility for issuing certification determinations to rest jointly with our field offices, working in partnership with Headquarters. The effective implementation of the certification process will require a significant allocation of resources which you should address in the development of regional staffing and travel budgets.

Especially in this initial effort and in recognition of the phase-in provisions of the metropolitan planning regulations (Section 45.336), we expect the emphasis to rest on ensuring a good faith effort to implement plan updates and the priorities indicated in the attachment. We also expect that the message conveyed to MPOs, state DOTs and transit operators collectively will be that they are mutually responsible for the continuing enhancement and improvement of the planning process to meet the objectives of the ISTEA planning requirements.

We expect the primary responsibility for implementing our stewardship role to rest with FTA and FHWA field staff. However, this is manifested not only in the certification process, but also in STIP approvals, Transportation Improvement Program (TIP) and STIP planning findings, conformity findings, and unified planning work program approvals. In recognition of our national stewardship role and mandate from the ISTEA, we plan to conduct Enhanced Planning Reviews (EPR) in selected metropolitan areas which will be integrated with the certification processes for the respective metropolitan areas. These EPRs will be done at the request of states, MPOs, transit operators or FTA/FHWA field or Headquarters offices to pursue more complex planning process questions and to assist MPOs in improving their procedures. As a supplement to these EPRs, we plan to develop and implement an overall assessment of the planning process and its

implementation under the ISTEA requirements over the next three fiscal years. The results of the planning reviews will provide input to this analysis. The challenge and the expectations are such that we believe that a very visible and substantial assessment is necessary to demonstrate our joint commitment and success in providing the leadership expected of both agencies. You will be hearing more about this initiative as it is developed.

We will be discussing the attached certification procedures and guidance with your offices at opportunities over the next several weeks. In conjunction with FHWA's Advance Planning Seminar which is scheduled for the week of April 10, we expect to have FHWA and FTA field staff participating in this seminar assist us in refining the attached certification procedures and guidance. Additionally, we will meet with field staff during May to discuss the certification process in more detail after additional guidance has been developed. As indicated in the attached paper, once this meeting has been held and the guidance refined, Headquarters staff will participate with field staff in conducting a pilot certification review in each region. Certification reviews should not be initiated by field staff pending the issuance of the additional guidance and/or completion of the pilot certification reviews. If you have questions on certification, please contact Deborah Burns, Office of Planning, TGM–21, at (202) 366–1637 or Sheldon Edner, Office of Environment and Planning, HEP–21, at (202) 366–4066.

Gordon J. Linton,

Administrator, Federal Transit Administration.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Guidance Certification of the Metropolitan Planning Process in TMAs

Principles/Process

• Must be a joint action by FHWA and FTA.

• Must be based on a serious examination of the planning process that documents the adequacy of the planning process. However, the workload involved in reviewing the planning process for approximately 135 MPOs once every 3 years combined with other oversight and administrative responsibilities demands a process that utilizes and builds on the other oversight functions including TIP findings, Unified Planning Work Program approvals and conformity findings.

• The certification process must recognize the differences among areas and not expect each area to respond to the requirements to some predefined minimum level/standard. The goal should be to encourage an improved planning process in each area rather than a process that only minimally meets the requirements.

• Process must recognize that certification is likely to involve negotiated improvements and schedules rather than pass or fail ratings. In this vein, the ISTEA sanction provisions are viewed as a "last resort" action to be used in situations where the parties involved are unresponsive to needed corrections or there are very serious inadequacies in the planning process. In almost all cases, it is likely that the "planning finding" process discussed below would probably have identified deficiencies and may have already affected the advancement of projects.

• While certification is the formal mechanism provided by ISTEA for determining the adequacy of the planning process in TMAs, a "once-every-three-years-look" at the planning process is not sufficient to ensure that the planning process, its products, and our actions related to the planning process meet the requirements. Fortunately, the regulations provide additional mechanisms for assuring the adequacy of the planning process, i.e., the planning finding that must be made on each TIP/TIP amendment in all metropolitan planning areas prior to its inclusion in an approved STIP, the air quality conformity determination process in nonattainment and maintenance areas, and the review and approval of the planning work programs for all metropolitan areas.

The planning finding provides a mechanism for identifying problems and requiring immediate corrective action without going through the more formal certification process. In addition, the planning finding process can provide an early warning mechanism for initiating a certification review prior to end of the normal 3 year certification period as well as in highlighting parts of the planning process that need to be examined in more depth as part of regularly scheduled certification reviews (and conversely identifying those parts that are clearly meeting the regulatory requirements and therefore require less review in the certification process). Although pre-ISTEA planning findings may have relied primarily on the State and MPO self-certification statements, this is not expected to be the case under the regulations. It is expected that FHWA/FTA as part of the planning findings process will review the adequacy of public involvement, financial constraint, relationship of projects in TIP to the transportation plan, and satisfaction of the provisions relating to the restriction on SOV projects in TMAs that are nonattainment for carbon monoxide and/or ozone.

The conformity regulations require consultation with a number of agencies (including FHWA and FTA) on key elements of the metropolitan planning process, including models to be used, proposed plans and TIPs, research and data collection related to the transportation planning process. The concerns that may be raised through this consultation process will provide another mechanism for identifying potential shortcomings in the planning process. Additionally, as part of the conformity determination in nonattainment areas requiring TCMs, FHWA and FTA must specifically consider comments concerning the financial feasibility of the plan and TIP made through the conformity consultation process and the metropolitan planning public involvement process.

Where review of the work programs indicates that essential activities for complying with the regulations are not being adequately undertaken and/or the proposed schedules for completing the activities do not satisfy regulatory requirements, the need for revisions to the work program can be addressed. Where there is not a positive response, FHWA and FTA can pursue this through action on the UPWP or a certification review could be initiated without waiting the normal three years.

• It is expected that FHWA and FTA field staff will involve themselves in the planning process on at least a selective basis, e.g., participation in key MPO meetings, monitoring TIP revisions, etc. This can be a valuable mechanism for not only surfacing potential problems and deficiencies in the planning process, and in initiating corrective action but also providing contact with local officials. This is an enhancement of the traditional planning oversight role of FHWA and FTA field offices.

• Enhanced planning reviews (EPRs) similar to the ones that FHWA and FTA have been doing in areas over a million can provide valuable input to the certification reviews and other oversight functions. For example, where FHWA and FTA identify an apparent shortcoming in the technical process, a comprehensive review of this portion of the process could be undertaken with Transportation Systems Center (TSC) staff. They could also be used to do "peer" type reviews on a selected or request basis. In what ever form, these

EPRs will require substantial additional resources.

• Reviews conducted under the FHWA Office of Program Review annual review program may also augment the certification reviews and other oversight functions. For example, last year implementation of the flexibility provisions and administration of joint FHWA/FTA projects was the subject of one of the reviews.

• Individual certification reviews should be tailored to reflect the information available from other oversight activities. While this may not be a significant factor for the certifications performed in the remainder of FY–94, this will become a significant factor as other oversight functions reflect the regulatory requirements. This means that while all aspects of the process will be addressed in the certification findings a significant amount of the information needed to make a decision on certification will be obtained from other oversight activities and day-to-day involvement in the planning process. It is expected that the certification process will include a discussion of the findings with the MPO policy body.

Certification reviews in the balance of 1994 (at least) will need to be done with the recognition that MPOs, States, and transit operators will have had little time to address new regulatory requirements and even less time to consider any nonregulatory guidance that may be issued to supplement the regulations. These reviews need to focus on how well they have addressed the interim guidance and what they are doing to begin to address the additional requirements in the final regulations.

• Guidance for DOT staff conducting certifications will have to be developed. This may include manuals, certification forms, checklists, etc.

• FHWA and FTA field staff will be the primary staff involved in certifying MPOs. An assessment will have to be made on training that may be necessary to equip DOT staff to perform certification reviews. One potential mechanism in lieu of any formal training is for Headquarters to lead the initial certification review in each Region.

As part of the process, the areas identified below represent focal points in the first round of certification reviews. They have been the subject of keen interest by several key constituencies, represent priority issues to FHWA and FTA and have been the subject of numerous questions by MPOs, States, and transit agencies. These areas should be addressed in a general way, reflecting the phase-in of the planning requirements.

Fifteen Factors—The planning regulations (58 FR 58040) require that the 15 factors be explicitly considered and analyzed as appropriate.

Public Involvement—The metropolitan transportation planning process should include provisions that encourage and ensure early and continuing involvement of citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties in the development of plans and TIPs, and in all other stages of the planning process.

Major Transportation Investments—Metropolitan Planning Organizations (MPO) and their planning partners must undertake detailed and participatory corridor and subarea studies of any major corridor investments contained in a regional plan. These studies will include detailed analysis of the forecasted effectiveness of alternative investments and strategies in terms of a broad array of criteria.

Congestion Management System—In TMAs, the planning process must include the development of a Congestion Management System (CMS) that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies. In TMAs that are nonattainment for carbon monoxide and/or ozone, Federal funds are not to be programmed for highway projects that increase Single Occupant Vehicle (SOV) carrying capacity unless such projects result from a CMS, meaning, in essence, that Transportation Demand Management (TDM), transit, operating strategies, and other actions must be looked at as alternatives to new highway construction. Even if such strategies cannot completely satisfy the need for additional capacity, they must be implemented in conjunction with the SOV capacity enhancements.

The planning process and Clean Air Act Amendments (CAAA) of 1990 conformity—In nonattainment and maintenance areas, the MPO must have an adequate process to ensure conformity of plans and programs with State or Federal implementation plans, in accordance with procedures contained in the rules resulting from the Clean Air Act Amendments of 1990.

Financially constrained plans and TIPS—The regulations require that MPOs have in place a process that produces current metropolitan plans and TIPs that are financially feasible. Plans must demonstrate the consistency of proposals with known and reasonably expected sources of revenue for transportation uses. The TIP must be financially constrained and include a plan that demonstrates how it can be implemented without detriment to operation and maintenance of the existing transportation system, and only projects for which funds can reasonably be expected to be available may be programmed. The metropolitan TIP is incorporated into the financially constrained State TIP which is jointly approved by FHWA and FTA. In nonattainment and maintenance areas, funds for projects in the first two years of a TIP must be available or committed.

Schedule of Activities

By April 1, 1994

• Develop and issue draft guidance for field.

• Schedule meeting on certification with field staff and schedule pilot reviews in each Region.

By July 31, 1994

• Complete one pilot review per region, evaluate results, and make any necessary modifications to guidance.

By September 30, 1994

• Each region should complete at least one additional certification review

• Evaluate results and regional/State workload. If necessary modify approach and consider options for handling workload. (There is significant disparity in the certification workload by Region as well as individual States.)

Authority: 23 U.S.C. 315; 49 CFR 1.48; 3012 Pub. L. 102–240, Sections 1024, 1025; 105 Stat. 1914, 1955, 1962, and 2098.

Issued on: August 16, 1994

Rodney E. Slater,

Federal Highway Administration.

Gordon J. Linton,

Federal Transit Administration.

[FR Doc. 94–20536 Filed 08–18–94; 8:45 am]

BILLING CODE 4910–22–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 160
Friday, August 19, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 24, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 17, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94–20520 Filed 8–17–94; 8:45 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 160
Friday, August 19, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1395-92]
RIN 1115-AD28

Petitioning for Foreign-Born Orphans by United States Citizens

Correction

In rule document 94-18367 beginning on page 38876 in the issue of Monday, August 1, 1994, make the following correction:

§ 204.3 [Corrected]

On page 38884, in the third column, in § 204.3(e)(2), paragraph "(ii) *History of abuse and/or violence.*" should read "(iii)*History of abuse and/or violence.*"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08-94-022]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Correction

In notice document 94-19727 appearing on page 41587 in the issue of Friday, August 12, 1994, make the following corrections:

1. The docket number is corrected to read as set forth above.

2. On page 41587, in the third column, the

DATES section should read: "The meeting will be held from 9 a.m. to 10:30 a.m., on Wednesday, September 1, 1994."

3. On the same page, in the same column, under the

DATES section, the

ADDRESSES section should read: "The meeting will be held at U.S. Coast Guard Base Galveston, Ferry Road 1, Galveston, TX 77553.

BILLING CODE 1505-01-D

federal register

Friday
August 19, 1994

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 225
Railroad Accident Reporting; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR-4, Notice No. 6]

RIN 2130-AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend the railroad accident reporting rules in several ways. First, FRA would require railroads to adopt internal control procedures to ensure accurate reporting of accidents, casualties, and highway-rail grade crossing accidents. Second, FRA would allow railroads to submit and update accident, casualty, and highway-rail accident reports through transfer of information on computer diskettes or magnetic tapes. Third, FRA would revise the accident and injury reporting forms, including definitions. Fourth, FRA would revise injury and illness, as well as derailment and collision, recordkeeping requirements. Finally, FRA would revise the method by which it will determine and periodically adjust the accident reporting threshold.

DATES: (1) *Written Comments:* Written comments must be received on or before November 17, 1994. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearings:* A series of public hearings on this proposal will be held on the dates and at the locations listed below to provide interested parties the opportunity to comment on specific issues addressed in the NPRM. Anyone who desires to make an oral statement at one of the hearings must notify the Docket Clerk by telephone or mail at least five working days prior to the date of the hearing and must submit three copies of the oral statement no later than the comment closing date announced in the notice.

ADDRESSES: (1) *Written Comments.* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., room 8201, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public Hearings.* Hearings to discuss issues raised in the NPRM will be held at these locations on the following dates:

(a) *Washington, D.C. on Wednesday, October 5 and Thursday, October 6, 1994.*

Location: Department of Transportation, Nassif Building, room 2230, 400 Seventh Street, S.W., Washington, D.C.

Time: 9:30 a.m.–4:00 p.m.

(b) *Kansas City, Missouri on Wednesday, October 19, 1994.*

Location: U.S. District Court House, room 829, 811 Grand Avenue, Kansas City, Missouri.

Time: 9:30 a.m.–4:00 p.m.

(c) *Old Sacramento, California on Thursday, November 3, 1994.*

Location: Delta King Hotel, Delta King Theater, 1000 Front Street, Old Sacramento, California.

Time: 9:30 a.m.–4:00 p.m.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202–366–0635) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2760); Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628); or Jesus Clemente, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Background

A. Purpose and Structure of the Accident Reporting Regulations

FRA's primary function is to promote safety within the railroad industry. To carry out its safety mission, FRA needs information about the conditions of the nation's railroads to enforce safety regulations and to develop railroad injury and accident prevention programs. The injury and accident reports submitted by the railroads form a principal basis for FRA's railroad safety program. FRA uses injury and accident data for, among other things, establishing its inspection strategy, determining comparative trends of railroad safety, and calculating the costs and benefits of proposed safety rules. Because FRA uses the data in all aspects of its operations, it is important that the data it receives be as accurate and consistent as possible.

The railroad accident reporting regulations set forth in 49 CFR part 225 require railroads to submit monthly reports to FRA summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. The regulations presently define an "accident/incident" in § 225.5(b) as:

(1) Any impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian at a rail-highway grade crossing;

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $6,300 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

(3) Any event arising from the operation of a railroad which results in:

(i) Death of one or more persons;

(ii) Injury to one or more persons, other than railroad employees, that requires medical treatment;

(iii) Injury to one or more employees that requires medical treatment or results in restriction of work or motion for one or more days, one or more lost work days, transfer to another job, termination of employment, or loss of consciousness; or

(iv) Occupational illness of a railroad employee as diagnosed by a physician.

Section 225.19 of the regulations presently divides railroad accidents/incidents into three categories: (1) highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) death, injury, or occupational illness accidents/incidents.

Every railroad accident/incident meeting the stated criteria for each category must be reported to FRA. 49 CFR 225.11. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different reporting form is used for each category. If the circumstances of an accident/incident are such that it falls within two or even all three categories, then a

separate reporting form for each category must be completed by the railroad. For example, if a highway-rail grade crossing accident involves damage to rail equipment over the current reporting threshold of $6,300, then both a "Rail-Highway Grade Crossing Accident/Incident Report" (Form FRA F 6180.57) and a "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54) must be completed by the reporting railroad. (In order to conform to the grade crossing signal system safety regulations in part 234, the term "rail-highway" will be changed to read "highway-rail" throughout part 225. This NPRM will hereinafter refer to "highway-rail" grade crossings.) Further, if injuries are associated with the crossing accident, then the monthly "Railroad Injury and Illness Summary (Continuation Sheet)" (Form FRA F 6180.55a) must also be completed.

B. General Accounting Office Study on Accident Reporting to FRA

Increasingly concerned with railroad safety, Congress asked the General Accounting Office (GAO) to determine whether FRA's safety programs were adequate to protect railroad employees and the general public from injuries associated with train accidents. GAO studied FRA's railroad injury and accident reporting data and issued a report (GAO/RCED–89–109) that raised important questions about the quality of railroad compliance with FRA's accident reporting regulations. GAO found that there was underreporting and inaccurate reporting of injury and accident data for 1987 by the railroads it audited.

GAO recommended that FRA (a) Require railroads to establish injury and accident reporting internal control procedures, (b) include an analysis of railroads' internal control procedures for reporting in FRA's safety records inspections, (c) provide inspectors with the authority to take enforcement actions against railroads with deficient internal control procedures, (d) require railroads to update reports on workdays lost due to injuries, and (e) clarify FRA's requirement for railroads to update accident reports when significant changes occur.

FRA's subsequent analysis of the findings from the 1989 GAO accident and injury reporting audit indicated that most of the missing accident reports were "fender benders" and that the unreported injuries were minor. Nonetheless, the accuracy of FRA's safety databases are of paramount importance, and FRA took several actions to improve railroads' accident and injury reporting.

C. Advance Notice of Proposed Rulemaking on Accident Reporting

On March 14, 1990, FRA published an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving FRA's injury and accident reporting system and its governing regulations (55 FR 9469). Interested parties were invited to participate in a public hearing held on May 17, 1990, and to file written comments prior to May 25, 1990. The responses to that public notice provided additional information and identified further issues and subissues related to the matters in the ANPRM. In order to further explore matters related to the accident/incident reporting system, FRA held informal, open meetings on June 13, 1991, August 22, 1991, and August 18, 1992, in Washington, D.C., with members of the Association of American Railroads (AAR) Committee for Uniformity in Reporting. At the request of rail labor representatives, FRA also held an informal, open meeting on October 21, 1991, in Washington, D.C., to discuss the same issues with representatives of various rail unions.

Discussion of Comments and Section Analysis

In addition to testimony from five organizations at the May 17, 1990 hearing, FRA received comments in response to the ANPRM from over 15 parties including several railroads, railroad unions, railroad trade associations, as well as two States. Discussions follow with respect to the primary issues addressed by the commenters.

A. Internal Control Procedures (Proposed § 225.33)

As discussed above, GAO concluded that erroneous injury and accident reporting occurred primarily because the railroads it studied lacked adequate internal procedures for properly classifying and reporting the events. GAO believed that under a system of self-reporting such as the one FRA uses to obtain railroad safety data, internal control procedures would be necessary to ensure that reliable and accurate data is obtained, maintained, and disclosed by the railroads. GAO recommended that FRA mandate such internal control procedures, periodically review them, and then use its enforcement authority to cite railroads for procedural deficiencies when inaccurate reporting is found and the cause can be attributed to internal control weakness.

Of the five railroads GAO visited, the Chicago and North Western Transportation Company ("CNW") was found to have the most effective internal control procedures for updating injury and accident information prior to reporting to FRA. CNW's procedures involved extensive communication between its safety office, which reports accident information to FRA, and other departments within the railroad. CNW also centralized its reporting responsibilities and updated injury and accident information before reporting to FRA. Specifically, (a) CNW's safety office and claim office met once a month to compare lists of injuries; (b) CNW used a "15-day" report (this report accurately disclosed the severity of each injury) to update the status of each injury before reporting it to FRA; (c) for train accidents, initial field estimates of property damage were compared with repair shop estimates before submitting a report to FRA; and (d) CNW required a final accident report to its safety office within 20 days following the accident to allow for further updating of information on the accident/incident report and the identification of additional reportable events prior to filing a report with FRA.

In the ANPRM, comments were solicited as to whether FRA should require railroads to implement specific internal control procedures to assure proper reporting or simply establish strict performance standards and hold railroads accountable for accuracy of the submitted data.

Comments

Most commenters did not support mandated internal control procedures, primarily because each railroad is different organizationally. Since internal control procedures would be adapted to the organizational structures of individual railroads, most commenters felt it would be unreasonable to prescribe a rigid set of rules governing the audit function for universal application. Instead, it was proposed that each railroad submit their own internal control procedures to FRA for review and subsequent approval. FRA would then have the ability to audit the railroad based upon the railroad's own operating plan.

One labor association suggested that internal control procedures that ensure accurate information should be mandated by FRA. It was proposed that this could be accomplished by requiring the railroads to update all initial information within a certain time period; *i.e.*, after filing the initial monthly report, the railroad would be required to supplement any and all changes that existed at the time of filing the initial report within a specified time

frame. It was also recommended that railroads should file an annual report that would supplement each monthly report and that the railroads' reporting information be crosschecked with accident data obtained from the Railroad Retirement Board and the Travelers Insurance Company.

One railroad association recommended that, if adopted, internal control procedures should apply initially to only the larger railroads (Class I railroads). It was further suggested that regulations crafted particularly for smaller railroads should be adopted in order to reduce the inequities that such railroads seemingly confront when implementing safety regulations in general.

One railroad opined that FRA should require railroads to implement some specific internal control procedures, *i.e.*, reporting data should be validated by at least one other internal railroad department source. As an alternative to specific, prescribed procedures, it was recommended that railroads develop and file an "action plan" describing how the railroad would validate its data with another impartial internal source.

Most commenters did not support GAO's recommendation for civil penalties for inaccurate reporting due to internal control weakness. A few stated that civil penalties should be assessed only for violations that are recurring, willful, or grossly negligent.

Section Analysis and FRA Conclusions (Proposed § 225.33)

FRA's Operating Practices inspectors have significantly increased the amount of time spent reviewing railroad accident reporting records. The internal control procedures of all the large railroads and a sampling of the small railroads have been reviewed and analyzed by these inspectors and the results compared with GAO's earlier findings. FRA found that these railroads have generally improved their internal control procedures and their accident/incident reporting.

FRA's recent review of the accident/incident reporting procedures of all of the major railroads and a large number of smaller railroads supports the GAO findings that errors in reporting resulted principally from the railroads' lack of internal control procedures. Railroads with specific internal control procedures in place had far more accurate reporting records. FRA also found that most non-reporting or inaccurate reporting was due to a communication breakdown between the claims department, which maintained medical records, and the other railroad departments, *e.g.*, operating, mechanical, and maintenance-of-way.

FRA therefore proposes, in new § 225.33(a), that each railroad must prepare and maintain an Internal Control Plan, that requires institution of proper internal control procedures for reporting. Such a Plan would ensure the reconciliation and incorporation of accident/incident and injury/illness data from the various departments within the railroad for submission to the railroad reporting officer. The reporting office must have access to all pertinent claims records, including medical records and payroll records. Further, the reporting office must be notified by claims and medical departments of each new case/claim opened by a railroad worker. Identification of offices and responsible railroad officers would also aid FRA in identification of procedural weaknesses in reporting.

FRA believes that requiring railroads to establish an Internal Control Plan for reporting would ensure more accurate injury and accident reporting. Once in place, FRA inspections would focus on the procedures the railroads use to report injuries and accidents. This periodical review of the Plan by FRA would detect procedural deficiencies and would enable the railroad to correct any identified problems. Thus, new § 225.33(b) proposes that each railroad not only have an Internal Control Plan, but also that all reasonable effort is made to adhere to that Plan. If FRA should find the railroad to be in noncompliance, FRA may cite that railroad for violating procedural requirements and require the railroad to correct the procedural weakness.

Additionally, this NPRM proposes, in new § 225.41, that the Internal Control Plan shall, upon request, be made available to any FRA or State safety inspector for examination and photocopying in a reasonable manner during normal business hours. Proposed § 225.41 is discussed in greater detail in this NPRM under the heading "Miscellaneous Amendments."

B. Computer Magnetic Media Transfer (Proposed § 225.37)

In order to resolve the discrepancies between the annual report for lost workdays and the monthly submission of lost workdays, FRA began in January 1990 to allow the railroads to update their portion of the accident and casualty database using magnetic media. In this NPRM, the term "magnetic media" means computer diskettes and magnetic tapes. Currently, railroads are allowed to update certain fields on existing records ("Days Lost," "Restricted Days," "Cause Code," "Alcohol and Drug Code," "Damages," "Total Injuries," and "Total Killed"). New submissions must be submitted on existing paper forms as existing provisions of part 225 do not allow transfer of data by means of magnetic media as an alternative means of compliance. Updating the information via a magnetic medium remained voluntary on the part of the railroad, and this procedure, along with paper form updates, has improved the overall accuracy of information submitted monthly particularly with respect to the number of lost workdays.

Comments

FRA solicited comments in the ANPRM regarding a proposal to allow railroads the option to report accidents/incidents by way of magnetic media transfer in lieu of the paper ("hard copy") forms currently submitted. Most commenters expressed an interest in implementing some kind of electronic transmission and exchange of data from the railroads to FRA. One railroad suggested that FRA implement the program to ensure timely and accurate changes to the hard copy "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54), rather than submitting a corrected hard copy report. Another railroad emphasized that implementation of a magnetic media program was a concept long overdue and predicted a reduction in the amount of annual key-punching labor cost. One rail association encouraged implementation of a magnetic media program as it would ensure timely reporting and a less expensive medium than submission of hard copies. It was also suggested that FRA should provide smaller railroads the appropriate software for their personal computers. Another railroad recommended that FRA review the feasibility of reporting accidents/incidents telephonically as well as by magnetic media. In reference to the initial cost to implement the program, the majority of the railroads anticipated a one-time start-up cost which would be necessary to implement the data transfer process.

Section Analysis and FRA Conclusions (Proposed § 225.37)

In light of the favorable responses to the ANPRM, FRA proposes, in new § 225.37, to amend the current reporting requirements and allow railroads the option of using magnetic media to transmit both the initial and updated versions of the following reports: (a) the "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54), (b) the "Railroad Injury and Illness Summary (Continuation Sheet)" (Form FRA F

6180.55a), and (c) the "Highway-Rail Grade Crossing Accident/Incident Report" (Form FRA F 6180.57). Reporting requirements for magnetic media transfer would be similar to the current hard copy reporting requirements currently stated in § 225.11; *i.e.*, reports submitted via magnetic media would be due within 30 days after expiration of the month in which the accident/incident occurred.

FRA has initially determined that use of a public standard (*i.e.*, National Institute of Standards and Technology XII Standard) electronic data interchange (EDI), whereby accident and incident data would be available to FRA in a short time period, is not only too expensive for the railroads to implement but also inefficient for the types of files that would be transferred to FRA. In order for FRA to effectively assess any modem-to-modem (computer-to-computer) private format EDI submission of accident and incident reports, many more railroads will need to submit their data on magnetic media. A decision on use of modem-to-modem submissions of accident/incident reports would be made once FRA gauges (a) the number of submissions by railroads willing to take part in this voluntary program and (b) the size (number of characters) of the submissions. In order to accomplish this, FRA will carefully monitor and assess all initial magnetic media submissions supplied by the railroads choosing the magnetic media option.

Computer Magnetic Media Transfer Option (Proposed § 225.37(a))

In particular, FRA proposes, in new § 225.37(a), to allow the railroads, subject to various conditions, the option to submit magnetic media that contain: (a) initial accident/incident reports, (b) updates or amendments to all reports previously submitted in hard copy, and (c) updates or amendments to reports initially transmitted on magnetic media. Railroads would be allowed to provide FRA with magnetic media in the form of either a magnetic tape (EBCDIC) fixed format, an ASCII diskette-fixed format, a DBF diskette, or a delimited diskette.

The magnetic media option also would allow railroads to continue to submit hard copy reports, as the current regulations require, but to update the data contained on the hard copy by way of magnetic media. Alternatively, railroads would have the option to utilize magnetic media exclusively for all initial reports and all updates and amendments to those reports. Further, all transmissions of updated or amended reports by means of magnetic media would be added to a year-to-date file created exclusively for each reporting railroad. This year-to-date file would include all updates and amendments on reported accidents and incidents and would be maintained by FRA

Retention of Records (Proposed § 225.27(c))

Railroads that choose to submit their data via magnetic media would remain responsible for having on file hard copies of the reports identified in § 225.21. Therefore, FRA proposes, in new § 225.27(c), that each railroad must maintain on file, at a central location(s) designated by the railroad, a signed copy of both the "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54) and the "Highway-Rail Grade Crossing Accident/Incident Report" (Form FRA F 6180.57), as well as a copy of all other reports filed with FRA. This requirement is also meant to include a hard copy of *any* record submitted via magnetic media. Maintaining files at an identified central location would enable both federal and State inspectors, as well as authorized representatives, a means by which to verify whether the railroad reported a specific accident/incident or injury to FRA.

Computer Magnetic Media Transfer Requirements (Proposed § 225.37(b))

FRA proposes, in new § 225.37(b), to require that when a railroad utilizes the magnetic media option, whether to submit an initial report, or an updated or amended report, it shall submit along with the magnetic media: (a) a sworn report, as required by 49 U.S.C. 20901 (formerly contained at § 1 of the Accident Reports Act, 45 U.S.C. 38), in the form of a notarized "Railroad Injury and Illness Summary" (Form FRA F 6180.55), and (b) a signed "Batch Control Form" for magnetic media. The requirement to submit a notarized Form FRA F 6180.55 would ensure that railroad reporting officials attest to the validity of the information reported to FRA in the magnetic media and would provide FRA with evidence necessary to hold those officials accountable for false reporting. The "Batch Control Form" for magnetic media, also signed by the railroad's reporting officer, would describe the type of report, number of reports, persons injured, rail damage, lost workdays, etc., for each type of accident/incident reported on the magnetic media. By signing the "Batch Control Form," the railroad reporting official would attest that the data contained in the magnetic media agrees with the data forwarded by the railroads in Forms FRA F 6180.54, 6180.55a, and 6180.57. FRA proposes to print the "Batch Control Form" on the back of the "Railroad Injury and Illness Summary" (FRA Form F 6180.55). The format of the proposed "Batch Control Form" is set forth in Appendix 1 to this NPRM.

Computer Magnetic Media Assimilation Period (Proposed § 225.37(c))

Since the magnetic media option is a fairly new concept, FRA proposes, in new § 225.37(c), to require the railroads that utilize this medium to initially include the hard copy of the particular accident/incident report with the magnetic media. During this assimilation period, FRA will compare the data on hard copy reports to the data contained in the magnetic media to determine if the information reported via magnetic media is consistent and reliable. This requirement would ensure quality control and would provide FRA a measure by which to gauge accurate reporting. After a three-month period of 100-percent accuracy verification, FRA will notify the railroad that the hard copy is no longer necessary. Of course, this process may take longer than three months if the hard copy reports do not agree with the magnetic media submission. If the data in the hard copy is inconsistent with the data in the magnetic media, FRA may require that particular railroad to continue to submit hard copies until both the hard copy and the magnetic media reflect the same information. Once the data on both the hard copies and magnetic media agree, FRA will notify the railroad reporting official to discontinue submitting hard copies. However, there would always remain the requirement that railroads submit a hard copy notarized Form FRA F 6180.55 as well as the signed hard copy "Batch Control Form."

FRA believes that providing the magnetic media transfer option for reporting accidents/incidents would ensure faster, more accurate reporting by railroads. The initial start-up cost to railroads is expected to be minimal. FRA would provide initial computer diskettes and technical advice to railroads that use the option. Moreover, railroads would be provided with the opportunity to correct or amend the hard copy reports or initial reports in magnetic media within the 30-day reporting period.

C. Reporting Definitions and Forms

FRA received a multitude of comments regarding the currently used reporting forms. In general, it was recommended that all forms be revised to reflect recent regulatory changes and new operating practices.

As mentioned previously, FRA has had open informal meetings with the

AAR Committee for Uniformity in Reporting. The American Short Line Railroad Association (ASLRA) representing the small railroad industry as well as counsel for the Railway Labor Executives' Association (RLEA) were in attendance at these open meetings. These meetings detailed changes in cause codes for train accidents and expansion of the illness codes. Suggestions were also made to restructure the "FRA Guide for Reporting Accidents/Incidents" ("FRA Guide"). It was suggested that FRA should develop easy-to-follow directions for any new reporting requirements. Most of the changes were studied by FRA and implemented in 1992.

Below is a discussion of each reporting form followed by recommended changes to that form.

1. Form FRA F 6180.45—"Annual Summary Report of Railroad Injury and Illness": Elimination of This Form and Transfer of Certain Information Blocks to Other Forms

Form FRA F 6180.45 has been used by the rail industry to report all deaths, injuries, and occupational illnesses of on-duty railroad employees that occurred during the calendar year. 49 CFR 225.21(f). FRA proposes to eliminate the requirement for submission of the "Annual Summary Report of Railroad Injury and Illness" (Form FRA F 6180.45) for the reasons set forth below.

The original instructions for reporting required railroads to make a "good faith" estimate of the number of days a worker was expected to be absent from work or on restricted duty following an injury or occupational illness. The annual report filed with the December submission was used to provide a summary total of the actual number of such days. FRA then used the reported information on individual incidents for its analyses. Because the total count of days found on the annual report cannot be assigned to individual cases, FRA found it necessary to amend its instructions several years ago to require railroads to provide an update for any case where the count of days on the report filed with FRA varied by more than ten percent from the actual count of such days.

FRA accepts updates made on magnetic media, *i.e.*, diskettes and tapes. Several railroads provide monthly updates in conjunction with the report for the current month and must provide a final accounting by April 15 of the following year. With the exception of the column used to identify terminations and permanent transfers, a duplicate of the breakdown of cases can be prepared by summarizing the individual cases.

Information regarding terminations or permanent transfers is currently found in column "8" on the annual summary report. This column lists the number of cases in column "3" (Total Lost Workday Cases) and column "7" (Non-fatal Cases Without Lost Workdays) that resulted in either the termination or the permanent transfer of the employee for reasons related to the sustained injury or occupational illness. Because FRA proposes to eliminate the requirement for submission of Form FRA F 6180.45, and since FRA deems the information under "Terminations or Transfers" important for accurate injury and illness data analysis, FRA proposes to move the block designated "Terminations or Permanent Transfers" over to block "5v" on the proposed "Railroad Injury and Illness Summary (Continuation Sheet)" (Form FRA F 6180.55a). Moving this data block to Form FRA F 6180.55a would enable FRA to continue to collect this relevant information while at the same time eliminating the requirement to complete the annual summary report (Form FRA F 6180.45).

For the same reasons set forth above, FRA is proposing to move the blocks that solicit information on "establishments included in this report" and "average employment in reporting year" on the annual summary report to the proposed "Annual Railroad Report of Worker Hours and Casualties, by State" (Form FRA F 6180.56).

2. Form FRA F 6180.54—"Rail Equipment Accident/Incident Report": Limited Changes

Collisions, derailments, explosions, fires, acts of God, and other events involving the operation of standing or moving on-track equipment resulting in more than $6,300 of reportable damage must be reported using Form FRA F 6180.54. 49 CFR 225.19(c) and 225.21(a).

Based on the comments received in response to the ANPRM, FRA proposes to make limited changes to the "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54). The purpose of these proposed changes is to improve FRA's accident analysis capability. The format of the proposed Form FRA F 6180.54 is set forth in Appendix 2 to this NPRM. The currently used Form is provided in Appendix 3 for comparison and reference purposes.

a. *Special Study Blocks (SSB).* The first proposed change would be the establishment of three new blocks on Form FRA F 6180.54, each designated as a "Special Study Block" (SSB) (*see* item "49" on the proposed Form). Over the years, FRA and other agencies and associations have frequently wanted to collect information on specific accident issues over a specified time period in response to particular risks of immediate safety concern. Because of the difficult and time-consuming task of revising and receiving approval for permanent changes to the reporting form, FRA has not been able to respond quickly in these situations and has had to rely on labor-intensive field surveys by regional FRA personnel and the informal cooperation of the industry.

FRA proposes to establish three SSB's for the purpose of temporarily collecting information on these issues of immediate safety concern. When one or more critical safety issues arise, FRA would notify the railroad reporting officers and request that they, for a specified time-frame, collect and report on the critical issues using the SSB. Upon expiration of the pre-defined time period, the SSB would not be used again until the next issues of immediate concern.

b. *Reporting definitions.* The proposed changes to the reporting definitions for Form FRA F 6180.54 address perceived deficiencies and inconsistencies regarding the area labelled "PROPERTY DAMAGE" on the current form in blocks "33" and "34." The inconsistencies result from a lack of clear direction to the industry on the issue of overhead and fringe expenses. Some railroads include overhead and fringe expenses in their estimates of damage, some include one and not the other, some include neither, and some may not even report the same way every time. These inconsistencies diminish the quality of the accident data and taint any analysis of that data.

FRA would like to improve the consistency of the information collected on damage costs. FRA proposes to make it clear that when estimating damage costs, the labor costs to be reported are only the direct labor costs to the railroad, *e.g.*, hourly wages, transportation costs, and hotel expenses. Thus, for example, the cost of fringe benefits would be *excluded* when calculating direct labor costs. This clarification should result in greater uniformity in reporting among the railroads. For services performed by a contractor, the railroad would estimate a direct hourly labor cost by multiplying the contractor's total labor hours charged to the railroad by the applicable direct hourly wage rate for a railroad worker in that particular craft.

FRA also proposes to make it clear that overhead is to be *excluded* from damage costs. FRA does not wish to

dictate a specific rate for overhead, but it also finds the non-uniform treatment of overhead under the current process to be unacceptable. Rather than have damage estimates that have an unknown level of overhead, FRA has decided to propose excluding overhead from the direct damage estimates.

Lastly, material costs would be calculated based upon the costs of acquiring new material, even if the railroad chooses to use refurbished or used material in their actual repairs.

In summary, the proposed changes in the reporting definitions would allow the industry maximum flexibility in cost accounting and management, and would not dictate set practices to restrict that flexibility, but would require enough disclosure of the practices used so that FRA could convert the information to common terms before any analysis is performed.

c. *Filing of an Amended Form FRA F 6180.54.* At the time the ANPRM for accident reporting was published, the FRA Guide provided that Form FRA F 6180.54 was to be amended if, after filing, it was determined that the damage estimate "was significantly in error * * *." Since the term "significantly" was not defined in the FRA Guide at that time, railroads used varying definitions of "significant" differences and, as a result, submitted few updated accident reports. Because of the doubt as to the definition of the term, the majority of commenters proposed that "significantly" be defined as at least a ten-percent change in the estimated or actual damages submitted to FRA.

In response to the comments, the FRA Guide was changed to specifically provide that an amended report be filed only if subsequently acquired information showed the damage to be at least a ten-percent variance from the amount originally reported to FRA (*see* page V–2 of the FRA Guide). This change became effective January 1, 1993.

3. Form FRA F 6180.55a—"Railroad Injury and Illness (Continuation Sheet)": Numerous Changes

The "Railroad Injury and Illness (Continuation Sheet)" (Form FRA F 6180.55a) collects information about injuries, fatalities, and illnesses of railroad workers, trespassers, contractors, and passengers and about highway-rail grade crossing injuries and fatalities. 49 CFR 225.19(d) and 225.21(c). Only the barest of information is currently available on Form FRA F 6180.55a: the railroad reporting the incident, the State in which the incident occurred, type of person injured or ill, age, type of injury or illness, what the person was doing at the time of the incident, and, for railroad workers, the number of workdays lost and restricted and the results of administered alcohol/drug tests. FRA does not believe the information currently requested on Form FRA F 6180.55a is sufficient for analyzing the causal factors related to injuries and illnesses. FRA thus proposes numerous changes to the Form in order to collect data that would aid in development of railroad injury and accident prevention programs.

The format of the proposed Form FRA F 6180.55a is set forth in Appendix 4 to this NPRM. Appendix 5, the currently used "Railroad Injury and Illness (Continuation Sheet)" is provided for comparison purposes.

a. *Exposure to hazardous materials.* When a railroad accident causes a release of hazardous materials, FRA cannot determine, using Form FRA F 6180.55a as it now stands, if any injuries are associated with the hazardous materials release. There is an increased need for information on the number of persons injured or killed due to exposure to hazardous materials. FRA thus proposes to add an additional block "5u" on Form FRA F 6180.55a to collect data on the number of injuries, as well as type of injury (*e.g.*, burn, inhalation, rash), due to release and exposure to hazardous materials.

b. *County/day of month/time of day.* When there is an injury that is not caused by a train accident or highway-rail grade crossing accident, FRA presently cannot determine the county of the incident or the exact date of the incident since the current Form requires railroads to report only the month, year, and State. Requiring the county in which the incident occurred in block "5d" will assist FRA safety inspectors in determining which sites or railroad shops have more injuries or illnesses. Requiring the exact date, including the day of the month, in block "5b" and time of day in block "5c" will assist FRA safety inspectors in records inspection. It will also assist the railroad industry in determining whether more accidents occur on certain days or times of the week.

c. *Gender/ethnicity.* FRA proposes requiring the gender and ethnicity of the person injured or ill in an effort to help identify whether particular groups of individuals, particularly trespassers, are more susceptible than others to certain injuries and illnesses. Language barriers or unfamiliarity with road signs, especially railroad crossing signs, may contribute to many of the accidents that occur at highway-rail grade crossings. Submission of information on gender in block "5h" and ethnicity in "5i" would furnish FRA with the data relevant to demonstrate whether or not this is in fact the case. If the data collected in these blocks showed that particular ethnic groups were more prone to certain injuries and accidents, then FRA would attempt to identify what the exact problem is and then develop remedial programs or other appropriate policies and procedures to prevent recurrence of such injuries and accidents in the future.

d. *Circumstance codes.* When there is an injury that is not associated with a rail equipment accident, the only information about the incident currently collected is (i) what the person was doing at the time of the incident and (ii) the type of injury. This is not sufficient data for safety analysis. For example, if an individual received an electric shock while using portable power tools, there is no way to determine, under the current reporting system, whether the cause of the incident was defective equipment, improper use of equipment, undesired contact with a power line or box, or some other circumstance such as stepping on a power line. FRA needs to collect "cause" or "circumstance" codes for such injuries and illnesses. FRA thus proposes to develop new codes, in addition to those currently used, to describe the cause and/or circumstance of such incidents. Appendix 6 to this NPRM provides a list of the proposed circumstance codes that is to be used when completing the "Railroad Injury and Illness (Continuation Sheet)." Specifically, these circumstance codes would be used to complete the information in blocks "5m—Physical Act," "5n—Location," "5o—Event," "5p—Result," and "5q—Cause." Appendix 6 is merely a preliminary sample of the list of circumstance codes and should not be considered all-inclusive. The list of circumstance codes, once finalized, would be printed in the FRA Guide.

e. *Terminations or permanent transfers.* As discussed earlier in the NPRM, FRA proposes to eliminate the requirement for submission of the "Annual Summary Report of Railroad Injury and Illness" (Form FRA F 6180.45). Data on terminations and permanent transfers is presently collected on Form FRA F 6180.45. In order to continue to gather this data, FRA proposes collection of this information by the addition of block "5v," entitled "Terminations or Permanent Transfers," to Form FRA F 6180.55a.

f. *Narrative on unusual circumstances.* FRA also proposes the addition of a narrative block "5w" on

Form FRA F 6180.55a that would allow the reporting railroad the opportunity to provide details (up to 250 characters) on any unusual circumstance(s) surrounding the railroad worker's injury or illness.

In summary, FRA proposes to amend Form FRA F 6180.55a to require railroads to:

a. Note all injuries and illnesses that are due to the release of hazardous materials and the associated injury problem (burn, rash, inhalation, etc.);

b. Record the county in which the incident occurred;

c. Record the day of the month and time of day that an incident occurred;

d. Record the gender and ethnic code for the ill or injured person;

e. Determine the cause and circumstance of all reportable accidents and injuries, and then use the applicable new circumstance codes as set forth in Appendix 6 to this NPRM;

f. Provide information on terminations or permanent transfers for reasons directly related to the injury or illness; and

g. Provide additional information on unusual circumstances surrounding the worker's injury and/or illness in narrative form.

4. Form FRA F 6180.55—"Railroad Injury and Illness Summary": Limited Changes

The "Railroad Injury and Illness Summary" (Form FRA F 6180.55) is used by the industry to summarize a railroad's accidents/incidents for a given month. This report must be filed with FRA even when no accidents/incidents occurred during the reporting month. 49 CFR 225.21(b). FRA proposes to make limited changes to this form.

The format of the proposed Form FRA F 6180.55 is set forth in Appendix 7 to this NPRM. Appendix 8, the currently used "Railroad Injury and Illness Summary," is provided for comparison purposes.

a. *Classifications of persons.* The FRA Guide currently classifies persons as: (i) "Employees on Duty" (Class A), (ii) "Employees Not on Duty" (Class B), (iii) "Passengers on Trains" (Class C), (iv) "Non-Trespassers" (Class D), (v) "Trespassers" (Class E), and (vi) "Contractor Employee" (Class F). These "person" classifications are used by the reporting railroad for completing the "Railroad Injury and Illness Summary" (Form FRA F 6180.55) and the "Railroad Injury and Illness (Continuation Sheet)" (Form FRA F 6180.55(a)).

FRA proposes the addition of "Non-Trespasser/Off Railroad Property" (Class G) and "Volunteer" (Class H) to the classes of persons and to replace the terms "Employee on Duty" and "Employee Not on Duty" with "Worker on Duty" and "Worker Not on Duty," respectively. Additionally, the definition of a "Worker on Duty" would be expanded to include individuals (including certain contractor employees and volunteers) who perform either (i) the operation of on-track equipment or (ii) any other safety-sensitive activity for the reporting railroad.

1. New classification: "Non-Trespasser/Off Railroad Property" (Class G)

Persons, other than railroad employees, passengers, trespassers or contractor employees, who are injured while on or adjacent to railroad property are currently coded as "Non-Trespassers" (Class D) on Form FRA F 6180.55a.

For reporting purposes, FRA would like to distinguish between Non-Trespassers injured while on railroad property and Non-Trespassers injured while off railroad property. FRA thus proposes to add a new classification of person to cover those individuals (non-trespassers) who are injured while off railroad property. It should be noted that an injury "off railroad property" would include an injury resulting from an event, such as a derailment or collision, that begins on railroad property but ends on public or private non-railroad property, so long as the injury is incurred while the person is physically located off railroad property. Similarly, if a derailment results in a release of hazardous materials onto public or private non-railroad property and the hazardous material injures a "Non-Trespasser" located on public or private non-railroad property, the injury should be reported as an injury to a "Non-Trespasser/Off Railroad Property" (Class G). "Non-Trespasser/On Railroad Property" (Class D) would be used to report injuries and illnesses sustained by such non-trespassers while on railroad property.

2. New Classifications: (i) "Volunteer" (Class H) and (ii) Volunteer or Contractor Employee Who Is Classified as a "Worker on Duty" (Class A)

"Volunteer" (Class H) would be added to the classes of persons, for purposes of completing Sections A and B on Form FRA F 6180.55. "Volunteer" (Class H) would be defined to include an individual who willingly performs a service for the reporting railroad, who does not receive direct monetary compensation from that railroad, and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting railroad. Injuries or illnesses sustained by such a volunteer would be reported on Form FRA F 6180.55a as injuries to a "Volunteer" (Class H).

In contrast, injuries or illnesses sustained by an individual, including a "volunteer" or "contractor employee," who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad, would be reported as injuries/illnesses to a "Worker on Duty" (Class A).

3. "Worker on Duty" (Class A) and "Worker Not on Duty" (Class B)

"Worker on Duty" (Class A) would be defined as an individual who receives direct monetary compensation from the railroad and who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad. "Worker on Duty" (Class A) and "Worker Not on Duty" (Class B) would replace the presently used classification of persons "Employee on Duty" (Class A) and "Employee Not on Duty" (Class B).

A "Worker on Duty" (Class A) would be subject to all of the applicable safety regulations in performance of his or her activities (*e.g.*, drug and alcohol regulations, qualification and certification of locomotive engineers). When an individual is engaged in "mixed service," *i.e.*, performs both safety-sensitive functions and other functions, the railroad would report all the hours for that tour of service as "railroad worker hours" in block "15" on the proposed Form FRA F 6180.55; and all reportable injuries and illnesses would be reported as those to a "Worker on Duty" (Class A) in block "5f" on the proposed Form FRA F 6180.55a together with the applicable job code series of the service performed.

Section 209.303 describes "safety-sensitive functions" as applying to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service;

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair, or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 236 of this title.

Example 1. A volunteer operates a locomotive for an excursion railroad. Since operation of a locomotive clearly falls within the realm of operation of on-track equipment, the hours contributed to the railroad by the volunteer would be reported as "railroad worker hours" on the "Railroad Injury and Illness Summary" (Form FRA F 6180.55). Likewise, if the volunteer sustains a reportable injury during operation of the locomotive, then the incident would be reported on the "Railroad Injury and Illness Summary (Continuation Sheet)" (Form FRA F 6180.55a) as an injury to a "Worker on Duty" (Class A), with the applicable job code series.

Example 2. A volunteer sells memorabilia at a historic railroad. Since selling memorabilia does not fall within the scope of either "the operation of on-track equipment" or "any other safety-sensitive function," the hours contributed by such a volunteer would *not* be reported as "railroad worker hours" and thus would not be reported on Form FRA F 6180.55. When such a volunteer sustains a reportable injury, such injury, however, would be reported on Form FRA F 6180.55a as an injury to a "Volunteer" (Class H).

Example 3. A volunteer sells tickets for train rides on a tourist railroad and also clears vegetation adjacent to roadbed. Note that the hours spent clearing the vegetation are reportable on Form FRA F 6180.55 as "railroad worker hours" because, under 49 CFR 213.37, vegetation is to be cleared from the roadbed for safe rail operations and is thus considered a safety-sensitive function. Any injury or illness sustained by the volunteer during the vegetation clearing would be classified as one to a "Worker on Duty" (Class A) with the applicable reporting requirements for purposes of Form FRA F 6180.55a. The hours donated selling tickets would not ordinarily be reportable and, if any reportable injury was sustained by the volunteer during the process of selling tickets, such injury would be classified as one to a "Volunteer" (Class H). If, however, the volunteer sells tickets and then clears vegetation *during the same tour*, then all hours are reportable as "railroad worker hours," and all injuries are considered as those attributable to a "Worker on Duty" (Class A). Therefore, when an individual is engaged in "mixed service," the railroad must report all the hours for that tour of service as "railroad worker hours" on Form FRA F 6180.55; and all reportable injuries and illnesses must be reported as those to a "Worker on Duty" (Class A) on Form FRA F 6180.55a, with the applicable job code series of the service performed.

Example 4. The employee of a contractor performs payroll as well as time-and-attendance functions for the railroad on railroad property. Such functions are not considered safety-sensitive because they are not related to the continued safety of the railroad. Thus, injuries sustained by this contractor performing those tasks would be reported on Form FRA F 6180.55a as those attributable to a "Contractor Employee" (Class F). Further, the hours contributed by this contractor would *not* be reported as "railroad worker hours" and thus would not be reported on Form FRA F 6180.55.

Example 5. A contractor employee inspects and replaces roller bearings for the reporting railroad. The hours worked by this contractor employee performing this function would be reported as "railroad worker hours" on Form FRA F 6180.55, and injuries sustained by this contractor would be reported as those to a "Worker on Duty" (Class A) on Form FRA F 6180.55a. Under 49 CFR 215.113, cars with defective roller bearings should not be in service, thus any activity associated with replacement of roller bearings is a safety-sensitive function qualifying as hours attributable to a "Worker on Duty" (Class A).

b. *Batch control form.* As discussed earlier in this NPRM, the "Batch Control Form" for magnetic media would appear on the back of Form FRA F 6180.55.

5. FRA Form F 6180.56—"Annual Railroad Report of Worker Hours and Casualties, by State" (Revised Title): Limited Changes

A summary of all hours worked by railroad employees during the report year is made on Form FRA F 6180.56 and is included with the December submission. 49 CFR 225.21(d). FRA is proposing limited changes to this Form.

Information on "establishments included in this report" and "average employment in reporting year," which previously appeared on Form FRA F 6180.45, would be moved to Form FRA F 6180.56 because, as discussed previously in this NPRM, FRA is proposing that Form FRA F 6180.45 be eliminated. In addition, a column reflecting a count for "casualties" would be added to Form FRA F 6180.56. Therefore, the title for Form FRA F 6180.56 would be revised to read "Annual Railroad Report of Worker Hours and Casualties, by State."

The format of the proposed Form FRA F 6180.56 is set forth in Appendix 9 to this NPRM. Appendix 10, the currently used "Annual Railroad Report of Manhours by State" is provided for comparison purposes.

6. FRA Form F 6180.57—"Highway-Rail-Grade Crossing Accident/Incident Report" (Revised Title): Limited Changes

Form FRA F 6180.57 collects information on accidents and incidents occurring at highway-rail grade crossings. Any impact, regardless of severity, between a railroad on-track equipment consist and any user of a public or private crossing site, including sidewalks and pathways, must be reported on this Form. 49 CFR 225.19(a) and 225.21(e). The information collected on this report is vital to identifying and resolving problems at highway-rail grade crossings.

Comments

FRA received several comments concerning Form FRA F 6180.57. Several commenters expressed concern over the question asked in block "32," which states, "[w]as the signaled crossing warning identified in item 31 operating?" Item "31" on the Form currently lists several types of signal devices, including active and passive devices. Confusion arises when the person completing the report identifies a passive device and then reports that it was not operating. To avoid this confusion, several commenters suggested that the question in item "32" be amended to request information on whether the device was operating only if the device identified in item "31" was an active device. The Form also makes a distinction between Amtrak and Autotrain in item one. Most commenters recommended elimination of this obsolete distinction. A few commenters stated that the grade-crossing report required no change at all since the information requested was adequate and not burdensome and that the Form itself was understandable.

Section Analysis and FRA Conclusions

The format of the proposed Form FRA F 6180.57 is set forth in Appendix 11 to this NPRM. Note that Appendix 12, the currently used Form FRA F 6180.57, is provided for comparison purposes. In order to collect more information on motorists involved in highway-rail

grade crossing accidents, FRA proposes to amend Form FRA F 6180.57 to require information under the heading "Motorist," if known, on the motorist's age and gender, and whether the motorist was impaired by alcohol or drugs at the time of the accident/incident (*see* items "39," "40," and "41" on the proposed Form). Additionally, under the heading "Highway Vehicle Property Damage/Casualties" on the currently used Form, FRA is proposing to delete blocks "43" through "45," which request information on the total number of occupants, and the total number of occupants killed and injured, and replace those blocks with several new ones (*see* items "48" through "54" on the proposed Form) to gather information on:

(a) the number of highway-rail crossing users (*i.e.*, pedestrians and vehicle occupants) killed,

(b) the number of highway-rail grade crossing users injured,

(c) the total number of highway-rail grade crossing users involved in the incident (including the driver),

(d) the number of railroad workers killed,

(e) the number of railroad workers injured,

(f) the total number of people on the train at the time of the incident (including passengers and train crew),

(g) the number of train passengers killed, and

(h) the number of train passengers injured.

FRA also proposes to eliminate the distinction between Amtrak and Autotrain in item "1" as such a distinction is obsolete. Additionally, FRA proposes to clarify the question in item "32," "[w]as the signaled crossing warning working?" FRA agrees that the ambiguity of this question has resulted in errors and problems because railroads report obvious contradictions. The proposed instructions for completing this question (item "33" on the proposed Form) are set forth in Appendix 13 to this NPRM.

FRA also proposes to add two new questions to the "Highway-Rail Grade Crossing Accident/Incident Report" to gather information on whistle bans and signal system failure. New block "34" asks whether a whistle ban was in effect and observed at the time of the accident/incident. New block "35" asks whether there was signal system failure within the last seven calendar days up to and including the day of the accident. The codes for completing both items would be included in the FRA Guide.

In addition, a new narrative block (item "55" on the proposed Form) allowing for up to 250 characters would be added to the form in order to gather information on unusual causes/circumstances surrounding the highway-rail grade crossing accident/incident.

7. Form FRA F 6180.78—"Notice to Railroad Worker Involved in Rail Equipment Accident/Incident Attributed to Worker Human Factor; Worker Statement Supplementing Railroad Accident Report" (Revised Title): Limited Changes

If a railroad should cite an employee human factor as the primary or contributing cause of a rail equipment accident/incident, then current regulations require the reporting railroad to complete the "Railroad Employee Human Factor Attachment" (Form FRA F 6180.81), and attach it to the "Rail Equipment Accident/Incident Report" (Form FRA F 6180.54). 49 CFR 225.12(a) and 225.21(g). Additionally, for each employee listed on Form FRA F 6180.81, the reporting railroad must complete part I, "Notice to Railroad Employee Involved In Rail Equipment Accident/Incident Attributed to Employee Human Factor," on Form FRA F 6180.78, and must provide a copy of this form to the worker within 45 days after the end of the month in which the accident/incident occurred. 49 CFR 225.12(b) and 225.21(h). Upon receipt of Form FRA F 6180.78, the worker has the option of providing a statement in part II (entitled "Employee Statement Supplementing Railroad Accident Report"). 49 CFR 225.12(g).

Recipients of the notice (Form FRA F 6180.78) are to include only those railroad workers who were the primary cause or a contributing cause of the rail equipment accident/incident. In order to minimize any confusion or misunderstanding for recipients of the notice, FRA proposes refinement of the language in the block entitled "Notice to Railroad Employee" to read as follows:

Notice to Recipient. An accident occurred on the above date which the railroad alleges was at least partially caused by an action, lack of action, or the physical condition of a railroad worker. The railroad is sending you this notice because it believes that you had a role, but may not necessarily be the primary or only person responsible for the accident's occurrence. The railroad has reported to FRA that the primary and/or major contributing cause(s) of this accident are those listed above. Other causal factors related to this event may be described in the narrative portion of the railroad's report; a copy of which is attached.

You *may* submit a statement to FRA with a copy to this railroad and comment on any aspect of the railroad's report. The decision whether to submit such a statement is entirely optional on your part. If you choose to do so, please see the additional notices and instructions on the reverse of this form.

Because FRA is proposing to replace "employee" with the term "worker," the title of Form FRA F 6180.78 would be revised to read "Notice to Railroad Worker Involved in Rail Equipment Accident/Incident Attributed to Worker Human Factor; Worker Statement Supplementing Railroad Accident Report." Similarly, the title of Form FRA F 6180.81 would be revised to read "Worker Human Factor Attachment."

The format of the proposed Form FRA F 6180.78 is set forth in Appendix 14 to this NPRM. Note that Appendix 15, the currently used Form FRA F 6180.78, is provided for reference and comparison purposes.

D. Recordkeeping

1. Injury and Illness Recordkeeping

a. *Railroad Worker Injury and Illness Log (Proposed Form FRA F 6180.xx and Proposed § 225.25(a)).* Section 225.25(a) refers to the log of injuries and occupational illnesses at and for each railroad establishment. It is silent as to whether an injury or illness has to be "reportable" to be included on the log. FRA has concluded that in order to effectively enforce railroad injury reporting, the log must contain *all* injuries and illnesses to railroad workers that arise from the operation of the railroad. Unless FRA has the opportunity to examine those injuries and illnesses deemed "non-reportable" as well as those deemed "reportable" by the railroad, it is difficult for FRA to determine whether a railroad is properly making the "reportable" decision.

Consequently, in order to accurately identify and review both reportable and non-reportable railroad injuries and illnesses, FRA is proposing to amend § 225.25(a) to require that railroads maintain a log of all reportable and non-reportable (*i.e.*, recordable) injuries and illnesses to railroad workers for each railroad establishment using a new form entitled "Railroad Worker Injury and Illness Log" (Form FRA F 6180.xx). The format of the proposed "Railroad Worker Injury and Illness Log" (Form FRA F 6180.xx) is set forth in Appendix 16 to this NPRM.

A "recordable" injury or illness is intended to encompass any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work

environment that causes or requires the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment. The "Railroad Worker Injury and Illness Log" would be maintained for each operational railroad establishment, *i.e.*, an establishment wherein workers report to work. The proposed log contains all the information currently required under § 225.25(a). Requiring railroads to log injury and illness data on the new Form would help alleviate the difficulty FRA inspectors encounter when attempting to locate injury and illness information at railroad establishments.

b. *Updating the Log (Proposed § 225.25(c)).* Discrepancies in the log are the most recurring problems FRA inspectors encounter during an inspection. Many railroads fail to update the log in a timely manner, particularly with respect to lost/restricted workdays. Therefore, in order to assure that each railroad continuously updates the log (new Form), FRA proposes, in new § 225.25(c), that each reportable and recordable (non-reportable) injury and illness be entered on the log as early as practicable, but in any event no later than seven working days after receiving information that an illness or injury has occurred. Additionally, new § 225.25(d) provides that if the log is maintained at a centralized location, but not through electronic means, a paper copy of the log that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When the logs are maintained at a central location through electronic means, the records for that establishment must be available for review in a hard copy format (paper printout) within four business hours of the request. The "Railroad Worker Injury and Illness Log" would also be used to prepare Form FRA F 6180.55a and to update changes in the status of a particular case.

c. *Elimination of supplementary record required under § 225.25(b).* FRA has found that much of the information requested in the supplementary record of injuries and illnesses pursuant to the present regulation set forth in § 225.25(b) would be collected on the new "Railroad Worker Injury and Illness Log" as proposed in § 225.25(a). Therefore, the requirement that each railroad maintain a supplementary record, as currently required under § 225.25(b), would be eliminated.

d. *Monthly list of injuries and illnesses (Proposed § 225.25(e)).* New § 225.25(e) proposes that each railroad maintain a list of all reported injuries and illnesses for the previous month and that such list be posted in a conspicuous location at each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For example, the monthly list of injuries and illnesses for the month of May must be completed and posted no later than June 30th. Moreover, the monthly injury and illness list would be displayed for a minimum of 60 consecutive days so as to allow all workers at that establishment the opportunity to view the list. Given the example above, the list, if posted on June 30th, would remain posted for a minimum of 60 days, or until August 30th.

Proposed § 225.25(e)(1) outlines the data that would be included in the list. New § 225.25(e)(2) proposes that if no reportable injuries or illnesses were associated with an establishment, the posting shall make reference to that fact.

e. *Employer notification (Proposed § 225.39(a) and Copy of "Railroad Worker Injury and Illness Log" to worker (Proposed § 225.39(b)).* Rail labor organizations have repeatedly expressed concern that many injured workers fail to inform their employers of such injuries. By placing part of the burden for reporting on the individual railroad worker, FRA believes it could improve the general quality of the injury/illness reporting data. Consequently, proposed § 225.39(a) would require that railroad workers notify their employer, in writing, that they have an injury and/or illness within seven calendar days of either incurring the injury or illness or obtaining knowledge that they incurred the injury or illness. A railroad worker must notify his or her employer of both reportable injuries and illnesses and non-reportable, *i.e.*, "recordable" injuries and illnesses. As discussed previously in this NPRM, a "recordable" injury or illness is intended to encompass any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional.

Another concern is that injured workers do not have the opportunity to review and verify the information on the accident/illness report prior to submission of that report to FRA. FRA thus proposes, in new § 225.39(b), the requirement that the reporting railroad must provide the railroad worker with a copy of the completed "Railroad Worker Injury and Illness Log" (Form FRA F 6180.xx). FRA believes that the general quality of injury and illness data would improve by allowing the worker to participate in the reporting process as set forth above.

2. Derailment and Collision Recordkeeping

a. *Rail Equipment Accident/Incident Log (Proposed Form FRA F 6180.xx(a) and Proposed § 225.25(b)).* At the present time railroads are required to maintain a log of only reportable rail equipment accidents. Information on non-reportable events can typically be found in "unusual occurrence" reports and "morning reports" that are maintained at various locations by the railroad. However, there is no guarantee that all of those reports are either available or complete. As a result, during routine accident/incident records inspections it is often difficult, if not impossible, to identify the events that were determined by the railroad to be non-reportable.

Consequently, in order to accurately identify and review both reportable and certain non-reportable rail equipment accident/incidents, FRA is proposing in new § 225.25(b) that railroads maintain a log similar to the injury/illness log that railroads are now required to maintain pursuant to § 225.25(a) using a new form entitled "Rail Equipment Accident/Incident Log" (Form FRA F 6180.xx(a)) (attached as Appendix 17). A "recordable" rail equipment accident/incident would encompass any event not otherwise reportable involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment before any rail operations over the track can continue. A "recordable" rail equipment accident/incident, if not tended to, would thus disrupt railroad service. A scrape or indentation to rail equipment, however, would not make a rail equipment/accident "recordable" if routine rail operations over the track can continue without such equipment being repaired or removed from service.

b. *Property Damage Estimate Worksheet and Record (Proposed Form FRA F 6180.xx(b)).* Appendix 18, entitled "Property Damage Estimate Worksheet and Record" (Form FRA F 6180.xx(b)) is a proposed worksheet that reporting railroads would use to determine costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, and (iv) track structures and roadbed, as well as (v) costs of equipment rental and operation. These five cost categories would be totaled to derive the total accident cost. If the total accident cost meets or

exceeds the reporting threshold, then the total cost for "damage to on-track equipment" in "Part A" would be transferred to "block 25 (Equipment Damage)" on the proposed "Rail Equipment Accident/Incident Log" (Form FRA F 6180.xx(a)). Likewise, the total cost for "damage to signal equipment," "damage to track," and "damage to track structures and roadbed" in "Parts B, C, and D" respectively, would be totaled and this amount would be transferred to "block 26 (Track, Signal, Way & Structure Damage)" on the "Rail Equipment Accident/Incident Log."

FRA proposes to print the "Property Damage Estimate Worksheet and Record" (Form FRA F 6180.xx(b)) on back of the "Rail Equipment Accident/Incident Log" (Form FRA F 6180.XX(a)).

E. Quarterly Accident Reports

FRA solicited comments in the ANPRM as to whether a quarterly report would result in more accurate accident data being filed with FRA. There remains a problem in accurately reporting both equipment accidents and personal injuries. Railroads submit detailed information on a monthly basis, and in some instances, only 30 to 60 days have elapsed since the date of the accident/incident until the railroad's certified report is filed with FRA. This does not always provide sufficient time for the railroads to gather and verify statistics on repair costs and lost workdays.

These detailed monthly reports provide the data for FRA's annual Accident/Incident Bulletin. This annual Bulletin summarizes all reportable railroad accidents/incidents that occurred during the previous calendar year. Monthly reports are, to some extent, based on estimates rather than actual figures; therefore, the Accident/Incident Bulletin also reflects estimated data.

In order to remedy this problem and ensure more consistently accurate statistics, FRA considered requiring quarterly accident reports covering the previous quarter's occurrences. This would provide at least 90 days (and up to 180 days depending on when the accident occurred within the quarter) during which the railroad could obtain actual repair data and lost workday information.

Comments

Some commenters suggested that the monthly reports could serve as estimates, while a quarterly report could contain the actual costs associated with accidents. Others recommended that the monthly report be eliminated and argued that quarterly reports containing actual costs would reduce inaccuracies. It was further suggested that quarterly reports should be required to contain a detailed report for incidents where damages exceeded $50,000.

Some commenters believed that a requirement for quarterly reporting would not remedy any problems. They recommended that the monthly reporting requirement should be retained and that railroads should provide quarterly updating of lost workdays, restricted days, equipment damage, track damage, and other changes, via magnetic media. Others suggested that the information contained in monthly reports together with the submission of the end-of-year report is sufficient and that the addition of a quarterly report requirement would create additional work without a concomitant increase in valuable information.

Finally, several railroads recommended that the deadline for submission of the annual report (Form FRA F 6180.45) be moved from January 31 to March 31. They believed this modification would enable the railroads to reconcile their actual figures with the estimated figures resulting in more accurate information.

Analysis and FRA Conclusions

FRA has concluded that substitution of quarterly reporting for monthly submission would result in very little additional accuracy of figures on repair costs and lost workdays. There would continue to be estimates involved due to the lack of completion of repairs or treatment, particularly the closer the incident to the submission date. Therefore, the discrepancies between monthly figures and the annual summary figures would continue to exist.

FRA agrees that the addition of a quarterly report would create additional work without a concomitant increase in valuable information. FRA believes that the revisions to the Forms, as proposed in this NPRM, would provide reliable and consistent injury and accident data for safety analysis.

F. Reporting Threshold

Since 1975, FRA has adjusted the reporting threshold every two years based on the prices of a market basket of railroad labor and materials. The purpose of these adjustments has been to maintain comparability between different years of data by having the threshold keep pace with accident costs so that each year the same groups of accidents are included in the "reportable" accident counts.

The current system is flawed for several reasons. First, the adjustment for the upcoming two years is made based on price levels for the previous year. This may be a good method for identifying what that previous year's threshold should have been, but is not necessarily a good method for setting the next two years' threshold. Second, the threshold adjustment has been performed only every two years instead of every year, so the comparability of annual statistics within the two-year set is less than perfect. Third, the market basket used is not necessarily representative of the labor and materials consumed in the aftermath of accidents "at the margin"—those with damages just above or just below the reporting threshold. Thus, changes in the prices of the market basket may not be a good indicator of changes in the costs associated with accidents at the margin. Fourth, the data used to calculate the threshold adjustment (the market basket prices) is collected directly from the railroad industry itself, rather than public sources, which may raise the suspicion that the data may be self-serving.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b) (formerly contained at section 15(a) of the Rail Safety Enforcement and Review Act (Pub. L. 102–365)): "[i]n establishing or changing a monetary threshold for the reporting of a railroad accident or incident, * * * damage cost calculations" shall be based "only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality." Congress allows an exception to this general rule only if the necessary data is not available from the sources described, and only after public notice and comment.

FRA solicited comments in the ANPRM on the feasibility of a two-tier reporting system in which virtually all rail equipment accidents/incidents are reported to FRA, as now, but in which those involving a substantially higher damage threshold (for example, $50,000 or $100,000), would trigger requirements for quicker or more detailed reports.

Comments

Many commenters favored the concept of two-tier reporting for rail equipment accidents and incidents and recommended that the minimum reportable threshold be raised to $10,000 or $20,000 to eliminate less serious accidents from reporting requirements. A few railroads recommended that the second tier begin at $50,000 and that the lower threshold be raised in increments of $1,000 on a yearly basis. One railroad recommended that a third tier be established for reporting in greater detail those accidents that result in $100,000 or more in damage. A few commenters did not recommend adoption of the two-tier reporting system because they believed that such a system would require more details on those accidents that fell within the second tier and thus would create a more burdensome reporting system.

Analysis and FRA Conclusions

After examining and assessing the feasibility of all comments received in response to the ANPRM, FRA has concluded that a two-tier reporting system is not warranted at this time. Adjustment of the reporting threshold, as described below, would provide FRA with the data it needs to effectively evaluate the true status of railroad safety.

Threshold Reporting

FRA proposes to obtain in October of 1994 the latest Producer Price Index ("PPI") and National Employment Hours and Earnings figures from the Department of Labor's Bureau of Labor Statistics ("BLS"). At that time, the latest final figures, as opposed to preliminary figures, would be available to cover the period through June 1994. In October of each subsequent year, FRA would obtain the latest 12 months of final BLS figures and calculate the threshold for the upcoming year, publishing the new figure in the **Federal Register** prior to its implementation. FRA hopes to issue a final rulemaking on the new threshold effective as early as January 1, 1995.

Equation

As mentioned previously, FRA proposes to use data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports for calculating the threshold. The equation used to adjust the reporting threshold would be based on the average hourly earnings reported for Class 1 railroads and an overall railroad equipment cost index determined by the BLS. The two factors would be weighted equally.

For the wage component, FRA would use LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class 1 Railroad Average Hourly Earnings. For the equipment component, FRA would use LABSTAT Series Report, Producer Price Index (PPI) Series 144 for Railroad Equipment. In the month of October of each year, FRA would obtain from the BLS, finalized cost data covering the twelve-month period ending with the month of June. The monthly figures would then be totaled and divided by twelve to produce annual averages. The wage data would be reported in terms of dollars earned per hour, while the equipment cost data would be indexed to a base year of 1982.

The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result would be rounded to the nearest $100.

Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{1 + 0.5\,\frac{Wn - Wp}{Wp} + 0.5\,\frac{En - Ep}{100}\right\}$$

Where:

Wn = New average hourly wage rate ($)
Wp = Prior average hourly wage rate ($)
En = New equipment average PPI value
Ep = Prior equipment average PPI value

FRA does not have data on the specific breakdown of railroad accident damage repairs, thus the proposed weightings are subject to adjustment should commenters choose to offer information that could provide the basis for refining the proposed formula. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

G. Miscellaneous Amendments

Many of the proposed changes in the rule text are self-explanatory or have been elucidated in the previous portion of the preamble. This segment of the NPRM outlines a number of proposed amendments to various sections of the rule text.

1. Applicability (§ 225.3)

Section 225.3 defines the applicability of the accident reporting regulations. FRA's delegated regulatory authority under 49 U.S.C. 20101 *et seq.* (formerly contained in the Federal Railroad Safety Act of 1970 (the "Act") (45 U.S.C. 431 *et seq.*) permits FRA to amend the current applicability sections of its various regulations so as to contract the populations of railroads covered by a particular set of regulations or to expand them to the full extent of that authority.

FRA, as the Secretary's delegate, has had jurisdiction over all "railroads" since the Act was enacted. There is a very wide range of operations that could be considered tourist railroads under the broadest reading of the term "railroad." Tourist railroads have written several letters to members of Congress questioning the basis for FRA's assertion of jurisdiction. Additionally, in 1992, FRA received a petition from a scenic railway requesting the need for legislative and regulatory action for new regulations tailored specifically to the tourist rail industry.

In an effort to clarify the proper extent of the exercise of FRA's jurisdiction, FRA settled on several principles that will be used as current guidelines. FRA will exercise jurisdiction over all tourist operations, whether or not they operate over the general railroad system, *except* those that are (1) less than 24 inches in gage and/or (2) insular.

To determine insularity, FRA looks at various criteria that measure the likelihood that a railroad's operations might affect a member of the public. FRA has concluded that a tourist operation is insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. An operation is *not* considered insular if one or more of the following exists on its line: (a) a public highway-rail

crossing that is in use; (b) an at-grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad. Thus, the mere fact that a tourist operation is not connected to the general system does not make it insular under these criteria. While these criteria tend to sort out the insular theme parks and museums, a need to do case-by-case analysis in certain close situations still exists.

Therefore, FRA has concluded that part 225 will apply to non-general system, non-insular tourist operations confined to an installation that is not part of the general system (*i.e.*, it is a stand-alone with no freight traffic but has one or more features that preclude its being considered insular).

2. Definitions (§ 225.5)

Section 225.5 lists definitions applicable to part 225. Section 225.5 would be reorganized so that definitions would appear in alphabetical order and without paragraph designations. The definitions of "accident/incident," "employee human factor," "medical treatment," "occupational illness," and "railroad" would be revised, and the definitions of "day away from work," "day of restricted work activity," "establishment," "first aid treatment," "FRA representative," "non-train incident," "person," "qualified health care professional," "volunteer," "work environment," "worker on duty," and "work related" would be added. The definitions of "lost workdays" and "restriction of work or motion" would be deleted.

a. *Revised definitions.* "Accident/Incident" as currently defined, is the term used to describe the *entire* list of reportable events including fatalities, injuries and illnesses, collisions, derailments, and similar accidents involving the operation of on-track equipment causing reportable damage above an established threshold as well as impacts between railroad on-track equipment and highway users at grade crossings.

A "train accident" is reported *only* when reportable damages exceed the reporting threshold. In contrast, an "incident" is an event that results in a reportable casualty, but does not cause reportable damage above the threshold established for train accidents. In order to minimize any confusion concerning the "accident/incident" distinction and to bring about consistency between the FRA Guide and other rail safety regulations, FRA proposes to define "train accident," "train incident," and "non-train incident" separately.

Thus, a "*train accident*" would be defined to include any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

A "*train incident*" would be defined as an event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the threshold established for train accidents.

In the definition of "*employee human factor*," the reference to "cause code 506" would be removed as obsolete and replaced by the term "train accident cause codes pertaining to non-railroad workers." Additionally, the term "employee human factor" would be changed to "worker human factor."

The definition of "*medical treatment*" would be revised to include any medical care or treatment beyond "first aid" regardless of who provided such treatment. Medical treatment does not include diagnostic procedures, such as X-rays or drawing blood samples.

In the definition of "*occupational illness*," the reference to "his or her railroad employment" would be replaced with the phrase "worker's railroad employment."

"*Railroad*" would be defined as it is in 49 U.S.C. 20102 (formerly contained in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

b. *Proposed new definitions.* A "day away from work" would be defined as any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad worker does not report to work for reasons associated with his or her condition.

A "*day of restricted work activity*" would be defined as any day that a worker is restricted (as defined below) in his or her job following the day of the injury or diagnosis of occupational illness.

An "*establishment*" would be defined as a physical location where business is conducted or where services or operations are performed.

"*First aid treatment*" would be defined as being limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, or splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

"*FRA representative*" would be defined to include the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

A "*non-train incident*" would be defined as an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

In the definition of "*person*," independent contractors and their employees and workers, as well as volunteers would be added to the current list of entities.

A "*qualified health care professional*" would be defined to include a professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of silicosis.

A "*volunteer*" would be defined to include individuals who willingly perform a service for the reporting railroad, who do not receive direct monetary compensation from that railroad and who are not involved in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting railroad as described in § 209.303.

"*Work environment*" would be defined as the physical location, equipment, materials processed or used, and activities of a worker associated with his or her work, whether on or off the railroad's property.

"*Work related*" would be defined to include any incident, activity, exposure, etc. occurring within the work environment.

A "*worker on duty*" would be defined as an individual who receives direct monetary compensation from the railroad and who is engaged in either (i) the operation of on-track equipment or (ii) with any other safety-sensitive function as described in § 209.303.

3. Public Examination and Use of Reports (§ 225.7)

In § 225.7(a), reference to "Executive Director" would be removed as obsolete, and would be replaced with "Office of Safety." Thus, written requests for a copy of any report would be addressed to the Office of Safety at FRA.

In § 225.7(b), "Accident Reports Act" would replace the erroneous reference to "Accidents Reports Act."

4. Reporting of Accidents/Incidents (§ 225.11)

Section 225.11 would be revised to reflect that reports identified in § 225.19 submitted via magnetic media would be due within 30 days after the end of the month in which the accident/incident occurred.

5. Primary Groups of Accidents/Incidents (§ 225.19)

Proposed revisions to § 225.19(a) and (b) would remove reference to the current threshold of "$6,300" and would replace it with the phrase "current reporting threshold of (insert current reporting threshold)."

In addition, § 225.19(d), which identifies the third group of accidents ("death, injury or occupational illness") that are to be reported on Form FRA F 6180.55a, would be simplified to read as follows: "Each event arising from the operation of a railroad, must be reported on Form FRA F 6180.55a, if it results in (1) death; (2) injury to any person that requires medical treatment; (3) injury to a railroad worker that results in (i) a day away from work; (ii) restricted work activity or job transfer; or (iii) loss of consciousness; or (4) occupational illness of a railroad worker.

6. Forms (§ 225.21)

In addition to the revisions to the titles of the Forms listed in § 225.21, reference to "Class I and II line-haul and terminal and switching railroads" in § 225.21(b), would be removed as obsolete, and replaced with "All railroads subject to this part."

Because FRA is proposing deletion of the annual summary report (as discussed previously in this NPRM), reference to Form FRA F 6180.45 (entitled "Annual Summary Report of Railroad Injury and Illness") in § 225.25(f) would be removed.

The proposed logs/forms discussed in new §§ 225.25(a) and (b) would be added to the list of forms as § 225.21(h), (Form FRA F 6180.XX—Railroad Worker Injury and Illness Log), and as § 225.21(i), (Form FRA F 6180.XX(a)—Rail Equipment Accident/Incident Log). Additionally, the "Property Damage Estimate Worksheet and Record" (Form FRA F 6180.xx(b)) would be added to the list of forms as § 225.21(j).

7. Penalties (§ 225.29)

Section 225.29 identifies the penalties FRA may impose upon any person that violates any requirement of this part. Any person who violates any requirement of this part or causes the violation of any such requirement of this part will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. Appendix A provides the revisions to the schedule of penalties under part 225.

8. Access to Records (Proposed § 225.41)

FRA inspectors frequently encounter reluctance from the railroads when examining and photocopying claims department records, particularly railroad worker medical records. New § 225.41 would provide FRA representatives, or any representative of a State participating in investigative and surveillance activities under the Federal railroad safety laws and regulations, access to all records, logs, and supplementary records related to (a) rail-equipments accidents/incidents, including collisions and derailments; (b) highway-rail grade crossing accidents/incidents; and (c) death, injuries, and illnesses, including claims and medical records, for examination and photocopying (at no expense to the representative) in a reasonable manner during normal business hours. Further, a penalty has been proposed for each instance the railroad denies a representative access to any record, log, and supplementary record identified above.

9. Schedule of Penalties (Proposed Revision to § 225.33)

Appendix B would be redesignated as Appendix A and would be revised to add penalties for proposed § 225.33, "Failure to adhere to Internal Control Plan," proposed § 225.39, "Failure to Inform Employer of Injury and/or Illness" and "Failure to Provide Worker with a Copy of Form FRA F 6180.XX(a)," and proposed § 225.41, "Access to Records." Additionally, the dual entries under each of paragraphs (a), (b), and (d) of § 225.12 would be coded "(1)" and "(2)," respectively, to allow the proper entry of data into FRA's enforcement database. Further, the penalties for violations of § 225.12(a) code (2) would be increased, in light of the 1992 amendments to the Federal Railroad Safety Act which increased the minimum penalty and settlement to $500.

10. Revision of Title 49, United States Code

On July 5, 1994, all Federal railroad safety laws were simultaneously repealed, reenacted without substantive change, and recodified as positive law in Title 49 of the U.S. Code by Public Law 103–272. Due to this change, part 225 would be amended throughout to reference the newly codified provisions.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rulemaking has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This NPRM also had been reviewed under Executive Order 12866 and is considered "nonsignificant" under that Order.

Although the rulemaking is "nonsignificant," FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the proposed rule. The regulatory evaluation estimates the economic costs and consequences of this proposed rule as well as its anticipated benefits and impacts. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. There is no direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule contains proposed information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget (OMB) for approval under the provisions of the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are set forth in the table below. Note that for easy reference, when an information collection requirement has been revised, the old burden estimate appears in parentheses beside the new burden.

Proposed section	Brief description	New burden (estimated)	Previous burden
225.19(c), 225.21(b)	Form FRA F 6180.54—Rail Equipment Accident/Incident Report.	2 hrs	(2 hrs.)
225.19(d), 225.21(c)	Form FRA F 6180.55a—Railroad Injury and Illness Summary (Continuation Sheet).	10 min	(5 min.)
225.21(b)	Form FRA F 6180.55—Railroad Injury and Illness Summary	45 min	(45 min.)
225.21(d)	Form FRA F 6180.56—Annual Railroad Report of Manhours and Casualties, by State.	3 hrs	(3 hrs.)
225.19(b), 225.21(e)	Form FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report.	4 hrs	(3 hrs.)
225.21(g)	Form FRA F 6180.78—Notice to Railroad Worker Involved in Rail Equipment Accident/Incident Attributed to Worker Human Factor; Worker Statement Supplementing Railroad Accident Report.	15 min	(15 min.)
225.21(h), 225.25(a)	Form FRA F 6180.xx—Railroad Worker Injury and Illness Log	30 min	(22 min.)
225.21(i), 225.25(b)	Form FRA F 6180.xx(a)—Rail Equipment Accident/Incident Log.	30 min	(New)
225.21(j), 225.25(b)	Form FRA F 6180.xx—Property Damage Estimate Worksheet and Record.	45 min	(New)
225.25(e)	Monthly List of Injuries and Illnesses	5 hrs 30 min. (RR with 400,000 manhours or more excluding Class I RR). 10 min. (RR with less than 400,000 manhours). NOTE: Old burden estimate was 3 hours annually per railroad.	(Class I RR)
225.33(a)	Internal Control Plans	85 hrs. (New— Class I RR). 64 hrs. (New—RR with 400,000 manhours or more excluding Class I RR). 18 hrs. (New—RR with less than 400,000 manhours).	
225.37(b)	FRA F Form 6180.xx—Batch Control Form	10 min	(New)
225.39(a)	Employer Notification	15 min	(New)
225.39(b)	Copy of Railroad Worker Injury and Illness Log to Worker	5 min	(New)

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street, SW., Washington DC 20590; and to the FRA Desk Officer, Regulatory Policy Branch (OMB No. 2130–0500), Office of Management and Budget, New Executive Office Bldg., 726 Jackson Place, NW., Washington, DC 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

These revised and/or new information collection requirements together with the unchanged information collection requirements contained in 49 CFR part 225 will be submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this proposed rule will not have any effect on the quality of the environment.

Federalism Implications

This proposed rule should not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 225

Railroad accident reporting rules, Railroad safety.

Request for Public Comment

FRA proposes to amend part 225 of title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or

participation at the public hearings, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA amends part 225, Title 49, Code of Federal Regulations to read as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 is amended to read as follows:

Authority: 49 U.S.C. 20901, 20102, 322(a), 21302, 21304, 20901, formerly codified at 45 U.S.C. 38, 42, 43, and 43a; 49 U.S.C. 20102–20103, 20107, 20108, 20110, 20131–20143, 21301–21302, 21304, 21311, 24902, formerly codified at 45 U.S.C. 431, 437, and 438; 49 U.S.C. 103, 49 U.S.C. 20901–20902, 21302, formerly codified at 49 App. U.S.C. 1655(e)(1)(K); Pub. L. 103–272 and 49 CFR 1.49 (c), (g), and (m).

2. By revising § 225.3 to read as follows:

§ 225.3 Applicability.

This part applies to all railroads except—

(a) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or an owner of railroad track that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation.

(b) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail grade crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

3. By revising § 225.5 to read as follows:

§ 225.5 Definitions.

As used in this part—

Arising from the operation of a railroad includes all activities of a railroad that are related to the performance of its rail transportation business.

Day away from work is any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad worker does not report to work for reasons associated with his or her condition.

Day of restricted work activity is any day that a worker is restricted (as defined below) in his or her job following the day of the injury or diagnosis of occupational illness.

Establishment means a single physical location where business is conducted or where services or operations are performed, for example, an operating division, general office, and major installation, such as a locomotive or car repair or construction facility.

First aid treatment means treatment limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, and splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

FRA representative means the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

Highway-rail grade crossing means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Joint operations means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part or operation of a train, locomotive, car, or other on-track equipment by one railroad over the track of another railroad.

Medical treatment includes any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples.

Non-train incident means an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

Occupational illness means any abnormal condition or disorder of a railroad worker, other than one resulting from injury, caused by environmental factors associated with the worker's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Person includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of silicosis.

Railroad means any form of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul railroad passenger service in a metropolitan or suburban area, as well as any commuter railroad service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad worker human factor includes any of the accident causes signified by the train accident cause codes listed under "Train Operation—Human Factors" in the current "FRA Guide for Preparing Accident/Incident Reports," except for those train accident cause codes pertaining to non-railroad workers.

Train accident means any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

Train incident means any event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the current threshold established for train accidents.

Volunteer includes individuals who willingly perform some sort of service for the reporting railroad without receiving direct monetary compensation from that railroad and are not engaged in either (1) the operation of on-track equipment or (2) any other rail safety-

sensitive function for the reporting railroad as described in § 209.303 of this chapter.

Work environment is the physical location, equipment, materials processed or used, and activities of a railroad worker associated with his or her work, whether on or off the railroad's property.

Work related means related to any incident, activity, exposure, or the like occurring within the work environment.

Worker on duty includes individuals who receive monetary compensation from the reporting railroad, and who are engaged in either (1) the operation of on-track equipment or (2) any other rail safety-sensitive function for the reporting railroad as described in § 209.303.

4. By removing "Executive Director" in the third sentence in § 225.7(a) and adding in lieu thereof "Office of Safety" and by removing "Accidents Reports Act" in the first sentence in § 225.7(b) and adding in lieu thereof "Accident Reports Act".

5. By revising the second sentence in § 225.11 to read as follows:

§ 225.11 Reporting of accidents/incidents.

* * * The report must be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of magnetic media, as prescribed in § 225.37, and must be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. * * *

6. By revising the second sentence in § 225.19(b), by revising the first, third, and fifth sentences of § 225.19(c), and by revising § 225.19(d) to read as follows:

* * * * *

(b) * * * In addition, whenever a highway-rail grade crossing accident/incident results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F 6180.54. * * *

(c) * * * Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, track equipment (standing or moving) that result in damages greater than the current reporting threshold to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * * If the property of more than one railroad is involved in an accident/incident, the reporting threshold is calculated by including the damages suffered by all of the railroads involved. * * * The reporting threshold will be reviewed periodically and will be adjusted every year.

(d) *Group III—Death, injury, or occupational illness.* Each event arising from the operation of a railroad, must be reported on Form FRA F 6180.55a, if it results in:

(1) Death;

(2) Injury to any person that requires medical treatment;

(3) Injury to a railroad worker that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness, or

(4) Occupational illness of a railroad worker.

* * * * *

7. By revising the fourth sentence in § 225.21(b), by removing § 225.21(f) and redesignating §§ 225.21(g) and 225.21(h) as §§ 225.21(f) and 225.21(g), respectively and by adding new §§ 225.21(h), (i), and (j) to read as follows:

* * * * *

(b) * * * All railroads subject to this part, must show on this form the total number of locomotive train miles, motor train miles, and yard switching miles run during the month, computed in accordance with Train-Mile, Locomotive-Mile, Car-Mile, and Yard Switching accounts in the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission in 49 CFR part 1200.

* * * * *

(h) *Form FRA F 6180.xx—Railroad Worker Injury and Illness Log.* Form FRA F 6180.xx shall be used by the railroads to record all reportable and recordable injuries and illnesses to railroad workers for each establishment. This form shall be completed and maintained in accordance with the requirements set forth in § 225.25.

(i) *Form FRA F 6180.xx(a)—Rail Equipment Accident/Incident Log.* Form FRA F 6180.xx(a) shall be used by the railroads to record all reportable and recordable rail equipment accidents/incidents for each establishment. This form shall be completed and maintained in accordance with the requirements set forth in § 225.25.

(j) *Form FRA F 6180.xx(b)—Property Damage Estimate Worksheet and Record.* Form FRA F 6180.xx(b) shall be used by the railroads to determine the total accident cost for any rail equipment accident/incident. This form shall be completed in accordance with instructions on the form and in the current "FRA Guide for Preparing Accident/Incident Reports" and shall be maintained in accordance with the requirements set forth in § 225.25.

8. By revising § 225.25 to read as follows:

§ 225.25 Recordkeeping.

(a) Each railroad shall maintain the Railroad Worker Injury and Illness Log (Form FRA F 6180.xx) of all reportable and recordable injuries and illnesses to railroad workers for each railroad establishment, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) Each railroad shall maintain the Rail Equipment Accident/Incident Log (Form FRA F 6180.xx(a)) and Property Damage Estimate Worksheet and Record (Form FRA F 6180.xx(b)) of reportable and recordable collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind for each railroad establishment.

(c) Each railroad must enter each reportable and recordable injury and illness and each reportable and recordable rail equipment accident/incident on the appropriate log, as required by paragraphs (a) and (b) of this section, as early as practicable but no later than seven working days after receiving information that an injury or illness or rail equipment accident/incident has occurred.

(d) The logs required under paragraphs (a) and (b) of this section may be maintained at the local establishment or alternatively, at a centralized location. If the logs are maintained at a centralized location, but not through electronic means, a paper copy of the logs that is current within 35 days of the month to which it applies must be available for that establishment. If the logs are maintained at a centralized location through electronic means, then the logs for that establishment must be available for review in a hard copy format within four business hours of FRA's request.

(e) A listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location at each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. This listing shall be posted in a conspicuous

location so that it may be observed by workers at that establishment and shall remain continuously displayed for at least 60 consecutive days. Incidents reported for workers at that establishment shall be displayed in date sequence.

(1) The listing shall contain the following information:

(i) Name and address of the establishment;

(ii) Calendar year of the cases being displayed;

(iii) Incident number used to report case;

(iv) Date of injury or illness;

(v) Location of incident;

(vi) Regular job title of worker injured or ill;

(vii) Description of the injury/condition;

(viii) Number of days absent from work at time of posting;

(ix) Number of days of work restriction at time of posting;

(x) Date of death, if worker died;

(xi) Annual average number of railroad workers reporting to this establishment;

(xii) Name, title, phone number, and signature of preparer; and

(xiii) Date of report.

(2) When there were no reportable injuries or occupational illnesses associated with an establishment, the posting shall make reference to this fact.

9. By revising the first sentence in § 225.27(a) and by adding new § 225.27(c) as follows:

§ 225.27 Retention of records.

(a) Each railroad must retain all logs, and listings, required by § 225.25 for at least 5 years after the end of the calendar year to which they relate. * * *

* * * * *

(c) Each railroad must identify one or more central locations where all reports filed under § 225.21 are maintained and available for photocopying as addressed in § 225.41.

10. By removing "$250" in the first sentence in § 225.29 and adding in lieu thereof "$500".

11. By adding new § 225.33 as follows:

§ 225.33 Internal Control Plans.

(a) Each railroad must maintain a written Internal Control Plan that shall include, at a minimum, each of the following components:

(1) A brief description of the railroad organization, including identification of (i) all components that regularly come into possession of information pertinent to the preparation of reports under this part (*e.g.*, medical, claims, and legal departments; operating, mechanical, and track structures departments; payroll, accounting, and personnel departments); (ii) the name and title of each railroad reporting officer; (iii) the name and title of each manager of such components, by component; and (iv) all officers to whom managers of such components are responsible, by component.

(2) Identification (categorically or individually) of all positions within the components identified in paragraph (a)(1) of this section whose incumbents have access to such information and responsibility for transferring the information to the railroad reporting officer.

(3) Procedures for timely, periodic transfer of information to the railroad reporting officer from each component identified in paragraph (a)(1) of this section, including transfer of updated or corrected information, and notification that a new claim has been opened by a railroad worker.

(4) Specification of the railroad officer responsible for auditing the performance of the reporting function, a statement of the frequency (not less than once per calendar year) with which audits are conducted, and a description of the place where the most recent audit report may be found for inspection and photocopying.

(5) Identification of any computerized databases necessary or useful in gathering or verifying data required to be reported under this part, the fields within such databases that are necessary or useful for this purpose, and the officers and workers responsible for maintaining or accessing this data for purposes of this part.

(6) A description of the method by which all pertinent officers and workers of the railroad having responsibility for information required to be reported are apprised of their responsibilities, including any training necessary to make such officers and workers aware of the duty of the railroad to report the information in question.

(7) A procedure for resolving, within the railroad, whether conditions or events of claimed or marginal reportability are properly reportable.

(8) Procedures and assignment of responsibility for development and accurate reporting of normalizing statistics (train miles, work hours).

(b) Each railroad must make a reasonable and conscientious effort to adhere to the Plan.

12. By adding new § 225.37 as follows:

§ 225.37 Computer magnetic media transfer.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of magnetic media (computer diskette or magnetic tape): the Rail Equipment Accident/Incident Report (Form FRA F 6180.54), the Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a), and the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57).

(b) Each railroad utilizing the magnetic media option shall submit the following:

(1) the computer diskette or magnetic tape;

(2) a batch control form, signed by the railroad's reporting officer, as prescribed in the "FRA Guide for Preparing Accident/Incident Reports"; and

(3) a notarized hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55), signed by the railroad's reporting officer.

(c) In addition to fulfilling the requirements stated in paragraph (b) of this section, the railroad must also submit the hard copy report(s) for each accident/incident it reports by means of magnetic media during an initial three-month assimilation period. The three-month assimilation period will begin whenever the magnetic media and hard copies of the report are in total agreement, as determined in writing by FRA.

13. By adding new § 225.39 to read as follows:

§ 225.39 Employer Notification and Copy of "Railroad Worker Injury and Illness Log" to Worker.

(a) Each railroad worker must notify his or her employer, in writing, of any reportable or recordable injury or illness within seven calendar says of either incurring that reportable or recordable injury or illness or obtaining knowledge of incurring such injury or illness.

(b) Each railroad shall provide the worker whose injury or illness is reported on the Railroad Worker Injury and Illness Log, Form FRA F 6180.XX, with a copy of such log within seven calendar days of completing the log.

14. By adding new § 225.41 to read as follows:

§ 225.41 Access to records.

All reports, logs, plans, and records (including relevant claims and medical records) provided for in this part shall, upon request, be made available to any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under Part 212 of

this chapter, for examination and photocopying in a reasonable manner during normal business hours at a central locations(s) identified pursuant to § 225.27(c). Such representatives shall display proper credentials when requested.

15. By removing Appendix A.

16. By redesignating Appendix B as Appendix A and by revising newly redesignated Appendix A to read as follows:

APPENDIX A TO PART 225.—SCHEDULE OF CIVIL PENALTIES

Section (including computer code, if applicable)	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	$1,000	$2,000
225.11 Reports of accidents/incidents	2,500	5,000
225.12(a):		
Failure to file Railroad Worker Human Factor Attachment properly:		
(1) Worker identified	2,500	5,000
(2) No worker identified	1,000	2,000
225.12(b):		
(1) Failure to notify worker properly	2,500	5,000
(2) Notification of worker not involved in accident	2,500	5,000
225.12(c):		
Failure of employing railroad to provide requested information properly	1,000	2,000
225.12(d):		
(1) Failure to revise report when identity becomes known	2,500	5,000
(2) Failure to notify after late identification	2,500	5,000
225.12(f)(1):		
Submission of notice if worker dies as result of the reported accident	2,500	5,000
225.12(g):		
Willfully false accident statement by worker		5,000
225.13 Late reports	2,500	5,000
225.17(d) Alcohol or drug involvement	2,500	5,000
225.23 Joint operations	(1)	(1)
225.25 Recordkeeping	2,500	5,000
225.27 Retention of records	1,000	2,000
225.33 Failure to adhere to Internal Control Plan	2,500	5,000
225.39:		
(1) Failure to inform employer of injury/illness		1,000
(2) Failure to provide worker with a copy of Form FRA F 6180.XX(a)	2,500	5,000
225.41 Access to records	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular worker's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

17. In addition to the amendments set forth above, in 49 CFR part 225 remove the word "rail-highway" and add, in its place, the word "highway-rail" in the following places:

(a) §§ 225.5(b) (1) and (h);

(b) § 225.12(b)(2)(iii);

(c) § 225.13;

(d) § 225.15(a);

(e) §§ 225.19 (a) and (b); and

(f) § 225.21(e);

18. In part 225, all references to "an employee" are revised to read "a worker".

19. In part 225, all references to "employee" and "employees" are revised to read "worker" and "workers" respectively.

Issued in Washington, DC, on August 5, 1994.

Jolene M. Molitoris,

Federal Railroad Administrator.

Note: Appendices 1 through 18 are published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 4910–06–P

PROPOSED

FRA BATCH CONTROL FOR MAGNETIC MEDIA

Rail Equipment Accident/Incident Report (Form FRA F 6180.54)	
Number of records on the tape or diskette	_____
Total equipment damage (Field Number 66, Field Name EQPDMG) for all records submitted	_____
Total track damage (Field Number 67, Field Name TRKDMG) for all records submitted	_____
Total number of cars in the consist (the sum of the fields LOADF1, LOADP1, EMPTYF1, EMPTYP1, and CABOOSE1 - Field Numbers 56, 57, 58, 59, and 60, respectively) for all records submitted	_____

Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57)	
Number of records on the tape or diskette	_____
Total vehicle damage (Field Number 56, Field Name VEHDMG) for all records submitted	_____
Total number of occupants killed (Field Number 59, Field Name TOTKLD) for all records submitted	_____
Total number of occupants (Field Number 61, Field Name TOTOCC) for all records submitted	_____

Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a)	
Number of records on the tape or diskette	_____
Total number of lost work days (Field Number 11, Field Name DAYSABS) for all records submitted	_____
Total number of days of restricted activity (Field Number 12, Field Name DAYSRES) for all records submitted	_____

Name of Reporting Officer (Type or Print)	Signature of Reporting Officer	Date

APPENDIX 1

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT

OMB Approval No. 2130-xxxx

1. Name of Reporting Railroad	1a. Alphabetic Code	1b. Railroad Accident/Incident No.
2. Name of Other Railroad Involved in Train Accident/Incident	2a. Alphabetic Code	2b. Railroad Accident/Incident No.
3. Name of Railroad Responsible for Maintenance *(single entry)*	3a. Alphabetic Code	3b. Railroad Accident/Incident No.
4. U.S. DOT-AAR Grade Crossing Identification Number	5. Date of Accident/Incident month / day / year	6. Time of Accident/Incident AM ☐ PM ☐

7. Type of Accident/Incident *(single entry in code box)*: 1. Derailment 2. Head on collision 3. Rear end collision 4. Side collision 5. Raking collision 6. Broken train collision 7. Hwy-rail crossing 8. RR grade crossing 9. Obstruction 10. Explosion-detonation 11. Fire/violent rupture 12. Other impacts 13. Other *(describe in narrative)* Code

8. Cars Carrying HAZMAT	9. HAZMAT Cars Damaged/Derailed	10. Cars Releasing HAZMAT	11. People Evacuated	12. Division

13. Nearest City/Town	14. Milepost *(to nearest tenth)*	15. State Abbr. Code	16. County

17. Temperature (F) *(specify if minus)* °F	18. Visibility *(single entry)* 1. Dawn 2. Day 3. Dusk 4. Dark Code	19. Weather *(single entry)* 1. Clear 2. Cloudy 3. Rain 4. Fog 5. Sleet 6. Snow Code	20. Type of Track 1. Main 2. Yard 3. Siding 4. Industry Code
21. Track Name/Number	22. FRA Track Class (1-6, X) Code	23. Annual Track Density *(gross tons in millions)*	24. Time Table Direction 1. North 2. South 3. East 4. West Code

25. Type of Equipment Consist *(single entry)*: 1. Freight train 2. Passenger train 3. Commuter train 4. Work train 5. Single car 6. Cut of cars 7. Yard/switching 8. Light loco(s) 9. Maint/inspect car Code

26. Was Equipment Attended? 1. Yes 2. No Code

27. Train Number/Symbol

28. Speed *(recorded speed, if available)* R - Recorded E - Estimated MPH Code

29. Trailing Tons *(gross tonnage, excluding power units)*

30. Method(s) of Operation *(enter code(s) that apply)*: a. ATCS b. Auto train control c. Auto train stop d. Cab signals e. Traffic control f. Interlocking g. Automatic block h. Current of traffic i. Time table/train orders j. Track warrant control k. Direct traffic control l. Yard limits m. Special instructions n. Other time zone track rules o. Other *(specify in narrative)*

Code(s)

31. Principle Car/Unit	a. Initial and Number	b. Position in Train	c. Loaded *(yes/no)*
(1) First Involved *(derailed, struck, etc.)*			
(2) Causing *(if mechanical, cause reported)*			

32. If any railroad workers tested for drug or alcohol impairment, enter codes from reporting manual. Code(s)

33. If the consist was transporting passengers, enter the number.

34. Locomotive Units	a. Head End	Mid Train b. Manual	Mid Train c. Remote	Rear End d. Manual	Rear End e. Remote
(1) Total in Train					
(2) Total Derailed					

35. Cars	Loaded a. Freight	Loaded b. Pass.	Empty c. Freight	Empty d. Pass.	e. Caboose
(1) Total in Equipment Consist					
(2) Total Derailed					

36. Equipment Damage This Consist	37. Track, Signal, Way, & Structure Damage	38. Primary Cause Code	39. Contributing Cause Code

Number of Crew Members				Length of Time on Duty	
40. Engineers/Operators	41. Firemen	42. Conductors	43. Brakemen	44. Engineer/Operator Hrs: Mins:	45. Conductor Hrs: Mins:

Casualties to	Fatal	Nonfatal	49. Special Study Block *(Optional)*
46. Rail Workers			
47. Train Passengers			
48. Others			

50. Narrative Description *(Be specific, continue on separate sheet if necessary)*

51. Typed/Printed Name & Title of Preparer	52. Signature	53. Date

FORM FRA F 6180.xx

APPENDIX 2

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT

FORM APPROVED
OMB NO.2130-0002

1. NAME OF REPORTING RAILROAD — Amtrak ☐ Autotrain ☐ | 1a. Alphabetic Code | 1b. Railroad Accident/Incident No.

2. NAME OF OTHER RAILROAD INVOLVED IN TRAIN ACCIDENT/INCIDENT | 2a. Alphabetic Code | 2b. Railroad Accident/Incident No.

3. NAME OF RAILROAD RESPONSIBLE FOR TRACK MAINTENANCE *(single entry)* | 3a. Alphabetic Code | 3b. Railroad Accident/Incident No.

4. U.S. DOT-AAR GRADE CROSSING IDENTIFICATION NUMBER | 5. DATE OF ACCIDENT/INCIDENT month | day | year | 6. TIME OF ACCIDENT/INCIDENT am ☐ pm ☐

7. TYPE OF ACCIDENT/INCIDENT *(enter number in code box, single entry)* — CODE

1. Derailment 2. Head on collision 3. Rear end collision 4. Side collision 5. Raking collision 6. Broken train collision 7. Rail-Hwy crossing 8. RR grade crossing 9. Obstruction 10. Explosion-Detonation 11. Fire or violent rupture 12. Other *(specify)*

HAZARDOUS MATERIALS *(number of)*

8. CARS CARRYING | 9. CARS DAMAGED OR DERAILED | 10. CARS WHICH RELEASED HAZ. MAT. | 11. PEOPLE EVACUATED *(est.)*

LOCATION

12. DIVISION | 13. NEAREST STATION | 14. MILEPOST *(to nearest tenth)* | 15. STATE *(two letter code)* — CODE

ENVIRONMENTAL CONDITIONS

16. TEMPERATURE *(specify if metric)* °F | 17. VISIBILITY *(single entry)* 1. Dawn 2. Day 3. Dusk 4. Dark — CODE | 18. WEATHER *(single entry)* 1. Clear 2. Cloudy 3. Rain 4. Fog 5. Sleet 6. Snow — CODE

OPERATIONAL DATA

19. METHOD *(place X in appropriate box(es))*

1 ☐ Manual block
2 ☐ Interlocking
3 ☐ Cab signal
4 ☐ Automatic block
5 ☐ Traffic control
6 ☐ Auto. train stop
7 ☐ Yard rules
8 ☐ Time table
9 ☐ Radio
10 ☐ Auto. train control
11 ☐ Verbal permission
12 ☐ Train orders
13 ☐ Other *(specify)*

20. SPEED *(recorded speed, if available)* Est. ☐ MPH Recorded ☐ | 21. TRAIN NUMBER | 22. TIME TABLE DIRECTION 1. North 2. South 3. East 4. West — CODE

EQUIPMENT

23. TRAILING TONS *(gross tonnage, excluding power units)* | 24. TYPE OF EQUIPMENT CONSIST *(single entry)* 1. Freight train 2. Passenger train 3. Mixed train 4. Work train 5. Single car 6. Cut of cars 7. Yard/switching 8. Light loco(s) — CODE | 25. WAS THE EQUIPMENT IDENTIFIED IN ITEM 24 UNATTENDED? 1. Yes 2. No — CODE

26. TRACK NUMBER OR NAME | 27. FRA TRACK CLASSIFICATION | 28. ANNUAL TRACK DENSITY *(gross tons in millions)* | 29. TYPE OF TRACK 1. Main 2. Yard 3. Siding 4. Industry — CODE

30. PRINCIPLE CAR/UNIT	30a. Initial and Number	30b. Position in Train	30c. Loaded *(yes or no)*
(1) First Involved *(derailed, struck, striking, etc.)*			
(2) Causing *(mechanical failures)*			

31. LOCOMOTIVE UNITS *(no. of)*	a. Head End	Mid Train b. Manual	Mid Train c. Remote	Rear End d. Manual	Rear End e. Remote	32. CARS *(no. of)*	Loaded a. Freight	Loaded b. Pass.	Empty c. Freight	Empty d. Pass.	e. Caboose
(1) Total in Train						(1) Total in Equipment Consist					
(2) Total Derailed						(2) Total Derailed					

PROPERTY DAMAGE *(estimated cost, including labor, to repair or replace)*

33. EQUIPMENT DAMAGE *(to be reported for this equipment consist only)* $ | 34. TRACK, SIGNAL, WAY AND STRUCTURES DAMAGE *(to be reported by railroad in item 3 only)* $

ACCIDENT/INCIDENT CAUSE CODE

35. PRIMARY CAUSE — CODE | 36. CONTRIBUTING CAUSE — CODE | 37. If no code available, explain cause.

CASUALTIES

38. NUMBER OF PERSONS INJURED | 39. ESTIMATED TOTAL DAYS DISABILITY | 40. NUMBER OF FATALITIES

CREW *(no. of)*

41. ENGINEERS | 42. FIREMEN | 43. CONDUCTORS | 44. BRAKEMEN

HOURS ON DUTY

45. ENGINEER Hrs. Mins. | 46. CONDUCTOR Hrs. Mins.

47. TYPED NAME AND TITLE | 48. SIGNATURE | 49. DATE

50. NARRATIVE DESCRIPTION – *Describe the cause, nature and circumstances of accident/incident*

FORM FRA F 6180-54 (12-74) REPLACES FORM FRA F 6180-15 (11-72) WHICH IS OBSOLETE

APPENDIX 3

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAILROAD INJURY AND ILLNESS SUMMARY

(Continuation Sheet)

OMB Approval No. 2130-xxxx

SHEET ___ OF ___

1. Name of Reporting Railroad	2. Alphabetic Code	3. Report Month	4. Report Year

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age	5h. Gender	5i. Ethnic Code

5j. Drug/ Alcohol	5k. Injury Illness Code	5l. Occurrence Code	5m. Physical Act	5n. Location	5o. Event	5p. Result	5q. Cause	5r. Number of Days Away From Work	5s. Number of Days Restricted	5t. Cases Without Lost Days	5u. Exposure to Hazmat	5v. Terminations or Permanent Transfers

5w. Narrative (Up to 250 Characters)

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age	5h. Gender	5i. Ethnic Code

5j. Drug/ Alcohol	5k. Injury Illness Code	5l. Occurrence Code	5m. Physical Act	5n. Location	5o. Event	5p. Result	5q. Cause	5r. Number of Days Away From Work	5s. Number of Days Restricted	5t. Cases Without Lost Days	5u. Exposure to Hazmat	5v. Terminations or Permanent Transfers

5w. Narrative (Up to 250 Characters)

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age	5h. Gender	5i. Ethnic Code

5j. Drug/ Alcohol	5k. Injury Illness Code	5l. Occurrence Code	5m. Physical Act	5n. Location	5o. Event	5p. Result	5q. Cause	5r. Number of Days Away From Work	5s. Number of Days Restricted	5t. Cases Without Lost Days	5u. Exposure to Hazmat	5v. Terminations or Permanent Transfers

5w. Narrative (Up to 250 Characters)

FORM FRA F 6180.xx

APPENDIX 4

U.S. Department of Transportation
Federal Railroad Administration

RAILROAD INJURY AND ILLNESS SUMMARY
(CONTINUATION SHEET)

FORM APPROVED
OMB NO 2130-0500

SHEET ____ OF ____

1. NAME OF REPORTING RAILROAD	2. ALPHABETIC CODE	3. REPORT MONTH

9.

CASUALTIES *(Cont.)*

a. ACCIDENT/ INCIDENT NUMBER	b. TYPE PERSON OR JOB CODE	c. INJURY OR ILLNESS CODE	d. OCCURRENCE CODE	e. AGE	f. NUMBER OF DAYS AWAY FROM WORK	g. NUMBER OF DAYS OF RESTRICTED ACTIVITY	h. CASES WITHOUT LOST WORK DAYS	i. STATE ALPHABETIC CODE

FORM FRA F 6180-55a (Rev 1-88)

APPENDIX 5

BILLING CODE 4910-06-C

Proposed Circumstance Codes—Physical Act Engaged in at Time of Incident

Examples:

Physical Act = Adjusting Coupler/Drawbar = 01
Physical Act = Standing = 60

Code List

01 Adjusting Coupler/Drawbar
02 Applying/Removing Anchors
03 Bending
04 Carrying
05 Chaining/Cabling Car/Locomotive
06 Cleaning Car
07 Cleaning Engine
08 Cleaning (Other)
09 Climbing
10 Coupling/Uncoupling Air Hoses
11 Coupling/Uncoupling Steam Hoses/Electric Cables
12 Crawling Under
13 Crossing
14 Cutting Brush
15 Cutting Rail
16 Cutting (Other)
17 Digging
18 Driving (Use for Motorized Vehicles Only)
19 Fueling
20 Getting Off
21 Getting On
22 Handling Material (General)
23 Handling Poles
24 Handling Rail
25 Handling Ties
26 Handling Tie Plates
27 Handling Wheels/Trucks
28 Handling (Other)
29 Horseplay
30 Inspecting Car
31 Inspecting Train
32 Inspecting (Other)
33 Jumping
34 Laying Material
35 Lifting Equipment
36 Lifting Material
37 Nipping Ties
38 Opening/Closing Door
39 Opening/Closing Window
40 Operating Derail
41 Operating Hand Brake
42 Operating Machinery (Except Power Tool)
43 Operating Power Tool
44 Operating Switch
45 Operating (Other)
46 Passing Signals
47 Performing Rerailing
48 Performing Maintenance (General)
49 Performing (Other)
50 Pulling
51 Pulling Pin Lifter/Operating Uncoupling Lever
52 Pulling (Other)
53 Pushing
54 Resting
55 Riding In/On
56 Running
57 Sitting
58 Sleeping
59 Spiking
60 Standing
61 Using Fusee
62 Using Hand Tool
63 Using Jack
64 Using Other Equipment
65 Walking
66 Welding
99 Act Not Otherwise Classified

Proposed Location of Person

Examples:

Location = Between Cars = 10
Location = Ladder = 13

Code List

01 On-Track Equipment in Service
01 Between Cars/Locomotive
02 Bunk/Outfit Car
03 Caboose
04 Engine-2 Locomotive
05 Freight Car
06 Maintenance-of-Way On-Track Equipment
07 Passenger Car (Train Only)

10 Office Buildings, Locomotive Facilities, Car Repair Facilities, Yard Offices (Inside or Outside)
10 Between Cars/Locomotives
11 Chair
12 Elevator
13 Ladder (Not on a Car or Locomotive)
14 On Car
15 On Locomotive
16 Parking Lot
17 Platform/Ramp
18 Stairs
19 Under Car
19a Under Locomotive

20 Railroad Yards and Right of Way
20 Beside Track
21 Between Rails
22 Between Tracks
23 Bridge/Trestle
24 Excavation
25 Kubota
26 Track Structure
27 Tunnel

30 Railroad Elevated Structures
30 Pole
31 Scaffold
32 Tower

40 Specialized Operations
40 Container on Flat Car/Trailer on Flat Car
41 Ship/Boat/Barge

60 Highway Vehicles
60 Company Automobile
61 Company Truck
62 Company Van
63 Leased Automobile
64 Personal Automobile
65 Taxi

90 Location Not Otherwise Classified
90 Off Railroad Property
91 On Railroad Property

Proposed Unusual Event

(Initial or Outside Occurrence)

Examples:

Cause = slack action = 32
Cause = hard coupling = 17

Code List

01 Animal Bite
02 Assaulted by Worker
03 Assaulted by Non-worker
04 Cave-in
05 Close Clearance
06 Clothing Caught In
07 Collision
08 Defective Equipment
09 Derailment
10 Electrical Shock/Flash
11 Emergency Application Air Brakes
12 Explosion/Detonation (One-time sudden event)
13 Fire/Violent Rupture
14 Hair Caught In
15 Hand Caught In
16 Harassed
17 Hard Coupling
18 High Wind
19 Highway Grade Crossing Incident (When casualty resulted from HGX accident)
20 Inadequate Ventilation
21 Insect Bite
22 Lightening
23 Noise (Sustained long-term)
24 Not Work-related
25 Object, Falling
26 Object, Thrown
27 Obstruction Incident
28 Oil/Grease on Surface
29 Other Slippery Substance on Surface
30 Other (Environmental conditions)
31 Overturned
32 Slack Action
33 Snow/Ice
34 Sudden Stop/Start
35 Tornado
36 Train/Track Motor Car Collision (Not auto and train at crossing)
37 Unexpected Movement
38 Vandalism
98 Event Not Otherwise Classified
99 None

Proposed Result of the Occurrence

Examples:

Result = struck and run over = 27
Result = slipped = 22

Code List

01 Aggravation of Old Injury
02 Caught Between Equipment
03 Caught Between Material
04 Caught Between Shifted Lading
05 Caught in Machinery
06 Caught in Switch
07 Contact (Electrical, with)

08 Emotional Stress
09 Exertion
10 Exposure (to heat, cold extremes, noise, etc.)
11 Fell Against
12 Fell From
13 Fell Into
14 Fell Onto
15 Fell and Run Over
16 Fell Through
17 Inhalation
18 Irritation
19 Lost Balance
20 Rolling Equipment
21 Shocked
22 Slipped
23 Slipped and Fell
24 Splinter
25 Stepped On/In
26 Struck Against Equipment
27 Struck and Run Over
28 Struck By Equipment
29 Struck By Falling Object
30 Struck By Flying Object
31 Struck By Material
32 Struck By On-Track Equipment
33 Struck By Stationary Object
34 Struck By Suspended Object
35 Struck By Thrown Object
36 Struck By Tool While Using
37 Struck By (Other)
38 Stumbled
39 Thrown Against
40 Thrown From
41 Tripped
42 Tripped and Fell
43 Twisted

Proposed Primary Cause of the Injury/Illness

Examples:

Primary Cause = Physical Condition of Person = 11

Primary Cause = Defective Equipment = 02

Code List

01 Actions of Another Person (other than railroad worker)
02 Defective Equipment
03 Employee/Worker's Attitude
04 Environmental Conditions Within Buildings
05 Environmental Conditions Outside of Buildings
06 Environmental Conditions on Rolling Stock
07 Impairment Due to Drugs or Alcohol
08 Inexperience With the Work Practice
09 Personal Protective Equipment Not Available
10 Personal Protective Equipment Not Worn
11 Physical Condition of Person (hearing, vision, etc.)
12 Rule Violation or Actions of Another Person (other than railroad worker)
13 Rule Violation by This Person (other than railroad worker)
14 Rule Violation or Action by Another Worker
15 Rule Violation by This Worker
99 Undetermined

BILLING CODE 4910-06-P

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAILROAD INJURY AND ILLNESS SUMMARY

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad	2. Alphabetic Code	3. Report Month & Year	4. State Alphabetic Code	5. County

6. Name of Reporting Officer	7. Official Title
8. Address	9. Telephone *(Area Code) (Number)*

10.

I, _____, being first duly sworn, do say upon my oath that I
(Name of Affiant)

am _____, of the railroad aforesaid and as such officer of the said railroad it is my duty to have supervision
(Title of Office held by affiant)

over the record of reportable incidents arising from the operation of the said railroad, and that I have caused to be compiled from the said record and to be carefully examined the annexed report of such incidents occurring during the month named at the head of this sheet; and that the said report is true and complete to the best of my knowledge and belief.

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid, this _____ day of _____, 19 _____.

(Use an im-
[L.S]
pression seal) _____ _____
(Notary Public) *(Signature of affiant)*

OPERATIONAL DATA & ACCIDENT/INCIDENT COUNTS FOR REPORT MONTH

11. Freight Train Miles	12. Passenger Train Miles	13. Yard Switching Train Miles	14. Other Train Miles

15. Railroad Worker Hours	16. Passenger Miles Operated	17. Number of Passengers Transported

18. REPORTED CASUALTIES			19. NUMBER OF FRA FORMS ATTACHED	
Type of Person	Fatal	Nonfatal	FRA Form Number	Number Attached
Workers on duty			6180-55a	
Workers not on duty			6180-54	
Passengers on trains			6180-81	
Nontrespassers/on railroad property			6180-78	
Trespassers			6180-57	
Contractor employees				
Nontrespassers/off railroad property				
Volunteers				
Grand total				

20. Remarks Section. Please describe operational, environmental, or other circumstances that account for unusual fluctuations in train miles operated, worker hours, or passenger counts.

FORM FRA F 6180.xx

This report is required by law (45 USC 40). Failure to report can result in the imposition of civil penalties.

APPENDIX 7

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

RAILROAD INJURY AND ILLNESS SUMMARY

Form Approved
OMB No. 2130-0500

1. NAME OF REPORTING RAILROAD	2. ALPHABETIC CODE	3. REPORT MONTH & YEAR	4. STATE ALPHABETIC CODE	5. COUNTY

NAME OF REPORTING OFFICER	OFFICIAL TITLE
ADDRESS	TELEPHONE *(Area Code) (Number)*

6.

I, _____, being first duly sworn, do say upon my oath that I
(Name of Affiant)
am _____, of the railroad aforesaid and as such officer of the said railroad it is my duty to have supervision
(Title of Office held by affiant)
over the record of reportable incidents arising from the operation of the said railroad, and that I have caused to be compiled from the said record and to be carefully examined the annexed report of such incidents occurring during the month named at the head of this sheet; and that the said report is true and complete to the best of my knowledge and belief.

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid, this _____ day of _____, 19____

(Use an im-
[L.S]
pression seal) _____ _____
(Notary Public) *(Signature of affiant)*

7. MILES RUN DURING MONTH

A. LOCOMOTIVE TRAIN MILES	B. MOTOR TRAIN MILES	C. YARD SWITCHING MILES	D. TOTAL

8.

A. EMPLOYEE MANHOURS WORKED	B. PASSENGER MILES OPERATED	C. NUMBER OF PASSENGERS TRANSPORTED

TOTAL TRAIN ACCIDENTS	TOTAL FRA FORMS 6180-55A	TOTAL FRA FORMS 6180-54	TOTAL FRA FORMS 6180-57

SECTION A–RECAPITULATION OF ALL CASUALTIES *INCLUDING* HIGHWAY GRADE CROSSING ACCIDENT/INCIDENT CASUALTIES								CLASS OF PERSON FOR SECTIONS A AND B	SECTION B–RECAPITULATION OF ALL HIGHWAY GRADE CROSSING ACCIDENT/INCIDENT CASUALTIES							
TRAIN ACCIDENTS		TRAIN INCIDENTS		NONTRAIN INCIDENTS		TOTAL			TRAIN ACCIDENTS		TRAIN INCIDENTS		NONTRAIN INCIDENTS		TOTAL	
Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
								1. Employees on duty								
								2. Employees not on duty								
								3. Passengers on trains								
								4. Other nontrespassers								
								5. Trespassers (all classes)								
								6. Contractor Employees								
								7. GRAND TOTAL								

SECTION C–MEMORANDUM–SUBSEQUENT FATALITIES DEVELOPED FROM REPORTED CASUALTIES

LINE NO.	ACCIDENT/INCIDENT NUMBER	TYPE PERSON OR JOB CODE	DATE OF INJURY	DATE OF DEATH	STATE
1.					
2.					
3.					
4.					

FORM FRA F 6180-55 (8-76) REPLACES FORM FRA F 6180-55 (12-74) WHICH IS OBSOLETE.

APPENDIX 8

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

ANNUAL RAILROAD REPORT
OF
WORKER HOURS AND CASUALTIES, BY STATE

1. Reporting Railroad				2. Alphabetic Code	3. Report Year
4. Establishments Included in this Report			5. Average Employment During the Year		
6.					
State	Worker Hours	Casualties	State	Worker Hours	Casualties
Alabama			Montana		
Alaska			Nebraska		
Arizona			Nevada		
Arkansas			New Hampshire		
California			New Jersey		
Colorado			New Mexico		
Connecticut			New York		
Delaware			North Carolina		
District of Columbia			North Dakota		
Florida			Ohio		
Georgia			Oklahoma		
Idaho			Oregon		
Illinois			Pennsylvania		
Indiana			Rhode Island		
Iowa			South Carolina		
Kansas			South Dakota		
Kentucky			Tennessee		
Louisiana			Texas		
Maine			Utah		
Maryland			Vermont		
Massachusetts			Virginia		
Michigan			Washington		
Minnesota			West Virginia		
Mississippi			Wisconsin		
Missouri			Wyoming		
7 Total Worker Hours for the Year			8. Total Casualties During the Year		
9 Typed Name and Title			10. Signature		11. Date

FORM FRA F 6180.xx

APPENDIX 9

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

FORM APPROVED
OMB NO. 04R4034

ANNUAL RAILROAD REPORT OF MANHOURS BY STATE

1. REPORTING RAILROAD	ALPHABETIC CODE	2. REPORT YEAR

3 ANNUAL MANHOURS

A. STATE	B. CODE	C. M/HRS.	A. STATE	B. CODE	C. M/HRS.
(1) ALABAMA	AL		(26) MONTANA	MT	
(2) ALASKA	AK		(27) NEBRASKA	NE	
(3) ARIZONA	AZ		(28) NEVADA	NV	
(4) ARKANSAS	AR		(29) NEW HAMPSHIRE	NH	
(5) CALIFORNIA	CA		(30) NEW JERSEY	NJ	
(6) COLORADO	CO		(31) NEW MEXICO	NM	
(7) CONNECTICUT	CT		(32) NEW YORK	NY	
(8) DELAWARE	DE		(33) NORTH CAROLINA	NC	
(9) DISTRICT OF COLUMBIA	DC		(34) NORTH DAKOTA	ND	
(10) FLORIDA	FL		(35) OHIO	OH	
(11) GEORGIA	GA		(36) OKLAHOMA	OK	
(12) IDAHO	ID		(37) OREGON	OR	
(13) ILLINOIS	IL		(38) PENNSYLVANIA	PA	
(14) INDIANA	IN		(39) RHODE ISLAND	RI	
(15) IOWA	IA		(40) SOUTH CAROLINA	SC	
(16) KANSAS	KS		(41) SOUTH DAKOTA	SD	
(17) KENTUCKY	KY		(42) TENNESSEE	TN	
(18) LOUISIANA	LA		(43) TEXAS	TX	
(19) MAINE	ME		(44) UTAH	UT	
(20) MARYLAND	MD		(45) VERMONT	VT	
(21) MASSACHUSETTS	MA		(46) VIRGINIA	VA	
(22) MICHIGAN	MI		(47) WASHINGTON	WA	
(23) MINNESOTA	MN		(48) WEST VIRGINIA	WV	
(24) MISSISSIPPI	MS		(49) WISCONSIN	WI	
(25) MISSOURI	MO		(50) WYOMING	WY	

4. TYPED NAME AND TITLE	5. SIGNATURE	6. DATE

FORM FRA F 6180-56 (8-74) SUBMIT THIS FORM WITH THE FRA F 6180-55, DECEMBER REPORT

APPENDIX 10

PROPOSED

OMB Approval No.: 2130-xxxx

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

HIGHWAY-RAIL GRADE CROSSING ACCIDENT/INCIDENT REPORT

1. Name of Reporting Railroad
1a. Alphabetic Code
1b. Railroad Accident/Incident

2. Name of Other Railroad Involved in Train Accident/Incident
2a. Alphabetic Code
2b. Railroad Accident/Incident No.

3. Name of Railroad Responsible for Maintenance *(single entry)*
3a. Alphabetic Code
3b. Railroad Accident/Incident No.

4. U. S. DOT-AAR Grade Crossing Identification Number
5. Date of Accident/Incident: month | day | year
6. Time of Accident/Incident: AM ☐ PM ☐

7. Nearest Railroad Station
8. Division
9. County
10. State Abbr. Code

11. City *(if in a city)*
12. Highway Name or Number: Public ☐ Private ☐

Highway User Involved

13. Type — Code
a. Auto b. Truck c. Truck-trailer d. Pick-up truck e. Van f. Bus g. School bus h. Motorcycle i. Other motor vehicle k. Pedestrian m. Other *(specify)*

14. Vehicle Speed *(est. mph at impact)*

15. Direction *(geographical)* — Code
1. North 2. South 3. East 4. West

16. Position — Code
1. Stalled on crossing 2. Stopped on crossing 3. Moving over crossing

20a. Was the highway user and/or rail equipment involved in the impact transporting hazardous materials? — Code
1. Highway user 2. Rail equipment 3. Both 4. Neither

Railroad Equipment Involved

17. Equipment — Code
1. Train *(units pulling)* 2. Train *(units pushing)* 3. Train *(standing)* 4. Car(s) *(moving)* 5. Car(s) *(standing)* 6. Light loco(s) *(moving)* 7. Light loco(s) *(standing)* 8. Other *(specify)*

18. Position of Car Unit in Train

19. Circumstance — Code
1. Rail equipment struck highway user 2. Rail equipment struck by highway user

20b. Was there a hazardous materials release by — Code
1. Highway user 2. Rail equipment 3. Both 4. Neither

20c. State here the hazardous material products and quantity released, if any

21. Temperature *(specify if metric)* °F

22. Visibility *(single entry)* — Code
1. Dawn 2. Day 3. Dusk 4. Dark

23. Weather *(single entry)* — Code
1. Clear 2. Cloudy 3. Rain 4. Fog 5. Sleet 6. Snow

24. Type of Equipment Consist *(single entry)* — Code
1. Freight train 2. Passenger train 3. Commuter train 4. Work train 5. Single car 6. Cut of cars 7. Yard/switching 8. Light loco(s) 9. Maint/inspect car

25. Track Type Used by Rail Equipment Involved — Code
1. Main 2. Yard 3. Siding 4. Industry

26. Track Number or Name

27. FRA Track Class (1-6, X)

28. Number of Locomotive Units

29. Number of Cars

30. Consist Speed *(Recorded speed, if available)* — Code
R - Recorded
E - Estimated
MPH

31. Time Table Direction — Code
1. North 2. South 3. East 4. West

32. Type Crossing Warning — Code(s)
1. Gates 2. Cantilever FLS 3. Standard FLS 4. Wig wags 5. Hwy. traffic signals 6. Audible 7. Crossbucks 8. Stop signs 9. Watchman 10. Flagged by crew 11. Other *(specify)* 12. None

33. Signalized Crossing Warning — Code
(See reverse side for instructions and codes)

34. Whistle Ban — Code
1. Yes 2. No 3. Unknown

35. Signal Failure Within Last 7 Days — Code
1. Activation failure 2. False activation 3. Both 4. Unknown 5. No

36. Location of Warning — Code
1. Both sides 2. Side of vehicle approach 3. Opposite side of vehicle approach

37. Crossing Warning Interconnected with Highway Signals — Code
1. Yes 2. No 3. Unknown

38. Crossing Illuminated by Street Lights or Special Lights — Code
1. Yes 2. No 3. Unknown

39. Motorist's Age

40. Motorist's Sex — Code
1. Male 2. Female

41. Motorist Impaired — Code
1. Yes - Alcohol 2. Yes - Drugs 3. Yes - Both 4. Yes - Unknown 5. No 6. Unknown 7. Unavailable

42. Motorist Drove Behind or in Front of Train and Struck or was Struck by Second Train — Code
1. Yes 2. No 3. Unknown

43. Motorist — Code
1. Drove around or thru the gate 2. Stopped and then proceeded 3. Did not stop 4. Stopped on crossing 5. Other *(specify)*

44. Motorist Passed Standing Highway Vehicle — Code
1. Yes 2. No 3. Unknown

45. View of Track Obscured by *(primary obstruction)* — Code
1. Permanent structure 2. Standing railroad equipment 3. Passing train 4. Topography 5. Vegetation 6. Highway vehicles 7. Other *(specify)* 8. Not obstructed

Casualties to:	Killed	Injured
48. Highway Crossing Users		
51. Rail Workers		
54. Passengers		

46. Motorist was — Code
1. Killed 2. Injured 3. Uninjured

47. Was Motorist in the Vehicle? — Code
1. Yes 2. No

49. Highway Vehicle Property Damage *(est. dollar damage)*

50. Total Number of Highway Crossing Users *(include driver)*

52. Total Number of People on Train *(include passengers and train crew)*

53. Is a Rail Equipment Accident/Incident Report Being Filed? — Code
1. Yes 2. No

55. Narrative Description *(Be specific, continue on separate sheet if necessary)*

56. Typed Name and Title
57. Signature
58. Date

FRA F 6180 xx

* NOTE THAT ALL CASUALTIES MUST BE REPORTED ON FRA F 6180.55A

APPENDIX 11

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

RAIL-HIGHWAY GRADE CROSSING ACCIDENT/INCIDENT REPORT

FORM APPROVED
OMB NO. 04R4033

1. NAME OF REPORTING RAILROAD — Amtrak / Autotrain — 1a. Alphabetic Code — 1b. Railroad Accident/Incident No.

2. NAME OF OTHER RAILROAD INVOLVED IN TRAIN ACCIDENT/INCIDENT — 2a. Alphabetic Code — 2b. Railroad Accident/Incident No.

3. NAME OF RAILROAD RESPONSIBLE FOR TRACK MAINTENANCE *(single entry)* — 3a. Alphabetic Code — 3b. Railroad Accident/Incident No.

4. U.S. DOT AAR GRADE CROSSING IDENTIFICATION NUMBER — 5. DATE OF ACCIDENT/INCIDENT (month / day / year) — 6. TIME OF ACCIDENT/INCIDENT (am / pm)

LOCATION

7. NEAREST RAILROAD STATION — 8. COUNTY — 9. STATE *(two letter code)* — CODE

10. CITY *(if in a city)* — 11. HIGHWAY NAME OR NUMBER *(if private crossing, so state)*

ACCIDENT/INCIDENT SITUATION

HIGHWAY USER INVOLVED

12. TYPE — 1. Auto, 2. Truck, 3. Truck Trailer, 4. Bus, 5. School Bus, 6. Motorcycle, 7. Pedestrian, 8. Other *(specify)* — CODE

SPEED *(estimated mph at impact)*

13. DIRECTION *(geographical)* — 1. North, 2. South, 3. East, 4. West — CODE

POSITION — 1. Stalled on crossing, 2. Stopped on crossing, 3. Moving over crossing — CODE

RAILROAD EQUIPMENT INVOLVED

14. EQUIPMENT — 1. Train *(units pulling)*, 2. Train *(units pushing)*, 3. Train *(standing)*, 4. Car(s) *(moving)*, 5. Car(s) *(standing)*, 6. Light locos) *(moving)*, 7. Light locos) *(standing)*, 8. Other *(specify)* — CODE

15. POSITION OF CARRUNIT IN TRAIN — CODE

16. CIRCUMSTANCE — 1. Train struck highway user, 2. Train struck by highway user — CODE

Was the highway user and/or rail equipment involved in the impact transporting hazardous materials? 1. Highway user 2. Rail equipment 3. Both 4. Neither — CODE

ENVIRONMENT

20. TEMPERATURE *(specify if minus)* °F

21. VISIBILITY *(single entry)* — 1. Dawn, 2. Day, 3. Dusk, 4. Dark — CODE

22. WEATHER *(single entry)* — 1. Clear, 2. Cloudy, 3. Rain, 4. Fog, 5. Sleet, 6. Snow — CODE

TRAIN AND TRACK

23. TYPE OF TRAIN — 1. Freight, 2. Passenger, 3. Mixed, 4. Work, 5. Yard/Switching, 6. Light Locomotive(s) — CODE

24. TRACK TYPE USED BY TRAIN INVOLVED — 1. Main, 2. Yard, 3. Siding, 4. Industry — CODE

25. TRACK NUMBER OR NAME

26. FRA TRACK CLASSIFICATION

27. NUMBER OF LOCOMOTIVE UNITS

28. NUMBER OF CARS

29. TRAIN SPEED *(recorded speed, if available)* MPH — Est. / Recorded

30. TIME TABLE DIRECTION — 1. North, 2. South, 3. East, 4. West — CODE

CROSSING WARNING

31. TYPE *(place X in appropriate box(es))*
1. Gates
2. Cantilever FLS
3. Standard FLS
4. Wig Wags
5. Hwy Traffic Signals
6. Audible
7. Crossbucks
8. Stop Signs
9. Watchman
10. Flagged by crew
11. Other *(specify)*
12. None

32. SIGNALED CROSSING WARNING — Was the signaled crossing warning identified in item 31 operating? 1. Yes 2. No — CODE

33. LOCATION OF WARNING — 1. Both sides, 2. Side of vehicle approach, 3. Opposite side of vehicle approach — CODE

34. CROSSING WARNING INTERCONNECTED WITH HIGHWAY SIGNALS — 1. Yes 2. No 3. Unknown — CODE

35. CROSSING ILLUMINATED BY STREET LIGHTS OR SPECIAL LIGHTS — 1. Yes 2. No 3. Unknown — CODE

MOTORIST ACTION

36. MOTORIST PASSED STANDING HIGHWAY VEHICLE — 1. Yes 2. No 3. Unknown — CODE

37. MOTORIST DROVE BEHIND OR IN FRONT OF TRAIN AND STRUCK OR WAS STRUCK BY SECOND TRAIN — 1. Yes 2. No 3. Unknown — CODE

38. MOTORIST — 1. Drove around or thru the gate, 2. Stopped and then proceeded, 3. Did not stop, 4. Other *(specify)*, 5. Unknown — CODE

39. VIEW OF TRACK OBSCURED BY *(primary obstruction)* — 1. Permanent structure, 2. Standing railroad equipment, 3. Passing train, 4. Topography, 5. Vegetation, 6. Highway vehicles, 7. Other *(specify)*, 8. Not obstructed — CODE

HIGHWAY VEHICLE PROPERTY DAMAGE/CASUALTIES

40. HIGHWAY VEHICLE PROPERTY DAMAGE *(no dollar damage)*

41. DRIVER WAS — 1. Killed, 2. Injured, 3. Uninjured — CODE

42. WAS DRIVER IN THE VEHICLE? — 1. Yes 2. No — CODE

43. TOTAL NUMBER OF OCCUPANTS KILLED

44. TOTAL NUMBER OF OCCUPANTS INJURED

45. TOTAL NUMBER OF OCCUPANTS *(include driver)*

46. IS A RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT BEING FILED? 1. Yes 2. No — CODE

47. TYPED NAME AND TITLE

48. SIGNATURE

49. DATE

FORM FRA F 6180-57 (12-74) REPLACES FORM FRA F 6180-13 (10-67) WHICH IS OBSOLETE

APPENDIX 12

BILLING CODE 4910-06-C

"Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57)"

Instructions for Proposed Item 33

Only if Types 1–6, Item 32, are indicated, mark here the status of warning devices at the crossing at the time of the accident:

1. Provided minimum 20-second warning.
2. Alleged warning time greater than 60 seconds.
3. Alleged warning time less than 20 seconds.
4. Alleged no warning.
5. Confirmed warning time greater than 60 seconds.
6. Confirmed warning time less than 20 seconds.
7. Confirmed no warning.

If status code 5, 6, or 7 was entered, also enter a letter code explanation from the list below:

A. Insulated rail vehicle.
B. Storm/lightning damage.
C. Vandalism.
D. No power/batteries dead.
E. Devices down for repair.
F. Devices out of service.
G. Warning time greater than 60 seconds attributed to accident-involved train stopping short of the crossing, but within track circuit limits, while warning devices remain continuously active with no other in-motion train present.
H. Warning time greater than 60 seconds attributed to track circuit failure (*e.g.*, insulated rail joint or rail bonding failure, track or ballast fouled, etc.).4
J. Warning time greater than 60 seconds attributed to other train/equipment within track circuit limits.
K. Warning time less than 20 seconds attributed to signals timing out before train's arrival at the crossing/island circuit.
L. Warning time less than 20 seconds attributed to train operating counter to track circuit design direction.
M. Warning time less than 20 seconds attributed to train speed in excess of track circuit's design speed.
N. Warning time less than 20 seconds attributed to signal system's failure to detect train approach.
P. Warning time less than 20 seconds attributed to violation of special train operating instructions.
R. No warning attributed to signal system's failure to detect the train.
S. Other cause(s).

APPENDIX 13

BILLING CODE 4910–06–P

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

NOTICE TO RAILROAD WORKER INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO WORKER HUMAN FACTOR

WORKER STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT

PART I - NOTICE TO RAILROAD WORKER INVOLVED IN RAIL EQUIPMENT ACCIDENT (To be completed by reporting railroad)

Name of Reporting Railroad	Date of Accident/Incident ___/___/___ mo day year	Accident/Incident No.	Location of Accident/Incident (State, nearest city/town)

Applicable to this person?	Causes reported on form FRA 6180-54 Code	Description
☐ Yes ☐ No		
☐ Yes ☐ No		

Worker's Name (First, middle, last)	Job Title on Date of Accident	Name of Employing Railroad on Date of Accident/Incident

Worker's Home Address or RFD No.

Notice to Recipient. An accident occurred on the above date which the railroad alleges was at least partially caused by an action, lack of action, or the physical condition of a railroad worker. The railroad is sending you this notice because it believes that you had a role, but may not necessarily be the primary or only person responsible for the accident's occurrence. The railroad has reported to FRA that the primary and/or major contributing cause(s) of this accident are those listed above. Other causal factors related to this event may be described in the narrative portion of the railroad's report; a copy of which is attached.

You may submit a statement to FRA with a copy to this railroad and comment on any aspect of the railroad's report. The decision whether to submit such a statement is entirely optional on your part. If you choose to do so, please see the additional notices and instructions on the reverse of this form.

Name of Railroad Representative	Signature of Railroad Representative	Date Signed	Date Mailed/Hand Delivered

Name and address of railroad representative to whom form is to be returned:

PART II - WORKER STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT (To be completed by notified person)

Willful false statements can result in imposition of civil penalties.

(Continue statement on separate sheet, if required, and mail with statement)

I have carefully read this statement and confirm that it is true to the best of my knowledge and belief.

Signature _____ Date Signed _____

Date Mailed/Hand Delivered to FRA: _____

Date Mailed/Hand Delivered to Railroad: _____

Your Telephone Number
Home: ( )
Work: ( )

Home address, if different from address in Part I

NOTE: This Notice and Worker Supplement under 49 CFR 225.12 are part of the reporting railroad's accident report to FRA pursuant to the Accident Reports Act and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any mentioned in said report . . . ." 45 U.S.C. 41. See 49 CFR 225.7 (b).

FORM FRA F 6180.XX

APPENDIX 14

NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR;

EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT

OMB No. 2130-0500

PART I - NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR (To be Completed by Reporting Railroad)

Name of Reporting Railroad	Date of Accident/Incident ___/___/___ mo day year	Accident/Incident No.	Location of Accident/Incident

Check the Cause Code(s) Applicable to this Employee.

☐ Primary Cause

☐ Contributing Cause

Cause Codes listed on Accident/Incident Report. (State meaning of each cause code as stated in the "FRA Guide for Preparing Accident/Incident Reports.")

Cause Code No. _____ Meaning _____

Cause Code No. _____ Meaning _____

Employee's Name (First, middle, last)	Job Title on Date of Accident	Name of Employing Railroad on Date of Accident/Incident

Employee's Home Address or RFD No.

Street (include apt. no., if any) City State Zip

NOTICE TO RAILROAD EMPLOYEE

This Notice is required by safety regulations of the Federal Railroad Administration (FRA), U.S. Department of Transportation.

This railroad, in submitting its reports to FRA on the accident described above, has alleged that you committed an act or omission or were in a physical condition that was either the primary cause or a contributing cause of the accident. (For the railroad's specific allegations, please see above on this form and the reports themselves, which are enclosed or attached.)

Under FRA's safety regulations (published in Title 49, Section 225.12 of the Code of Federal Regulations), you may submit a statement to FRA, with a copy to this railroad, commenting on the railroad's allegations and explaining any factors that you believe caused or contributed to the accident. YOU ARE NOT REQUIRED TO SUBMIT THIS STATEMENT SUPPLEMENTING THE RAILROAD'S ACCIDENT REPORT; HOWEVER, IF YOU CHOOSE TO DO SO, YOU MUST FOLLOW THE INSTRUCTIONS PRINTED ON THE REVERSE OF THIS FORM.

Name of Railroad Representative	Signature of Railroad Representative	Date Signed	Date Mailed or Hand Delivered to Employee

Name and address of railroad representative to whom form is to be returned:

PART II - EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT (To be Completed by Notified Employee, If Employee Wishes to File this Supplement. See instructions on reverse of this form.)

ATTENTION: THIS STATEMENT SUPPLEMENTING RAILROAD ACCIDENT/INCIDENT REPORT MUST BE SIGNED. (Otherwise it will be returned to the employee.)

NOTE: Willful false statements can result in the imposition of civil penalties. Knowing and willful false statements can result in the imposition of criminal penalties.

I have carefully read this statement and confirm that it is true and correct to the best of my knowledge and belief.

Signature of Employee _____ Date Signed _____

Date Mailed/Hand Delivered to FRA	Date Mailed/Hand Delivered to Railroad that Issued this Notice

Employee's Home Telephone Number	Employee's Work Telephone Number
( )	( )

Home address, if different from address shown in Part I above

NOTE: This Notice and Employee Supplement under 49 CFR 225.12 are part of the reporting railroad's accident report to FRA pursuant to the Accident Reports Act and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report . . . ." 45 U.S.C. 41. See 49 CFR 225.7 (b).

Form FRA F 6180.78 (10/90)

APPENDIX 15

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAILROAD WORKER INJURY AND/OR ILLNESS LOG

PROPOSED
OMB Approval No.: 2130-xxxx

1. Railroad	2. Case/Incident Number

WORKER INFORMATION

3. Last Name, First Name, Middle Initial	4. Date of Birth	5. Sex (M/F)	6. Social Security Number	7. Date Hired

HOME ADDRESS:	8. Street Address *(include Apt. No.)*	9. City	10. State	11. Zip	12. Home Telephone No. *(include area code)*

ESTABLISHMENT/ FACILITY WHERE WORKER NORMALLY REPORTS:	13. Name of Facility			
	14. Street Address	15. City	16. State	17. Zip

18. Job Title	19. Department Assigned To

ACTIVITY/INCIDENT/EXPOSURE DESCRIPTION

LOCATION WHERE ACCIDENT/ INCIDENT/ EXPOSURE OCCURRED:	20. Specific Site			
	21. City	22. County	23. State	24. Zip

25. Is this on your premises? Yes ☐ No ☐	26. Date of Occurrence	27. Time Shift Began AM ☐ PM ☐	28. Time of Occurrence AM ☐ PM ☐	29. Was person on duty? Yes ☐ No ☐

COMPANY NOTIFICATION:	30. Date that Worker Notified Company Personnel of Condition	31. Time that Worker Notified Company Personnel of Condition AM ☐ PM ☐	32. Person Notified

33. Describe the general activity this person was engaged in prior to injury/illness.

34. Describe all factors associated with this case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it, and the tools, machinery, processes, material, environmental conditions, etc., involved.

FORM FRA F 6180.xx

I APPENDIX 16

PROPOSED

INJURY/CONDITION INFORMATION

35. Describe in detail the injury/condition that this person sustained. Include a discussion of the body parts affected. If this a recurrence, list date of last occurrence.

36. Identify all persons and organizations used to evaluate and/or treat condition. (Include facility, provider and address)

37. Describe all procedures, medications, therapy, etc., used/recommended for the treatment of condition:

38. Check any of the following consequences resulting from this injury/condition:

- ☐ Death. Date of: _____
- ☐ Restriction of work. Total days of restricted activity: _____ as of: _____
- ☐ Occupational illness. Date of initial diagnosis: _____
- ☐ Instructions to obtain prescription medication, or receipt of prescription medication.
- ☐ Missed a day of work or next shift. Actual days absent from work: _____ as of: _____
- ☐ Medical treatment. This includes any medical care or treatment beyond "first aid" that is given, or should have been given, regardless of who provided the treatment. "First Aid" treatment is limited to very simple procedures, e.g., application of a bandaid on minor scratches, cuts, abrasions, etc.
- ☐ Transfer to another job or termination of employment.
- ☐ Hospitalization for treatment as an outpatient.
- ☐ Multiple treatments or therapy sessions.
- ☐ Loss of consciousness.

39. If any of the above consequences occurred, the injury/condition is almost always reportable to FRA on Form 6180-55a. If you believe this case does not meet the reporting criteria, you must give a brief explanation below of the basis for this decision. Was the case reported? Yes ☐ No ☐

40. Has this worker been provided an opportunity to review his or her file? Yes ☐ No ☐

41. Preparer's Name	42. Preparer's Title	43. Telephone Number	44. Date

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAIL EQUIPMENT ACCIDENT/INCIDENT LOG

OMB Approval No.: 2130-xxxx

1. Date (YY/MM/DD)	2. Time	AM	
		PM	
3. Name of Railroad	4. Incident Number		
5. Other Railroad	6. Incident Number		
7. Railroad Responsible for Track Maintenance	8. Incident Number		
9. Type of Accident/Incident (Derailment, Collision, Obstruction, Other)			
10. Number of Hazmat Cars Damaged or Derailed	11. Number of Hazmat Cars Releasing Product		
12. Division	13. Nearest City/Town	14. State	
15. Milepost *(to nearest tenth)*	16. Specific Site		
17. Speed	Actual		18. Train/Job Number
	Estimated		
19. Type of Equipment (Freight, Passenger, Yard/Switching, etc.)	20. Type of Track (Main, Yard, Siding, Industry)		
21. Total Locomotive Units in Train	22. Total Locomotives Derailed	23. Total of Cars in Equipment Consist	24. Total Cars Derailed
25. Equipment Damage *(in dollars)*	26. Track, Signal, Way & Structure Damage *(in dollars)*		
27. Primary Cause	28. Contributing Cause		

29. Persons Injured and Killed	Injured	Killed		Injured	Killed
Worker on duty			Trespasser		
Worker not on duty			Contractor		
Passenger			Nontrespasser/off RR property		
Nontrespasser/on RR property			Volunteer		

30. Narrative Description (Be specific, continue on separate sheet if necessary)

31. Was this accident/incident reported to the FRA? Yes ☐ No ☐

32. Name of Railroad Official	33. Signature	34. Telephone Number	35. Date

FORM FRA F 6180.xx

APPENDIX 17

PROPOSED

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

RAIL EQUIPMENT ACCIDENT/INCIDENT LOG

OMB Approval No.: 2130-xxxx

1. Date (YY/MM/DD)	2. Time	AM PM	
3. Name of Railroad		4. Incident Number	
5. Other Railroad		6. Incident Number	
7. Railroad Responsible for Track Maintenance		8. Incident Number	
9. Type of Accident/Incident (Derailment, Collision, Obstruction, Other)			
10. Number of Hazmat Cars Damaged or Derailed	11. Number of Hazmat Cars Releasing Product		
12. Division	13. Nearest City/Town	14. State	
15. Milepost *(to nearest tenth)*	16. Specific Site		
17. Speed	Actual Estimated	18. Train/Job Number	
19. Type of Equipment (Freight, Passenger, Yard/Switching, etc.)	20. Type of Track (Main, Yard, Siding, Industry)		
21. Total Locomotive Units in Train	22. Total Locomotives Derailed	23. Total of Cars in Equipment Consist	24. Total Cars Derailed
25. Equipment Damage *(in dollars)*	26. Track, Signal, Way & Structure Damage *(in dollars)*		
27. Primary Cause	28. Contributing Cause		

29. Persons Injured and Killed	Injured	Killed		Injured	Killed
Worker on duty			Trespasser		
Worker not on duty			Contractor		
Passenger			Nontrespasser/off RR property		
Nontrespasser/on RR property			Volunteer		

30. Narrative Description (Be specific, continue on separate sheet if necessary)

31. Was this accident/incident reported to the FRA? Yes ☐ No ☐

32. Name of Railroad Official	33. Signature	34. Telephone Number	35. Date

FORM FRA F 6180.xx

APPENDIX 17

PROPOSED

RR Code

PROPERTY DAMAGE ESTIMATE WORKSHEET AND RECORD

Incident Number

NOTE: If contractor services were used, distribute contractor wages and materials costs among appropriate categories as if they were railroad expenses. Do not include contractor fringe benefits, overhead, G&A, or profit amounts.

EQUIPMENT DAMAGE

A. DAMAGE TO ON-TRACK EQUIPMENT

			Labor	Materials & Parts
LOCOMOTIVES:	Number Destroyed ____	Total Replacement Cost (1)		$
	Number Damaged ____	Total Materials & Parts Cost to Repair (1)		$
		Total Labor Cost to Repair (2)	$	
RAILCARS & OTHER ON-TRACK EQUIPMENT:	Number Destroyed ____	List Types and Quantities (3)		
		Total Replacement Cost (1)		$
	Number Damaged ____	List Types and Quantities (3)		
		Total Materials & Parts Cost to Repair (1)		$
		Total Labor Cost to Repair (2)	$	

Part A Total: Add all Labor and Materials & Parts costs. Enter here and in Block 25 of FRA Form 6180.xx → $

SIGNAL, TRACK, STRUCTURE AND ROADBED DAMAGE

B. DAMAGE TO SIGNAL EQUIPMENT

Number Destroyed ____	List Types and Quantities (4)		
	Total Replacement Cost (1)		$
Number Damaged ____	List Types and Quantities (4)		
	Total Materials & Parts Cost to Repair (1)		$
	Total Labor Cost to Repair (2)	$	

C. DAMAGE TO TRACK

Number of Feet Damaged ____	Total Materials & Parts Cost to Repair (1)		$
FRA Track Class ____	Total Labor Cost to Repair (2)	$	

D. DAMAGE TO TRACK STRUCTURES AND ROADBED

List Types of Structures and Quantities (5)			
	Total Materials & Parts Cost to Repair (1)		$
	Total Labor Cost to Repair (2)	$	

Parts B+C+D Total: Add all Labor and Materials & Parts Costs. Enter here and in Block 26 of FRA Form 6180.xx → $

E. EQUIPMENT RENTAL & OPERATION COSTS

Type(s) Used and Work Performed (6) ____

Part E Total: $

F. TOTAL ACCIDENT COST (ADD A+B+C+D+E COSTS): $ ____ (7) Reportable to FRA? Yes ☐ No ☐

(1) Use present cost of brand new items.

(2) Number of labor hours multiplied by average hourly rate (DO NOT INCLUDE FRINGE BENEFITS).

(3) Box, flat, refer, tank, gondola, TOFC/COFC, passenger, antique, Hi-rails, M of W equipment, etc. (example: tank x 3 for 3 tank cars).

(4) Wayside, crossing warning, cable, relays, housings, etc.

(5) Tunnel portal, tunnel, bridge, overpass (example: overpass x 2).

(6) Cranes, bulldozers, backhoes, etc.

(7) If total accident cost meets or exceeds FRA Reporting Threshold, enter totals for Part A and Parts B+C+D in Blocks 25 and 26 of Form FRA 6180.xx.

FRA F 6180.xx

APPENDIX 18

[FR Doc. 94–20023 Filed 8–18–94; 8:45 am]

BILLING CODE 4910–06–C

federal register

Friday
August 19, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 65, 121, 135

Antidrug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 121, 135

[Docket Nos. 25148 and 26620; Admt. Nos. 65–38; 121–240; 135–51]

RIN 2120–AE82

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 (the Act), amended the Federal Aviation Act of 1958 to provide a statutory mandate for drug testing of air carrier employees. The Act also prescribed certain consequences for prohibited drug use and mandated the use of split specimen testing. This rule amends the antidrug rule for conformity to the requirements of the Act.

In addition, this rule incorporates other changes to the antidrug rule. These changes clarify the requirements of the rule and also address concerns that have been raised since the rule was published.

Finally, this rule includes substantive changes to address provisions of the rule that are unclear, do not comport with the changes in the final DOT drug testing procedures, or do not adequately address required steps in the implementation process.

EFFECTIVE DATE: This final rule is effective on September 19, 1994, except the amendment to part 121, appendix I, VI.C. which is effective August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the amendment number identified in this final rule.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On November 14, 1988, the FAA issued an antidrug rule which required specified aviation employers and operators to initiate antidrug programs for personnel performing safety-sensitive functions.

On October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (the Act) was enacted. Among other things, the Act provided a statutory mandate for drug testing in the aviation industry and required specified consequences for positive drug tests. A notice of proposed rulemaking (NPRM), published on February 15, 1994, proposed amendments to certain provisions of the FAA's antidrug rule in accordance with the Act. The NPRM also proposed certain other changes to the antidrug rule that would clarify employer and Medical Review Officer responsibilities and addressed other issues that have been identified since the promulgation of the rule. This rule incorporates the requirements of the statutory mandate, as well as the clarifying amendments.

Seven comments were received in the docket in response to the NPRM. These comments were taken into consideration during the development of this final rule.

Reason for Expedited Effective Date

A section of this rule concerning split specimen testing is being made effective in less than the 30 days from publication usually required by law. With an effective date of August 15, 1994, for this section the FAA can ensure that this rule is consistent with the DOT final rule which was published on February 15, 1994 (59 FR 7354). The DOT rule implements split specimen collection testing required by the Omnibus Transportation Employee Testing Act of 1991, as of August 15, 1994, for four modal administrations under the DOT. The DOT rule provided affected employers 6 months to begin implementing split specimen testing. Because employers have been given prior notification of the requirement for split specimen testing, employers subject to this rule will not be unduly burdened by an effective date of less than 30 days. The FAA has therefore determined that good cause exists under the provisions of 5 U.S.C. 533(d)(3) to warrant an expedited effective date.

Discussion of Comments and Final Rule

This rulemaking action encompasses a variety of changes to the FAA's antidrug regulation, most of which affect the operational provisions of the antidrug rule found in 14 CFR part 121, appendix I. Because a variety of changes, both substantive and minor technical revisions, were made to appendix I, the entire revised appendix has been republished in this final rule. Each of the significant changes and any related comments are discussed in detail below.

Random Testing

This final rule does not change the random drug testing requirements. The FAA notes, however, that a separate NPRM was jointly issued by the Office of the Secretary of Transportation and all DOT agencies with antidrug rules on February 15, 1994 (59 FR 7614). This NPRM proposed parallel changes to each agency's rule under which the random drug testing rate would be established based on the rate of random positive drug tests in the particular industry. Because of the common aspects of the random testing issues, the FAA will make any such changes as part of a joint final rule to be issued in the near future.

Amendments Required by the Act

Prohibition on Service; Rehabilitation and Evaluation

The Omnibus Transportation Employee Testing Act section entitled "Prohibition on service" (found at new FAAct section 614(b)) provides that no person who is determined to have engaged in illegal use of drugs may perform a safety-sensitive function after such determination. In accordance with this section, the FAA proposed that sections of the FAA's regulations that address the use of prohibited drugs (see, *e.g.*, 14 CFR 65.46(c), (d)) would be revised slightly to reflect the fact that entities other than certificate holders (*i.e.*, contractor companies) can require drug tests under the antidrug rule if they have an FAA-approved antidrug program. The changes were supported by commenters and are included in the final rule.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that at a minimum provide for the identification and opportunity for treatment of employees in need of assistance in resolving problems with the use of controlled substances.

Further, the section states that the Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. This language recognizes that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in the revisions to paragraph A, section VII, of appendix I. The legislative history of the Act reflected the fact that the FAA did not prescribe regulations with respect to specific types of rehabilitation in its antidrug rule. However, because the Act requires the FAA to prescribe regulations under which persons in need of assistance would be identified, this final rule modifies the Medical Review Officer (MRO) duties to include such identification. Some commenters noted that a MRO may not be qualified as a substance abuse professional (SAP) and should therefore be required to refer the individual to a qualified SAP for the evaluation. It was the FAA's intent that only MROs who also meet the qualifications of a SAP (as contained in the definition of a SAP) would be authorized to perform the initial evaluation of individuals who have a verified positive drug test result or refuse to submit to a required test. The final rule has been changed to clarify this requirement. It also incorporates a provision parallel to one in the alcohol misuse prevention program final rule that limits the providers or facilities to which SAPs who perform an initial evaluation may refer an employee determined to be in need of assistance. This limitation also applies to MROs who serve as SAPs.

The NPRM proposed, and this final rule provides, that each covered employee who had a verified positive drug test result or who refused to submit to testing would be advised of all relevant resources available to the employee. Further, each such employee would be evaluated by a SAP (who could be the MRO) who would determine whether and what assistance the employee needed in resolving problems associated with prohibited drug use. Some commenters representing labor organizations stated that the FAA should include requirements that employers must provide or pay for any required treatment and that employees should be prohibited from terminating employees who are undergoing treatment. The FAA reaffirms its position that these issues are most appropriately matters for employer/employee negotiation.

New section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of drugs. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the prohibited drug use. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

The final rule implements the provisions in the Act in two ways. Appendix I has been revised by adding paragraph F to section VI to preclude any person from performing the safety-sensitive function that the individual was performing if that person had two verified positive drug test results or if the individual used a prohibited drug while performing such a safety-sensitive function. A definition of "performing" paralleling the one in the alcohol misuse prevention program rule has been added. In order to effectively administer this provision, the final rule provides that this prohibition is effective for drug tests and on-duty drug use occurring after the effective date of the final rule. (The NPRM proposed to amend the regulatory sections to implement this prohibition. However, for clarity and consistency with the alcohol misuse prevention program we are adding this provision to appendix I.)

The bar is limited to the narrow prohibition in the Act and will not affect the performance of other duties. While the FAA recognizes that a narrow bar could lead to anomalous results (for example, a person might be barred from performing screening duties but could serve as a pilot), a bar that is limited to the statutory requirements is more likely to be consistent with the requirements of the Americans with Disabilities Act or other legal constraints. The FAA expects that employers will exercise responsible judgment in determining whether employees not expressly barred from service should be permitted to perform other safety-sensitive duties.

The bar on two-time violators will apply both to persons who have gone through rehabilitation and to those who, after evaluation, were determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be subject to the bar, but an employee who did not need assistance but simply chose to use drugs again would not be. This provision is established under the FAA's general statutory authority to prescribe regulations affecting aviation safety.

Commenters representing labor organizations objected to the permanent bar in principle, but recognized the FAA's statutory requirement to impose such a bar. Commenters representing employers objected to the FAA's implementation of the permanent bar in which the burden of ensuring that permanently barred individuals do not perform the relevant safety-sensitive duties is placed on employers. These commenters assert that the FAA should maintain a name-specific "black list" that employers could check to determine an applicant's status. The FAA has not adopted this recommendation and believes that it would be inappropriate to do so. Aside from the obvious privacy and logistical issues associated with the creation of such a data base, it would not serve the purpose asserted by the commenters, which appears to be to relieve the employers of the necessity of obtaining information regarding applicants' drug testing history. However, the permanent bar is not the only measure precluding service in a safety-sensitive function. In addition, if an individual has a verified positive drug test result or has refused to submit to a drug test, the employer cannot use the individual to perform any safety-sensitive function unless and until the appropriate MRO or SAP evaluation and return to duty requirements have been met. (A similar prohibition applies under the alcohol misuse prevention program, 14 CFR part 121, appendix J). Information regarding such unresolved violations can be obtained only from the employee's records. In summary, the FAA does not view the need to ensure that an applicant is not subject to the permanent bar as materially different from the other requirements in this employer-based, employer-implemented program.

The FAA has addressed one concern raised by commenters regarding the availability of records from previous employers. The confidentiality provisions have been revised to clarify that employers are required to release employee antidrug program records upon written consent of the employee. This revision precludes prior employers from refusing to release records and thereby frustrating the intent of this regulation. With respect to record retention, the FAA notes that the retention periods provided in this rule are minimums and employers may choose to retain any records for a longer period of time. Employers should consider longer retention of information regarding verified positive drug test

results, refusals to submit to testing, evaluation, and rehabilitation, if for no other reason than to ensure that an individual previously terminated for violating the rule is not rehired for and impermissibly returned to the performance of safety-sensitive functions.

Commenters also expressed concern that employees be provided with adequate notice of the implications of having a verified positive drug test result or using drugs while performing a safety-sensitive function. The FAA agrees that employees should be advised of the consequences of such actions, and of the consequences of refusing to submit to a required test (which, although it does not implicate the permanent bar, does necessitate removal from safety-sensitive functions and possible reporting to the FAA). The FAA has therefore revised the employee assistance program provisions of appendix I to include a requirement that the employer policy provide information on the consequences under the antidrug rule of illegal use of drugs, verified positive drug test results, and refusals to submit to testing. It should be noted that an employer may advise employees of any consequences imposed under the employer's independent authority (e.g., termination); however, the employer could not purport or imply that the FAA's antidrug rule required such actions.

The permanent bar following a refusal to undertake or failure to complete rehabilitation is further implemented by retaining the current requirement that prior to returning to duty performing safety-sensitive functions following a verified positive drug test result on an FAA-mandated drug test or refusal to submit to such a drug test, the employee must be evaluated by the MRO on the specific issue of compliance with any previously-established treatment program. This rule retains the provisions regarding MRO recommendations for return to duty, with the modification that, based on the requirements of the Act, the MRO cannot recommend return to duty if an individual has failed to comply with a specified rehabilitation program. The FAA has chosen, however, not to impose a definite time period during which the employee must agree to undertake or complete the prescribed rehabilitation. This allows for the denial phase that most people go through when first confronted with evidence of a drug problem.

Split Specimen Testing

Split specimen testing, which is expressly required under the Act, is a procedure under which an original urine specimen is divided into two containers, each of which is sealed, labeled, and maintained separately. If the primary specimen tests positive, the split or secondary specimen can be tested to ensure that the confirmed positive was not caused by error or tampering. In accordance with the requirements of the Act, DOT has revised its procedural rule to require split specimen testing for all drug testing performed under the auspices of the FAA antidrug rule (and those of the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration). Consistent with the provisions of the DOT rule, this final rule provides that split specimen testing is in lieu of the right to request a retest of the original specimen.

A number of commenters objected to the split specimen testing requirement as unnecessary and unduly burdensome. These commenters stated that split specimen provisions should not be included in the final rule. The FAA is constrained by the requirements of the Act and must provide for split specimen testing. All aviation entities with FAA-approved antidrug programs must therefore ensure that they have split specimen testing provisions in place by August 15, 1994, including providing appropriate amendments to their antidrug program plans to the FAA.

Both the Act and the DOT's revised rule provide that an employee is entitled to split specimen testing if the employee requests such testing within 3 days of receiving notice of the positive drug test result, and this final rule incorporates an analogous provision. The NPRM proposed that the request must be in writing. Commenters noted that the requirement for a written request conflicts with the limited time available during which to make the request to have a split specimen tested. The FAA has deleted the proposed requirement that an employee request the split specimen test in writing. The final rule also revises the provision regarding MRO verification of the primary specimen. The NPRM proposed that the MRO "may" proceed with verification pending receipt of the split specimen test result. Although this language was permissive, it was not the intent of the FAA that verification could be delayed solely based on an employee's request for a split specimen test. Rather, the provision was intended to recognize that factors other than the request for the split specimen analysis could affect the verification process. The final rule makes the intent of the FAA explicit. Finally, the rule provides that no employer or agency action is stayed during the request period or while waiting for a split specimen test result.

Clarifying Amendments

Rule Language

The NPRM included a notice that in the final rule the FAA would amend the antidrug rule to change the terms "passing" and "failing" a drug test. All of the DOT agencies that require drug testing, including the FAA, have received reports of some confusion in their respective industries regarding the use of the terms passing and failing a drug test and how those terms relate to different drug test results (*i.e.*, confirmed or verified positive or negative test, cancelled tests, etc.). The final rule changes these terms wherever they are used throughout the antidrug rule to the more accurate "verified positive" or "verified negative."

Additionally, the revised appendix I published in this final rule includes a number of minor editorial changes. For example, throughout the antidrug rule the phrase "functions specified in section III of appendix I" is used. This final rule replaces that phrase with the term "safety-sensitive function," which is defined accordingly.

Contract Air Traffic Control Facilities

As was noted in the preamble to the NPRM, when the FAA's final antidrug rule was published in 1988, air traffic control (ATC) facilities operated under contract with the FAA were explicitly excluded from coverage under the rule. It was subsequently determined that employees of contract ATC facilities would not be included in the FAA's program for Federal employees and should be subject to the FAA's rules for the aviation industry. This final rule changes the definition of covered employers to include such facilities. The FAA's air traffic control facilities and facilities operated by the military (whether directly or by contract) are not affected by this change.

Air traffic control facilities, whether they are currently required to perform testing by contract or not, should submit plans to the FAA within 90 days after the rule's effective date, as required by paragraph A.5., Section IX.

Refusal to Submit to Testing

The final antidrug rule included amendments to the airmen certification

sections of the FAA's regulations under which a refusal to submit to testing could be the basis for a certificate action. However, the rule did not have an express requirement for employers to notify the FAA of refusals or a specific mechanism for providing such notice. The NPRM proposed a reporting requirement that (paragraph E of section VI of appendix I to part 121) would correct this gap in the requirements of the rule. However, the proposal did not include a specific time for notifications. The final rule specifies that employers must notify the FAA of refusals to submit to required tests within 5 working days. The final rule also clarifies that sanctions do not attach to refusals to submit to either pre-employment or return to duty tests since the redefinition of "return to duty tests" makes such tests essentially voluntary. An individual who refuses to submit to pre-employment or return to duty testing but then wishes to perform a safety-sensitive function would have to subsequently agree to take and have a verified negative drug test result on such a test. The individual would then be subject to follow-up testing while performing safety-sensitive functions, because the individual might have refused based on recent drug use. The individual would not, however, be subject to certificate action for declining what is essentially a test taken voluntarily as a precondition to performing safety-sensitive duties.

Employees Covered By the Antidrug Rule

The final rule modifies the specified safety-sensitive duties slightly to parallel the classes of covered functions in the FAA's new alcohol misuse prevention program rule (14 CFR part 121, appendix J). This modification is not intended to significantly change the antidrug rule's coverage. The most significant changes are the elimination of flight test and ground instruction duties. The former category is eliminated because the FAA has determined that as a practical matter, these duties are essentially subsumed in flight crewmember or flight instructor duties. Ground instruction duties have been eliminated based on the FAA's desire to reduce the burden of the antidrug rule on the industry and the determination that individuals performing such duties could be removed from the program without jeopardizing public safety. Additionally, the categories of "aviation screening duties" and "ground security coordinator duties" have been established to clarify the FAA's original intent with respect to covered security functions.

Although most commenters supported these changes, one commenter believed that rather than specifying categories of safety-sensitive duties, the rule should provide the Administrator with the discretion to establish these categories without rulemaking. The FAA has not adopted this recommendation. While flexibility might be desirable, the FAA believes that it is essential that adequate notice and opportunity for comment be given to individuals the FAA intends to subject to the requirements of this rule. Publication of the safety-sensitive functions as part of the final rule also ensures that affected employees and employers have actual or constructive knowledge of the requirements of the rule.

The FAA has previously received a petition for rulemaking on the issue of the appropriate scope of covered employees under the antidrug rule. Because the issues raised in the petition have been resolved in this final rule, the FAA has closed this action. (Docket No. 26620)

Because the covered employee categories are being revised, we are republishing with this final rule the Drug Testing Management Information System (MIS) Data Collection Forms, which were published in the **Federal Register** on December 23, 1993 (58 FR 68198), and became effective on January 1, 1994. These forms provide the FAA with additional data for use in monitoring the antidrug program and reflect the changes in employees covered by the antidrug rule. There are no other significant changes to the forms.

Pre-Employment Testing

The NPRM proposed to revise the antidrug rule's pre-employment testing provision (paragraph A of section V of appendix I) to make the provision less burdensome. When it was published in 1988, the antidrug rule required pre-employment testing before an individual could be hired to perform a function specified in appendix I. As interpreted by the FAA, testing was required of individuals not currently employed by the employer, of current employees moving from a non-covered to a covered safety-sensitive function, and in circumstances where an employee was removed from the random testing pool for any length of time or was unavailable for testing for an extended period of time. Individuals who had a verified positive drug test result or refused to submit to an FAA-mandated drug test also had to pass a pre-employment test prior to performing or returning to safety-sensitive duties.

The FAA continues to believe that pre-employment drug testing has utility for those individuals who have not previously been subject to the FAA-approved random drug testing program of an employer. However, we have reassessed the need for pre-employment testing in other situations, such as when an employee has been on leave of absence or working outside the territory of the United States. The FAA believes, and all of the commenters addressing this issue concur, that safety can be maintained even if the requirement for pre-employment testing in some circumstances is eliminated. Therefore, the FAA has revised its antidrug rule to require pre-employment testing of an individual only prior to the first time the individual performs a safety-sensitive function for an employer. Such an individual must have a verified negative drug test result on a pre-employment test prior to performing a safety-sensitive function, and the employer could not permit the individual to perform such a function until the employer receives the verified negative pre-employment drug test result.

Employers would be permitted to require an employee to submit to pre-employment testing in cases where an employee previously subject to random testing by that employer has been removed from the random testing pool for reasons other than a verified positive drug test result on an FAA-mandated drug test or refusal to submit to such testing.

Return to Duty and Follow-Up Testing

The 1988 final antidrug rule included the category of "testing after return to duty" (former paragraph F, section V, appendix I). Under this provision, individuals who had been hired to perform safety-sensitive functions, or returned to the performance of safety-sensitive functions after receiving a verified positive drug test result on or refusing to submit to an FAA-mandated drug test, were subject to unannounced testing. As noted above, the threshold test required before returning to duty was characterized as a pre-employment test.

Commenters concurred with the FAA's assessment that the FAA's prior use of the term "return to duty" testing has caused confusion in the industry. The FAA also wishes to ensure consistency in terminology with the alcohol misuse prevention program rule. For these reasons, the antidrug rule has been revised to provide that an individual who had a verified positive

drug test result on a pre-employment test, or refused a pre-employment test, must take another pre-employment test and obtain a verified negative drug test result before performing safety-sensitive duties and would then be subject to follow-up testing. An employee who had a verified positive drug test result on another type of test or refused to submit to another type of test (*e.g.*, random) must take a return to duty test and obtain a verified negative drug test result before returning to the performance of safety-sensitive duties, and would then be subject to follow-up testing. Like all FAA-mandated tests, return to duty and follow-up tests must be performed in accordance with the requirements of appendix I and the testing procedures in 49 CFR part 40.

The FAA also proposed two other changes that would parallel the provisions of the alcohol rule. The first proposed change was the addition of a mandatory minimum of six follow-up drug tests during an individual's first 12 months after being hired for or returning to the performance of safety-sensitive functions after the individual has refused to submit to or had a verified positive drug test result on an FAA-mandated test. Commenters generally opposed this proposal, believing the determination of the appropriate number of follow-up tests should be a matter for the MRO's discretion. Based on these comments, the FAA has revised the follow-up testing provision. As revised, although follow-up testing is required for any person who refuses to submit to or who has a verified positive drug test result on an FAA-mandated drug test, a minimum of six tests over 12 months will be required only for an individual who is determined in an evaluation conducted under this rule to be in need of assistance in resolving problems associated with illegal use of drugs. This modification ensures that those employees most in need of monitoring will be subject to at least a minimum number of tests over the first year after returning to duty, the period during which recidivism is the most likely to occur. The remaining employees would be tested at the MRO's discretion.

The second change permits the employer to direct the individual to undergo alcohol testing, as well as drug testing, if the Medical Review Officer determines that such testing would be appropriate. No commenters addressed this change, and the final rule includes this provision as it was proposed.

Medical Review Officer Functions

The NPRM proposed to substantially revise section VII of appendix I. First, changes in the DOT final rule (49 CFR part 40), which establishes the duties of the MRO in the verification process, have superseded the FAA's rule. Rather than reiterate the duplicative provisions of the DOT rule, which are subject to change, the revised MRO section cites to the applicable provisions of the DOT rule and incorporates them (and therefore any future amendments) by reference.

The MRO duties have been revised to require the MRO to inquire whether an individual holds a part 67 airman medical certificate, to process requests for split specimen testing, and to evaluate or refer the individual to a SAP for evaluation, as discussed previously. The MRO's duties in the case of an employee or applicant who holds a part 67 airman medical certificate or who would be required to hold such a certificate to perform a safety-sensitive function for an employer are also specified. In response to comments, the requirements for submission of the reports to the Federal Air Surgeon have been revised. The final rule provides that an MRO has 10 working days following verification of a positive drug test result in which to make a determination regarding drug dependence. All documents pertaining to the test result, verification, dependency, SAP evaluations, and return to duty recommendations, if any, must be forwarded to the Federal Air Surgeon within 12 working days of verifying the positive drug test result.

The final rule also includes specific recordkeeping requirements for the MRO. This change makes explicit the previously implicit requirement that MROs maintain records necessary for accomplishing their duties. While the records are created on behalf of and remain the employers' records, the new recordkeeping section reflects the fact that, of necessity, there are records that must be maintained by the MRO if the MRO is to fulfill his or her regulatory role. The provision regarding forwarding of MRO records has been revised slightly from the NPRM to clarify that it is the employer's obligation to ensure that MRO records are forwarded to a new MRO, even if the employer is obtaining MRO services through a consortium. The change reflects the FAA's position that records associated with a particular employer's antidrug program remain the employer's records, even if the records are maintained by the MRO and even if the employer does not contract directly with the MRO. The FAA recognizes that a consortium may effect the actual transfer of records; however, the consortium does so only as an agent of the employers using its services to implement their programs.

Antidrug Program Plan Submission

Several changes were proposed in this NPRM to the plan submission provisions. First, the address to which plans and plan amendments must be submitted has been changed to reflect the Drug Abatement Division's current address. Second, the "transition" provisions of the rule for new aviation employers (paragraph A., section IX) have been changed to eliminate the substantial grace period previously provided. Commenters supported the FAA's view that given the published guidance available from the FAA and from private sector entities and the wealth of material and experience now available, there is no longer a reason to permit carriers to begin operations without having implemented an FAA-approved antidrug program.

The FAA noted in the preamble to the final rule that the compliance deadlines for new businesses might be accelerated in the future (53 FR 47043; November 21, 1988), and, accordingly, this final rule prohibits covered employers from beginning operations without an approved antidrug program. The program must be implemented, and all covered employees subject to testing, not later than the inception of operations. Any person hired by a new certificate holder to perform a safety-sensitive function after the issuance of the certificate must undergo pre-employment testing. Additionally, each new employer must ensure that employees performing safety-sensitive functions by contract are subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program. This requirement will impose no significant burden on new operators and any burden is outweighed by the benefits gained by public safety.

Third, the consortium plan submission section has been revised to require that each consortium program must provide for notification to the FAA of changes in membership. Finally, a new provision (section IX, paragraph A.6.) expressly states that covered employers must ensure that they are continuously covered under an approved antidrug program. This new section reflects the FAA's recognition of the fluid nature of the aviation industry, in which locations, contracts, and even corporate identities are subject to frequent changes.

Employees Located Outside the United States

As noted in the preamble to the NPRM, the original antidrug rule published in 1988 applied to employees performing safety-sensitive functions for the specified employers regardless of whether the employees were located within the territory of the United States or were located in a foreign country. In recognition of the international implications of the rule, however, the effective date of the rule with respect to employees located outside the territory of the United States was deferred on a number of occasions. Significant practical and legal concerns surrounding implementation of the antidrug rule outside the territory of the United States remain and the FAA has substantially revised the international section of the antidrug rule (section XII, appendix I).

Consistent with the proposed rule, this final rule provides that no employee located outside the territory of the United States shall be tested for illegal use of drugs under the provisions of appendix I. To ensure proper selection for random testing, an employer must remove from the random testing pool any employee assigned to perform safety-sensitive functions solely outside the territory of the United States, since such an employee is not available for testing. The employee must be returned to the random testing pool as soon as the employee once more begins to perform functions wholly or partially within the territory of the United States. As noted above, the employer has the option of requiring the employee to undergo a pre-employment test prior to returning to the performance of a safety-sensitive function within the territory of the United States (and therefore to the random testing pool). This section also provides that the provisions of appendix I do not apply to employees performing safety-sensitive functions by contract outside the territory of the United States.

Although most commenters supported this revision, one commenter expressed concern that employees performing safety-sensitive functions within the territory of the United States may be subject to random testing at a disproportionately high rate if employees outside the territory of the United States are excused from testing and that employees taken out of the random testing pool may pose a safety risk. The FAA is cognizant of concerns about safety and economic parity that are raised by this exclusion. However, the FAA has determined that the burdens associated with extraterritorial testing outweigh the possible safety benefit. The FAA expects that employers will ensure that persons performing safety-sensitive functions wholly or partially within the territory of the United States remain subject to an effective random testing program. Finally, employers concerned about drug use by employees removed from the random testing pool may, as addressed above, subject such employees to pre-employment testing prior to permitting the employees to perform safety-sensitive functions within the territory of the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final antidrug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120–0535. The recordkeeping and reporting requirements in this amendment to the final rule were submitted to OMB during the NPRM stage and approved under the same OMB#2120–0535. There have been no changes to the paperwork or recordkeeping burden since the NPRM approval.

Federalism Implications

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

Regulatory Evaluation Summary

The FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The Agency has prepared a regulatory evaluation that analyzes the costs and benefits of this final rule. The FAA does not expect that this rule will have a significant economic effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the complete regulatory evaluation, regulatory flexibility determination, and international trade assessment has been placed in the docket. A copy may be obtained by contacting the office identified under **FOR FURTHER INFORMATION CONTACT.**

International Trade Impact Analysis

The FAA finds that this rule will not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States

Significance

This rule is not likely to result in an annual effect on the economy of $100 million or more, although it may result in a small increase in costs for consumers, industry, or Federal, State, or local agencies. The FAA has determined that the rule is not significant under the Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 65

Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air taxi, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration is amending 14 CFR parts 65, 121, and 135 as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 65.46 is amended by revising paragraphs (a)(2) and (d), by removing paragraph (e), and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 65.46 Use of prohibited drugs.

(a) * * *

(2) An "employer" means an air traffic control facility not operated by the FAA or by or under contract to the U.S. military that employs a person to perform an air traffic control function.

* * * * *

(d) No employer shall knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I to part 121 of this chapter for returning to the performance of safety-sensitive duties.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. Section 121.455 is amended by revising paragraph (c) and by removing paragraph (d) to read as follows:

§ 121.455 Use of prohibited drugs.

* * * * *

(c) No certificate holder shall knowingly use any person to perform, nor shall any person perform for a certificate holder, either directly or by contract, any safety-sensitive function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I for returning to the performance of safety-sensitive duties.

5. Appendix I is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

This appendix contains the standards and components that must be included in an antidrug program required by this chapter.

I. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 complies with the requirements of this appendix and the "Procedures for Transportation Workplace Drug Testing Programs" published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (DHHS) pursuant to the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970; April 11, 1988 as amended by 59 FR 29908; June 9, 1994).

II. *Definitions.* For the purpose of this appendix, the following definitions apply:

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

Annualized rate for the purposes of unannounced testing of employees based on random selection means the percentage of specimen collection and testing of employees performing a safety-sensitive function during a calendar year. The employer shall determine the annualized rate by referring to the total number of employees performing a safety-sensitive function for the employer at the beginning of the calendar year.

Employee is a person who performs, either directly or by contract, a safety-sensitive function for an employer, as defined below. Provided, however, that an employee who works for an employer who holds a part 135 certificate and who holds a part 121 certificate is considered to be an employee of the part 121 certificate holder for the purposes of this appendix.

Employer is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military. Provided, however, that an employer may use a person who is not included under that employer's drug program to perform a safety-sensitive function, if that person is subject to the requirements of another employer's FAA-approved antidrug program.

Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, or a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 811, 812, unless the drug is being used as authorized by a legal prescription or other exemption under Federal, state, or local law.

Refusal to submit means that an individual failed to provide a urine sample as required in 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with this appendix or engaged in conduct that clearly obstructed the testing process.

Safety-sensitive function means a function listed in section III of this appendix.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of disorders related to drug use and abuse.

Verified negative drug test result means that the test result of a urine sample collected and tested under this appendix has been verified by a Medical Review Officer as negative in accordance with 49 CFR part 40.

Verified positive drug test result means that the test result of a urine sample collected and tested under this appendix has been verified by a Medical Review Officer as positive in accordance with 49 CFR part 40.

III. *Employees Who Must Be Tested.* Each person who performs a safety-sensitive function directly or by contract for an employer must be tested pursuant to an FAA-approved antidrug program conducted in accordance with this appendix:

A. Flight crewmember duties.
B. Flight attendant duties.
C. Flight instruction duties.
D. Aircraft dispatcher duties.
E. Aircraft maintenance or preventive maintenance duties.
F. Ground security coordinator duties.
G. Aviation screening duties.
H. Air traffic control duties.

IV. *Substances for Which Testing Must Be Conducted.* Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V of this appendix. As part of a reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

V. *Types of Drug Testing Required.* Each employer shall conduct the following types of testing in accordance with the procedures set forth in this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40):

A. *Pre-employment Testing.*

1. Prior to the first time an individual performs a safety-sensitive function for an employer, the employer shall require the individual to undergo testing for prohibited drug use.

2. An employer is permitted to require pre-employment testing of an individual if the following criteria are met:

(a) The individual previously performed a covered function for the employer;

(b) The employer removed the individual from the employer's random testing program conducted under this appendix for reasons other than a verified positive test result on an FAA-mandated drug test or a refusal to submit to such testing; and

(c) The individual will be returning to the performance of a safety-sensitive function.

3. No employer shall allow an individual required to undergo pre-employment testing under section V, paragraphs A.1 or A.2 of this appendix to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual.

4. The employer shall advise each individual applying to perform a safety-sensitive function at the time of application that the individual will be required to undergo pre-employment testing to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under section V, paragraph A.(2) of this appendix.

B. *Periodic Testing.* Each employee who performs a safety-sensitive function for an employer and who is required to undergo a medical examination under part 67 of this chapter shall submit to a periodic drug test. The employee shall be tested for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs during the first calendar year of implementation of the employer's antidrug program. The tests shall be conducted in conjunction with the first medical evaluation of the employee or in accordance with an alternative method for collecting periodic test specimens detailed in an employer's approved antidrug program. An employer may discontinue periodic testing of its employees after the first calendar year of implementation of the employer's antidrug program when the employer has implemented an unannounced testing program based on random selection of employees.

C. *Random Testing.* Each employer shall randomly select employees who perform a safety-sensitive function for the employer for unannounced drug testing. The employer shall randomly select employees for unannounced testing for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in an employee's system using a random number table or a computer-based, number generator that is matched with an employee's social security number, payroll identification number, or any other alternative method approved by the FAA.

(1) During the first 12 months following implementation of unannounced testing based on random selection pursuant to this appendix, an employer shall meet the following conditions:

(a) The unannounced testing based on random selection of employees shall be spread reasonably throughout the 12-month period.

(b) The last collection of specimens for random testing during the year shall be conducted at an annualized rate equal to not less than 50 percent of employees performing a safety-sensitive function.

(c) The total number of unannounced tests based on random selection during the 12 months shall be equal to not less than 25 percent of the employees performing a safety-sensitive function.

(2) Following the first 12 months, an employer shall achieve and maintain an annualized rate equal to not less than 50 percent of employees performing a safety-sensitive function.

D. *Post-accident Testing.* Each employer shall test each employee who performs a safety-sensitive function for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident. The employee shall submit to post-accident testing under this section.

E. *Testing Based on Reasonable Cause.* Each employer shall test each employee who performs a safety-sensitive function and who is reasonably suspected of using a prohibited drug. Each employer shall test an employee's specimen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs. An employer may test an employee's specimen for the presence of other prohibited drugs or drug metabolites only in accordance with this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40). At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; provided, however, that in the case of an employer other than a part 121 certificate holder who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use shall substantiate the decision to test an employee who is reasonably suspected of drug use. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use.

F. *Return to Duty Testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual.

G. *Follow-up Testing.* Each employer shall implement a reasonable program of unannounced testing of each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix.

2. The number and frequency of such testing shall be determined by the

employer's Medical Review Officer. In the case of any individual evaluated under this appendix and determined to be in need of assistance in resolving problems associated with illegal use of drugs, follow-up testing shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol, in addition to drugs, if the Medical Review Officer determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Medical Review Officer may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Medical Review Officer determines that such testing is no longer necessary.

VI. Administrative and Other Matters

A. *Collection, Testing, and Rehabilitation Records.* Each employer shall maintain all records related to the collection process, including all logbooks and certification statements, for two years. Each employer shall maintain records of employee confirmed positive drug test results, SAP evaluations, and employee rehabilitation for five years. The employer shall maintain records of negative test results for 12 months. The employer shall permit the Administrator or the Administrator's representative to examine these records

B. *Laboratory Inspections.* The employer shall contract only with a laboratory that permits pre-award inspections by the employer before the laboratory is awarded a testing contract and unannounced inspections, including examination of any and all records at any time by the employer, the Administrator, or the Administrator's representative.

C. *Employee Request for Test of a Split Specimen.* Not later than 72 hours after receipt of notice of a verified positive test result, an employee may request that the MRO arrange for testing of the second, "split" specimen obtained during the collection of the primary specimen that resulted in the confirmed positive test result.

2. The split specimen shall be tested in accordance with the procedures in 49 CFR part 40.

3. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the pendency of the split specimen test result. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

D. *Release of Drug Testing Information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with the specific, written consent of the employee authorizing release of the information to an identified person, to the National Transportation Safety Board as part of an accident investigation upon written request or order, to the FAA upon request, or as required by this appendix Except as required by law or this appendix, no employer shall release employee information.

E. *Refusal To Submit to Testing.* Each employer shall notify the FAA within 5 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Notification should be sent to: Federal Aviation Administration, Aviation Standards National Field Office, Airmen Certification Branch, AVN–460, P.O. Box 25082, Oklahoma City, OK 73125.

2. Employers are not required to notify the above office of refusals to submit to pre-employment or return to duty testing.

F. *Permanent Disqualification From Service.* An employee who has verified positive drug test results on two drug tests required by appendix I to part 121 of this chapter and conducted after September 19, 1994 is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.

2. An employee who has engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994 is permanently precluded from performing that safety-sensitive function for an employer.

VII. Medical Review Officer/Substance Abuse Professional

The employer shall designate or appoint a Medical Review Officer (MRO) who shall be qualified in accordance with 49 CFR part 40 and shall perform the functions set forth in 49 CFR part 40 and this appendix. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

A. *MRO and Substance Abuse Professional Duties.* In addition to the functions delineated in 49 CFR part 40, the MRO shall perform the duties listed hereunder.

1. During the MRO's interview with an employee or applicant who has had a confirmed positive drug test result, the MRO shall inquire, and the individual must disclose, whether the individual holds an airman medical certificate issued under part 67 of this chapter or, if an applicant, would be required to hold such certificate in order to perform the duties of the position for which the applicant is applying.

2. The MRO must process employee requests for testing of split specimens in accordance with section VI, paragraph C, of this appendix.

3. The MRO shall advise each employee who receives a verified positive drug test result on or refuses to submit to a drug test required under this appendix of the resources available to the employee in evaluating and resolving problems associated with illegal use of drugs, including the names, addresses, and telephone numbers of substance abuse professionals (SAP) and counseling and treatment programs.

4. The MRO shall ensure that each employee who receives a verified positive drug test result on or refuses to submit to a drug test required under this appendix is evaluated by a SAP to determine if the employee is in need of assistance in resolving problems associated with illegal use of drugs. The MRO may perform this evaluation if the MRO is qualified as a SAP.

5. Prior to recommending that an employee be returned to the performance of a safety-sensitive function after the employee has received a verified positive drug test result on or refused to submit to a drug test required by this appendix, the MRO shall—

a. Ensure that an employee returning to the performance of a safety-sensitive function has received a return to duty verified negative drug test result on a test conducted under section V., paragraph F of this appendix;

b. Ensure that each employee has been evaluated in accordance with section VII, paragraph A.4 of this appendix; and

c. Ensure that the employee demonstrates compliance with any rehabilitation program recommended following the evaluation required under section VII, paragraph A.4 of this appendix.

6. Prior to recommending that an individual be hired to perform a safety-sensitive function after such individual has received a verified positive drug test result on a pre-employment test or has refused to submit to a pre-employment drug test required by this appendix, the MRO shall—

a. Ensure that an individual has received a verified negative drug test result on a subsequent pre-employment test conducted under section V, paragraph A, of this appendix;

b. Evaluate the individual (if the MRO is qualified to be a SAP), or have the individual evaluated by a SAP, for drug use or abuse; and

c. Ensure that the individual has complied with the requirements of any rehabilitation program in which the individual participated following the verified positive pre-employment drug test result or the refusal to submit to a pre-employment test.

7. The MRO shall not recommend that a person who fails to satisfy the requirements in section VII, paragraph A.5 or A.6 of this appendix be hired to perform or returned to duty to perform a safety-sensitive function.

B. *MRO Determinations.* In the case of an employee or applicant who holds an airman medical certificate issued under part 67 of this chapter, or who is or would be required to hold such certificate in order to perform a safety-sensitive function for an employer, the MRO shall take the following actions after verifying a positive drug test result.

1. In addition to the evaluation required in section VII, paragraph A.4 of this appendix, the MRO shall make a determination of probable drug dependence or nondependence as specified in part 67 of this chapter within 10 working days of verifying the test result. If the MRO is unable to make such a determination, he or she should so state in the individual's records.

2. If the MRO determines that an individual is nondependent, the MRO may recommend that the individual be returned to duty or hired to perform safety-sensitive functions subject to the requirements of section VII, paragraph A.5 of this appendix. If the MRO makes a determination of probable drug dependence or cannot make a dependency determination, the MRO shall not recommend that the individual be returned to duty unless and until such individual has been found nondependent by or has received a special issuance medical certificate from the Federal Air Surgeon.

3. After making the determinations in section VII, paragraphs B.1 and B.2 of this appendix, the MRO must forward the names of such individuals with identifying information, the determinations concerning dependence, SAP evaluation (if available), return to duty recommendations, and any supporting information to the Federal Air Surgeon within 12 working days after verifying the positive drug test result of such individuals.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 400 7th Street, SW., Washington, DC 20590.

C. *MRO Records.* Each MRO shall maintain records concerning drug tests performed under this rule in accordance with the following provisions:

1. All records shall be maintained in confidence and shall be released only in accordance with the provisions of this rule and 49 CFR part 40.

2. Records concerning drug tests confirmed positive by the laboratory shall be maintained for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process, and copies of dependency determinations where applicable.

3. Records of confirmed negative test results shall be maintained for 12 months.

4. All records maintained pursuant to this rule by each MRO are subject to examination by the Administrator or the Administrator's representative at any time.

5. Should the employer change MROs for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within 10 working days of receiving notice from the employer of the new MRO's name and address.

6. Any employer obtaining MRO services by contract, including a contract through a consortium, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

D. *Evaluations and Referrals.* Each employer shall ensure that a substance abuse professional, including an MRO if he/she is qualified as a substance abuse professional, who determines that a covered employee requires assistance in resolving problems associated with illegal use of drugs does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

1. A public agency, such as a State, county, or municipality;

2. The employer or a person under contract to provide treatment for drug problems on behalf of the employer;

3. The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

4. The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

VIII. Employee Assistance Program (EAP)

The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

A. *EAP Education Program.* Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug use in the workplace. The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

B. *EAP Training Program.* Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified above. The employer shall ensure that

supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training. The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years. The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan submitted to the FAA for approval.

IX. Employer's Antidrug Program Plan

A. *Schedule for Submission of Plans and Implementation.* Each employer shall submit an antidrug program plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street, SW., Washington, DC 20590.

2. (a) Any person who applies for a certificate under the provisions of part 121 or part 135 of this chapter after September 19, 1994 shall submit an antidrug program plan to the FAA for approval and must obtain such approval prior to beginning operations under the certificate. The program shall be implemented not later than the date of inception of operations. Contractor employees to a new certificate holder must be subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program.

(b) Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after September 19, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No operator may begin conducting sightseeing flights prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new operator must be subject to an FAA-approved program within 60 days of the implementation of the employer's program.

(c) Any person who intends to begin air traffic control operations as an employer as defined in 14 CFR 65.46(a)(2) (air traffic control facilities not operated by the FAA or by or under contract to the U.S. military) after September 19, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No air traffic control facility may begin conducting air traffic control operations prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new air traffic control facility must be subject to an FAA-approved program within 60 days of the implementation of the facility's program.

3. In accordance with this appendix, an entity or individual that holds a repair station certificate issued by the FAA pursuant to part 145 of this chapter and employs individuals who perform a safety-sensitive function pursuant to a primary or direct contract with an employer or an operator may submit an antidrug program plan (specifying the procedures for complying with this appendix) to the FAA for approval. Each certificated repair station shall implement its approved antidrug program in accordance with its terms.

4. Any entity or individual whose employees perform safety-sensitive functions pursuant to a contract with an employer (as defined in section II of this appendix), and any consortium may submit an antidrug program plan to the FAA for approval on a form and in a manner prescribed by the Administrator.

(a) The plan shall specify the procedures that will be used to comply with the requirements of this appendix.

(b) Each consortium program must provide for reporting changes in consortium membership to the FAA within 10 working days of such changes.

(c) Each contractor or consortium shall implement its antidrug program in accordance with the terms of its approved plan.

5. Each air traffic control facility operating under contract to the FAA shall submit an antidrug program plan to the FAA (specifying the procedures for all testing required by this appendix) not later than November 17, 1994. Each facility shall implement its antidrug program not later than 60 days after approval of the program by the FAA. Employees performing air traffic control duties by contract for the air traffic control facility (i.e., not directly employed by the facility) must be subject to an FAA-approved antidrug program within 60 days of implementation of the air traffic control facility's program.

6. Each employer, or contractor company that has submitted an antidrug plan directly to the FAA, shall ensure that it is continuously covered by an FAA-approved antidrug program, and shall obtain appropriate approval from the FAA prior to changing problems (e.g., joining another carrier's program, joining a consortium, or transferring to another consortium).

B. An employer's antidrug plan must specify the methods by which the employer will comply with the testing requirements of this appendix. The plan must provide the name and address of the laboratory which has been selected by the employer for analysis of the specimens collected during the employer's antidrug testing program.

C. An employer's antidrug plan must specify the procedures and personnel the employer will use to ensure that a determination is made as to the veracity of test results and possible legitimate explanations for an employee receiving a verified positive drug test result.

D. The employer shall consider its antidrug program to be approved by the Administrator, unless notified to the contrary by the FAA, within 60 days after submission of the plan to the FAA.

X. Reporting of Antidrug Program Results

A. Annual reports of antidrug program results shall be submitted to the FAA in the form and manner prescribed by the Administrator by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

1. Each part 121 certificate holder shall submit an annual report each year.

2. Each entity conducting an antidrug program under an FAA-approved antidrug plan, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

3. The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

B. Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA.

C. Each report shall be signed by the employer's antidrug program manager or other designated representative.

D. Each report with verified positive drug test results shall include all of the following informational elements:

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of positive drug test results verified by a Medical Review Officer

(MRO) by type of test, type of drug, and employee category.

5. Number of negative drug test results reported by an MRO by type of test and employee category.

6. Number of persons denied a safety-sensitive position based on a verified positive pre-employment drug test result reported by an MRO.

7. Action taken following a verified positive drug test result(s), by type of action.

8. Number of employees returned to duty during the reporting period after having received a verified positive drug test result on or refused to submit to a drug test required under the FAA rule.

9. Number of employees by employee category with tests verified positive for multiple drugs by an MRO.

10. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

11. Number of covered employees who have received required initial training.

12. Number of supervisory personnel who have received required initial training.

13. Number of supervisors who have received required recurrent training.

E. Each report with only negative drug test results shall include all of the following informational elements. (This report may *only* be submitted by employers with *no* verified positive drug test results during the reporting year.)

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of negative tests reported by an MRO by type of test and employee category.

5. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

6. Number of employees returned to duty during the reporting period after having received a verified positive drug test result on or refused to submit to a drug test required under the FAA rule.

7. Number of covered employees who have received required initial training.

8. Number of supervisory personnel who have received required initial training.

9. Number of supervisors who have received required recurrent training.

F. An FAA-approved consortium may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

XI. Preemption

A. The issuance of 14 CFR parts 65, 121, and 135 by the FAA preempts any state or local law, rule, regulation, order, or standard covering the subject matter of 14 CFR parts 65, 121, and 135, including but not limited to, drug testing of aviation personnel performing safety-sensitive functions.

B. The issuance of 14 CFR parts 65, 121, and 135 does not preempt provisions of state criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

XII. Employees Located Outside the Territory of the United States

A. No individual shall undergo a drug test required under the provisions of this appendix while located outside the territory of the United States.

1. Each employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

2. Each covered employee who is removed from the random testing pool under this paragraph A shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

B. The provisions of this appendix shall not apply to any person who performs a function listed in section III of this appendix by contract for an employer outside the territory of the United States.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

7. Section 135.249 is amended by revising paragraph (c) and by removing paragraph (d) to read as follows:

§ 135.249 Use of prohibited drugs.

* * * * *

(c) No certificate holder or operator shall knowingly use any person to perform, nor shall any person perform for a certificate holder or operator, either directly or by contract, any safety-sensitive function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I to part 121 of this chapter for returning to the performance of safety-sensitive duties.

Issued in Washington, DC, on August 12, 1994.

David R. Hinson,

Administrator.

Note: These exhibits will not appear in the Code of Federal Regulations.

Exhibits—FAA Drug Testing Management Information System Data Collection Forms

BILLING CODE 4910–13–P

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) :"EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FAA/DOT drug testing regulations.

SECTION A - AVIATION EMPLOYER INFORMATION requires the company name for which the report is done, a current address, the company's FAA Antidrug Plan Identification Number, and the FAA Operating Certificate Number(s) held by the company. Below the company name, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary. Finally, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code).

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, flight test pilots, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Aircraft Maintenance"; "Ground Security Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - DRUG TESTING INFORMATION requires information on the drug tests conducted by your company. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in

covered positions only. Each part of this table must be completed for each category of testing including: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, (5) return to duty, and (6) follow-up testing. These numbers do not include refusals for testing. "COLL" requires the number of specimens collected in each employee category for each category of testing. "NEG" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added to the answer entered in the row marked "TOTAL."

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or other (pre-employment, periodic, post-accident, reasonable cause, return to duty, or follow-up) drug test required under the FAA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to a drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to a drug test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the actions taken.

SECTION D - DRUG TRAINING requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

OMB NO. 2120-0535

FAA Drug Testing MIS EZ Data Collection Form
(NO POSITIVE Drug Test Results)

Year Covered by This Report: 19____

A. AVIATION EMPLOYER INFORMATION

Company Name		Antidrug Plan No. FAA Certificate No.
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or 135 certificate holders included in this report. (Attach additional sheets if necessary)

Company Name		Telephone No. ( )
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____ Date _____

Title _____ ( )____-_____ Telephone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES AS OF JANUARY 1, 19___						
		NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Aircraft Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
	Pre-employment		Periodic		Random		Post-Accident		Reasonable Cause		Return To Duty		Follow-up	
EMPLOYEE CATEGORY	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Flight Crewmember														
Flight Attendant														
Flight Instructor														
Aircraft Dispatcher														
Aircraft Maintenance														
Ground Security Coordinator														
Aviation Screener														
Air Traffic Controller														
TOTAL														

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST		
	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

D. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	
	NUMBER
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by the FAA drug testing regulations:	
Supervisory personnel who have received *initial* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA drug testing regulations:	
Supervisory personnel who have received *recurrent* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA drug testing regulations:	

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-v as an example to facilitate the process of completing the form correctly.

This reporting from includes five sections. These sections address the data elements required in the FAA and the DOT drug testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. AVIATION EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. DRUG TESTING INFORMATION	ii-v	2-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	vi	5
E. DRUG TRAINING	vi	5

Page 1 AVIATION EMPLOYER INFORMATION (Section A) requires the company name for which the report is done and a current address. Below the company names, list any other names the company uses ("Doing Business As") and the company's FAA Antidrug Plan Identification Number. Provide the FAA Operating Certificate Number(s) held by the company. Below this, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code). Finally, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary.

Page 1 COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, flight test pilots, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Aircraft Maintenance"; "Ground Security

Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is the count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each category under the appropriate additional operating administration(s).

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on periodic, random, post-accident, reasonable cause, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1. the number of specimens collected in each employee category;
2. the number of specimens tested which were verified negative and verified positive for any drug(s); and
3. individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all seven parts of the table in Section C.

Information on actions taken with those persons testing positive is also required. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 2 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of

testing. These categories include: (1) periodic (2) random, (3) post-accident, (4) reasonable cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL.**"

A sample table is provided on page v with example numbers.

Page 2 Below the part of the table containing pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test.**" This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Flight Crewmember" and "Flight Attendant" to illustrate the procedures for completing the form.

A Urine specimens were collected from 157 job applicants for flight crewmember positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Flight Crewmember."

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for flight crewmember positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Flight Crewmember."

C The MRO for your company reported that 4 of those 157 specimens from applicants for flight crewmember positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Flight Crewmember."

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drug(s)
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, **OTHER DRUG TESTING/PROGRAM INFORMATION**, on page 5 of the reporting form.

Please note that the sample data collection form also has information for flight attendants on line two. The same procedures outlined for flight crewmembers should be followed for entering the data on flight attendants. With applicants for flight attendant positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Flight Attendant."

E The last row, marked "TOTAL," requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for flight crewmember positions were collected and 107 for applicants for flight attendant positions. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DURG				
				MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHETA-MINES
Flight Crewmember	157	153	4	2	1	0	0	1
Flight Attendant	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1
	A	B	C	D				

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS." The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

Page 4 Next you must provide information on **ACTIONS TAKEN ON VERIFIED POSITIVE TEST RESULTS**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a positive drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a positive drug test.

- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Indicate the sum of the actions taken on the line marked **TOTAL**.

Page 5 **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 5 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine." If marijuana and opiates were detected in 2 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates."

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **other** (pre-employment, periodic, post-accident, reasonable cause, return to duty, or follow-up) drug test required under the FAA regulation and the actions taken following the refusal.

Page 5 **DRUG TRAINING** (Section E) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

OMB NO. 2120-0535

FAA Drug Testing MIS Data Collection Form

Year Covered by This Report: 19____

A. AVIATION EMPLOYER INFORMATION

Company Name		Antidrug Plan No. _____ FAA Certificate No.
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name		Telephone No. ( ) -
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date

_____ Title

( )_____ Telephone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 2.5 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES AS OF JANUARY 1, 19___						
		NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Aircraft Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for the employees in **COVERED POSITIONS** as defined by the FAA drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR part 40.
3. Information on refusals for testing should only be reported in Section D ("OTHER DRUG TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test:	

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PERIODIC								
Flight Crewmember								
Flight Instructor								
Air Traffic Controller								
TOTAL								
RANDOM								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								
POST-ACCIDENT								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								
REASONABLE CAUSE								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
RETURN TO DUTY								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
FOLLOW-UP								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

ACTIONS TAKEN ON VERIFIED POSITIVE DRUG TEST RESULTS	
	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	
TOTAL	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHET-AMINES

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST		
	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	**NUMBER**	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

E. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	
	NUMBER
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by the FAA antidrug regulations:	
Supervisory personnel who have received *initial* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA antidrug regulations:	
Supervisory personnel who have received *recurrent* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA antidrug regulations:	

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BILLING CODE 4910–13–C

federal register

Friday
August 19, 1994

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5051-2]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: Through this action EPA is amending the Refrigerant Recycling Regulations. This action is being undertaken by EPA to amend specific portions of the published text, including the definitions, required practices, and the reporting and recordkeeping requirements; to adopt recently amended industry standards; and to clarify the meaning and applicability of various terms. This action will affect the sellers of refrigerant, aid the affected community, and may provide relief to certain segments of the affected community.

DATES: This final action will become effective on October 18, 1994 unless EPA is notified by September 19, 1994 that any person wishes to submit adverse comment. Should EPA receive such notice, EPA will publish one subsequent action in the **Federal Register** to withdraw this final action and another action proposing this action and requesting comments. In such a case, following a public comment period, the Agency will draft the final regulation to be published in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1994.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-92-01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500. Dockets may be inspected from 8 a.m. until 4 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Cynthia Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460 Docket # A-92-01 VIII B. (202) 233-9729.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Refrigerant Recycling Regulations
II. Revisions to the Refrigerant Recycling Regulations
A. Definitions
1. Technician
2. Adoption of Standard Based on ARI 700-1993 in Definition of "Reclaim"
B. Prohibitions
1. Sale of Used Appliances Without Service Apertures
2. Exceptions to Prohibition on Sale of Unreclaimed Refrigerant
C. Required Practices
1. Exception for Leaky Appliances to Evacuation Requirements at Disposal
2. Use of Nitrogen to Pressurize-113 Appliances for Non-major Repairs
3. Requirements for Recovery Using New Recovery Technologies
4. Availability of Certified Recycling and Recovery Equipment to Persons Disposing of MVACs and MVAC-like Appliances
5. Exemption for Pump-out Units from 15-pound Limit for System-Dependent Equipment
6. Applicability Solely to Equipment Containing More Than 50 Pounds of Refrigerant of Leak Repair and Associated Recordkeeping Requirements
D. Equipment Certification
1. Measurement of Recovery Rates
E. Technician Certification
F. Reporting and Recordkeeping Requirements
1. Sales Restriction—Effective Date for Recordkeeping
2. Proof of Employment of Certified Personnel
G. Appendix A
H. Appendix B
I. Appendix D
J. Removal of Parenthetical Statements
III. Effective Dates
IV. Summary of Supporting Analysis
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
V. Judicial Review

I. Refrigerant Recycling Regulations

Final regulations published on May 14, 1993 (58 *FR* 28660) establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair, and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 *FR* 2420) that took effect on July 1, 1992, these regulations should substantially reduce the emissions of ozone-depleting refrigerants. The regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices that reduce emissions, and establish equipment and reclamation certification requirements, as well as a technician certification requirement. A sales restriction on the sale of refrigerant was also established by the final regulations. As of November 14, 1994, only certified technicians will legally be authorized to purchase refrigerant.[1] In addition, the final regulations established a leak repair requirement for equipment that normally holds a refrigerant charge of fifty pounds or more. Finally, the regulations require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant.

II. Revisions to the Refrigerant Recycling Regulations

Through this action EPA is promulgating several minor changes to the final rule. Below is a description of each change to the regulatory text that appeared in the **Federal Register** on May 14, 1993.

A. Definitions

1. Technician

Section 82.152(x) defines a "technician" for purposes of the refrigerant recycling rule. A technician is a person who provides maintenance, service or repair that could reasonably be expected to release ozone-depleting substances through those actions. Section 82.152(x) includes in the definition of "technician" a person who disposes of appliances, but does not include any person disposing of small appliances. In excluding such persons, EPA considered the nature of work associated with recovering refrigerants from small appliances prior to disposal, the affected workforce, and any environmental damage that could result from emissions during disposal.

[1] It should be noted that EPA has recently proposed to extend this date for technicians that have been trained, tested, and approved by an organization requesting to be grandfathered under § 82.161(g). (See **Federal Register** published 8/15/94).

In drafting the final rule, EPA left out motor vehicle air conditioners (MVAC)[2] and MVAC-like equipment[3] in exempting certification of technicians disposing of certain types of equipment. Disposal of MVACs and MVAC-like appliances is similar in many ways to the disposal of small appliances. EPA distinguishes between large equipment that is dismantled on-site and portable equipment that may enter the waste stream with its refrigerant charge still intact because of the differences between the two types of equipment once they reach the end of their useful lives. Large equipment dismantled on-site must have refrigerant removed as part of the dismantling process because there is no other option that will result in successful recovery of refrigerant. This large equipment cannot enter the waste stream with the charge intact, while more portable small appliances, MVACs, and MVAC-like equipment frequently does enter the waste stream with the charge intact.

In regulations promulgated under section 608, EPA discussed the differences between the disposal sector and the servicing sector. (See 58 FR 28705.) EPA noted that unlike the servicing sector, the disposal sector does not reintroduce refrigerant to equipment, after removal. Refrigerant is merely being removed, usually after the appliances have been removed from operation. This removal may occur at any stage either before it enters the waste stream or once in the waste stream.

Since the types of recover-only processes used with small appliances, MVACs, and MVAC-like equipment tend to be relatively straight-forward and a simpler task than recycling or the recovery of refrigerant from larger types of appliances, EPA did not require the certification of technicians disposing of small appliances. Since the circumstances for disposing of small appliances is quite similar to the circumstances for disposing of MVACs and MVAC-like equipment, EPA believes it is appropriate to revise the definition of "technician" to exclude any person disposing of MVAC and MVAC-like equipment. The revised definition will consequently read as follows: "Technician means any person who performs maintenance, service, or repair that could reasonably be expected to release class I or class II substances from appliances into the atmosphere, including but not limited to installers, contractor employees, in-house service personnel, and in some cases, owners. Technician also means any person disposing of appliances except for small appliances, MVACs, and MVAC-like equipment."

2. Adoption of Standard Based on ARI 700–1993 in Definition of "Reclaim"

Section 82.152(q) defines "reclaim" to mean "to reprocess refrigerant to at least the standard of purity specified in the ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants." A standard based closely on ARI 700–1988 is included in the rule as Appendix A. During the comment period on the proposed § 608 refrigerant recycling rule, the Air-Conditioning and Refrigeration Institute had requested that EPA adopt a standard based on ARI 700–1993, which is an updated version of ARI 700–1988. ARI described the differences between ARI 700–1988 and ARI 700–1993 during the public hearing and submitted a draft version of the updated standard, which was included in the public docket for the rule.

The updated standard included changes in three areas:

1. ARI 700–1993 included purity standards for eleven additional refrigerants: R–23, R–32, R–123, R–124, R–125, R–134a, R–143a, R–401(A), R–401(B), R–402(A), and R–402(B).

2. Liquid phase contaminant water levels were increased from 10ppm in ARI 700–1988 to 20ppm in ARI 700–1993 for R–11 and R–113 only.

3. Where ARI 700–1988 allowed 0.5 as the maximum percentage by weight of "other refrigerants," ARI 700–1993 allows 0.50 as the maximum percentage by weight of "all other organic impurities, including other refrigerants." The inclusion of organic impurities other than refrigerants in the limit effectively tightens the standard, and at the same time, the change from 0.5 to 0.50 reduces the tolerance of the standard by a factor of ten. (Thus, while a sample containing 0.54 percent other refrigerants would have met the old standard, only a sample containing 0.504 percent (or less) other organic impurities would meet the new standard.)

Although all the comments received by EPA regarding adoption of the updated standard were favorable, the standard was not included in the final rule because it was not finalized by the time the final rule was published. (See 58 FR 28679 for a discussion of this issue in the final rule.) An appendix to the standard specifying procedures for analyzing refrigerant was undergoing a lengthy process of peer review, which is now complete. Because the final standard is substantially identical to the draft that was included in the docket for comment, and because EPA agrees with commenters that the changes to the standard are appropriate and necessary, EPA is changing the definition of "reclaim" to refer to ARI 700–1993, and is replacing the standard based on ARI 700–1988 with a standard based on ARI 700–1993 as appendix A. EPA is also replacing references to ARI 700–1988 with references to ARI 700–1993 in its reclaimer certification program.

Because section 608 of the Act does not give EPA the authority to regulate refrigerants that do not contain class I or class II substances until November, 1995, EPA is not adopting the purity standards of ARI 700–1993 that apply to refrigerants that do not contain CFCs or HCFCs. Thus, EPA is not adopting purity requirements for HFC–23, HFC–32, HFC–125, HFC–134a, or HFC–143a at this time. (ARI and other standard-setting organizations remain free, of course, to adopt and observe purity requirements for these refrigerants.) However, the purity requirements for CFC and HCFC refrigerants (including blends that contain either CFCs or HCFCs along with non-ozone-depleting components) in appendix A are identical to the purity requirements for CFC and HCFC refrigerants in ARI 700–1993.

EPA would like to clarify that since it is not possible to return a refrigerant to a standard of purity if no standard of purity is specified for that refrigerant, refrigerants that are not covered by appendix A need not be reclaimed under this regulation.

B. Prohibitions

1. Sale of Used Appliances Without Service Apertures

Section 82.154(j) and § 82.154(k) are prohibitions against the sale and distribution, or offer for sale and distribution of any appliance, unless such equipment is equipped with either a service aperture or, for small appliances, with a process stub, to facilitate the removal of refrigerant. EPA would like to clarify that for the purposes of these prohibitions, EPA will interpret sale, distribution, or offer of sale or distribution as not referring to the sale of used products. Sale of used products means a sale or distribution by a person after a period of use other than demonstration use. The Agency recognizes that there is a market for the

[2] Regulations concerning MVAC appliances were promulgated under section 609 and published in the Federal Register on July 14, 1992 (57 FR 31241).

[3] MVAC-like equipment is defined in § 82.152(1) as the mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of a non-road motor vehicle. This includes the air-conditioning equipment on agricultural or construction vehicles. This definition is not intended to cover appliances using HCFC–22 refrigerant.

sale of used air conditioners and refrigerators. Restricting the resale of such used durable goods before the end of their productive lifetimes would provide little, if any, environmental benefit. Indeed, the introduction of a service aperture may lead to unintentional releases by weakening the refrigeration circuit. Because requiring these goods to be retrofitted prior to resale would impose significant economic hardship on a great many consumers without providing significant environmental benefits, EPA does not believe it is necessary to ban their resale. Consequently, while EPA's interpretation of sale and distribution or offer for sale and distribution is such that the entire chain of sale and distribution from the manufacturer of a new product to its ultimate consumer is included, the Agency recognizes that in the case of durable consumer goods, resale of the product to additional consumers may occur after the original sale or distribution of the new product to the ultimate consumer after some period of use by the original ultimate consumer. In such cases, EPA will not prohibit the sale of these used products.

2. Exceptions to Prohibition on Sale of Unreclaimed Refrigerant

Prohibitions §§ 82.154(g) and 82.154(h) currently prohibit the sale of used refrigerant that has not been reclaimed by a certified reclaimer. EPA intended to exclude two classes of used refrigerant from this prohibition: refrigerant that was and is to be used only in an MVAC or MVAC-like appliance, and refrigerant that is contained in an appliance that is sold or offered for sale together with the refrigerant. The section 609 refrigerant recycling rule, which covers MVACs, explicitly recognizes and permits the transfer of refrigerant between MVACs owned by different persons if that refrigerant is: (1) Recovered from an MVAC and returned to an MVAC by a single service entity; and (2) recycled to meet the SAE J1991 standard.[4] (This provision of the section 609 rule, which is contained in the definition of "properly using" recycling and recovery equipment, also covers MVAC-like appliances pursuant to § 82.156(a)(5).) Because this standard is not as stringent as the standard that reclaimed refrigerant must meet in the section 608 refrigerant recycling rule, refrigerant that only meets this standard cannot be considered reclaimed. Thus, such refrigerant cannot be sold under the section 608 rule. However, EPA did not intend to reverse the position that it took in the section 609 rule regarding the transfer of refrigerant between MVACs owned by different people. For instance, one of the primary arguments made in support of the reclamation requirement in the section 608 rule, that no less stringent recycling standard currently exists (58 FR 28679), clearly does not apply to MVACs and MVAC-like appliances, which are governed by the less stringent SAE J1991 standard. EPA is therefore amending the prohibitions to exclude the sale of refrigerant transferred between MVACs or MVAC-like appliances.

Another primary argument made in support of the reclamation requirement, that transfer of refrigerant between different owners can contaminate appliances, clearly does not apply to refrigerant that changes ownership solely because it is contained in an appliance that changes ownership. If refrigerant remains within a single appliance, it obviously cannot introduce contaminants into another appliance. Thus, EPA is also amending the prohibition to exclude the sale of refrigerant that is contained in an appliance that is sold or offered for sale together with the refrigerant.

C. Required Practices

1. Exception for Leaky Appliances to Evacuation Requirements at Disposal

Section 82.156(a)(2)(ii) establishes an exception to the evacuation requirements for appliances undergoing maintenance, service, or repair. The paragraph reads:

If, due to leaks in the appliance, evacuation to the levels in Table 1 is not attainable, or would substantially contaminate the refrigerant being recovered, persons opening the appliance must:

(A) Isolate leaking from non-leaking components wherever possible;

(B) Evacuate non-leaking components to be opened to the levels specified in Table 1; and

(C) Evacuate leaking components to be opened to the lowest level that can be attained without substantially contaminating the refrigerant. In no case shall this level exceed 0 psig.

Through an accidental omission, the requirements in § 82.156(a)(3) for evacuating appliances at disposal contain no exception for leaky appliances, although the rationale for such an exception at disposal is identical to the rationale for the exception at maintenance, service, or repair. That is, leaks in the appliance may permit air to enter the appliance as the internal pressure of the appliance is lowered, contaminating the refrigerant being recovered and making it impossible to attain the required vacuum. EPA is therefore adding an exception for leaky appliances to the evacuation requirements at disposal. This exception is identical to that at maintenance, service, and repair.

2. Use of Nitrogen to Pressurize –113 Appliances for Non-Major Repairs

Section 82.156(a)(2)(B) prohibits the use of nitrogen to pressurize low-pressure appliances for non-major repairs. In including this prohibition in the rule, EPA intended to encourage the use of pressurization methods that do not require subsequent purging, such as heating of the evaporator and/or condenser. However, while heat can be safely used to pressurize appliances utilizing CFC–11 and HCFC–123 to atmospheric pressure, heat alone is not a practical or safe method for pressurizing appliances utilizing CFC–113 because the temperatures required to raise the pressure of CFC–113 to atmospheric pressure are quite high (117.6 °F for CFC–113 vs. 74.7 °F for CFC–11). Thus, for refrigerants with boiling points above 85 °F, EPA is now requiring that heat be used to raise the internal pressure of the appliance as much as possible, but is permitting nitrogen to be introduced to meet the remaining pressure requirements.

Contrary to popular perception, EPA has never prohibited the use of nitrogen to pressurize systems for purposes of a leak check (because leak checking does not involve "opening" of the appliance), although the Agency encourages the use of heat, rather than nitrogen, to pressurize systems whenever possible. Thus, it has been and remains acceptable to introduce nitrogen into an appliance utilizing CFC–113 for purposes of a leak check. EPA recommends that heat be the primary method used to raise the internal pressure of appliances containing CFC–113 as much as possible for checking leaks, and that nitrogen be introduced to meet the remaining pressure requirements.

3. Requirements for Recovery Using New Recovery Technologies

In § 82.158(b)(2), EPA provided for the certification of recycling and recovery equipment whose recovery efficiency cannot be tested according to the procedures in ARI 740–1993, which measure levels of evacuation. The rule states that this new equipment may be certified if an approved third-party testing organization adopts and

[4] The preamble to the section 609 rule states, "service establishments owned by a single owner may recover refrigerant and send the refrigerant to a central location for recycling to the SAE J1991 standard for CFC–12" (57 FR 31246).

performs a test that demonstrates, to the satisfaction of the Administrator, that the recovery efficiency of the new equipment is equal to or better than that of equipment that: (i) Is intended for use with the same type of appliance; and (ii) achieves the level of evacuation in Table 2 of the rule. As discussed in the preamble to the final rule (58 FR 28689), EPA's goal in including this provision was to avoid unnecessary delay in the certification, marketing, and use of new recovery technologies that do not operate by drawing vacuums.

However, EPA inadvertently neglected to include a provision in the required practices section (82.156) that would permit the use of recovery technologies that do not operate by drawing vacuums. EPA is therefore adding a provision, § 82.156(a)(2)(iii), that permits the use of equipment certified pursuant to § 82.158(b)(2), as long as users of this equipment follow the manufacturer's directions for achieving the required recovery efficiencies. EPA will make the development of and compliance with such directions part of the process for certifying new recovery technologies under § 82.158(b)(2).

4. Availability of Certified Recycling and Recovery Equipment to Persons Disposing of MVACs and MVAC-Like Appliances

Section 82.156(b) currently requires that: All persons opening appliances except for small appliances and MVACs for maintenance, service, or repair and all persons disposing of appliances except for small appliances must have at least one piece of certified, self-contained recovery equipment available at their place of business.

EPA inadvertently omitted three items from this paragraph. First, certified, self-contained recycling equipment should have been listed along with certified, self-contained recovery equipment as equipment that would meet this requirement. In all other sections of the rule, recycling and recovery equipment are treated identically, and EPA did not intend to treat them differently here. Therefore, EPA is inserting "or recycling" between "recovery" and "equipment" in § 82.156(b).

Second, persons disposing of MVACs and MVAC-like appliances should have been excluded along with persons disposing of small appliances from the requirement to have one piece of certified, self-contained recovery or recycling equipment available at their place of business. EPA clearly intended to exclude these persons from this requirement because it excludes recovery and recycling equipment used to dispose MVACs and MVAC-like equipment from third-party certification requirements. (See the final rule preamble at 58 FR 28705, §§ 82.158(a) and 82.158(l).) Therefore, EPA is inserting "MVACs, or MVAC-like appliances" after "all persons disposing of appliances except for small appliances," excluding all three groups from the requirement to have certified recovery or recycling equipment available at their place of business.

Third, EPA intended to exempt persons who own appliances containing pump-out units and who maintain, service, repair, or dispose of only these appliances from the above requirement. The requirement was intended to ensure that persons who used small, portable system-dependent recovery equipment to service appliances also had self-contained equipment available in the event the appliance compressor was not operational. In general, such small, self-contained recovery equipment is not prohibitively expensive, particularly if it is to be used for a large number of jobs. However, the requirement may also affect owners of chillers, which are frequently equipped with built-in pump-out units that are used for the recovery of large quantities of refrigerant. Because system compressors may be used to move the refrigerant into the pump-out unit in some cases, these units may be considered "system-dependent" in those cases.[5] While small self-contained recovery devices are relatively inexpensive, larger self-contained recovery devices may be prohibitively costly for persons who own and service a limited number of chillers. Moreover, instead of purchasing large recovery devices, owners of chillers may contract out the recovery procedure if the built-in unit is not capable of meeting the applicable evacuation requirements. EPA did not intend to require such owners to purchase expensive equipment when this less costly remedy exists. Thus, EPA is adding a sentence to make this exemption explicit. However, persons exempted from § 82.156(b) are still required to meet the other applicable requirements of § 82.156 (e.g., evacuation requirements).

[5] EPA understands that in general, pump-out units on chillers are equipped with their own pumps or compressors, which are not used during the operation of the appliance. Pump-out units equipped with their own compressors would not be considered system-dependent recovery equipment. On the other hand, system receivers, which are not equipped with their own compressors, would not be considered recovery equipment at all because they are an integral part of the appliance.

5. Exemption for Pump-out Units From 15-pound Limit for System-Dependent Equipment

Section 82.156(c) prohibits the use of system-dependent equipment with appliances normally containing more than 15 pounds of refrigerant. This prohibition was intended to cover small, portable system-dependent equipment, which is not designed for the recovery of large quantities of refrigerant. As noted above, however, some large chillers are equipped with built-in pump-out units that could also be considered "system-dependent equipment," but that are designed to be used for the recovery of large quantities of refrigerant. EPA did not intend to prohibit the use of such pump-out units for recovery. Thus, EPA is revising § 82.156(c) to read "System-dependent equipment shall not be used with appliances normally containing more than 15 pounds of refrigerant, unless the system-dependent equipment is permanently attached to the appliance as a pump-out unit."

6. Applicability Solely to Equipment Containing More Than 50 Pounds of Refrigerant of Leak Repair and Associated Recordkeeping Requirements

Section 82.156(i), the leak repair requirement, contains two subparagraphs that apply to owners of different types of equipment. The first subparagraph, § 82.156(i)(1), applies to "owners of commercial refrigeration and industrial process refrigeration," specifying no lower size limit for covered equipment. The second subparagraph, § 82.156(i)(2), applies to "owners of appliances normally containing more than 50 pounds of refrigerant and not covered by paragraph (i)(1)." EPA has received numerous inquiries regarding whether or not it intended to include a lower size limit in the first subparagraph.

Although EPA did not explicitly restrict the scope of its leak repair requirement for commercial and industrial process refrigeration to equipment containing more than 50 pounds of refrigerant, EPA intended this requirement to cover only equipment containing at least 50 pounds. The definition of commercial refrigeration includes a note that "[a]ll of the equipment contains large refrigerant charges, typically over 75 pounds," and the discussion of industrial process refrigeration that appears in the preamble to the rule includes a note that "charge sizes can be very large, ranging from 750–3000 lbs for ice rinks, and rising as high as 20,000 lbs for built-up

centrifugal units." (No other charge sizes are mentioned.) The preamble also notes:

The 50-pound cut-off is intended to exempt smaller equipment where the cost of repairing the leak is an order of magnitude higher than the environmental benefit of repairing the leak (RIA). The 50-pound cut-off is also consistent with guidance found in the ASHRAE Guideline 3–1990 (58 FR 28680).

This rationale applies to commercial and industrial process refrigeration as well as to other large appliances.

In order to clarify that only commercial and industrial process refrigeration equipment containing more than 50 pounds is covered by the leak repair requirements, EPA is now specifying this limit in § 82.156(i)(1).

D. Equipment Certification

1. Measurement of Recovery Rates

Section 82.158(b)(6) requires manufacturers of recycling and recovery equipment to have an approved equipment testing organization measure the liquid and vapor recovery rates of equipment as part of the equipment certification process. EPA required measurement and publication of these recovery rates in order to ensure that technicians would not inadvertently purchase equipment whose recovery rates were too low for the intended application; the Agency was concerned that a technician purchasing underpowered equipment would be tempted to interrupt the resulting lengthy recovery process before it was complete.

However, some types of equipment do not have inherent liquid and vapor recovery rates. For instance, the recovery rate of system-dependent equipment depends upon the compressor of the individual appliance from which it is recovering refrigerant. EPA intended to exempt this equipment from the requirement to have its liquid and vapor recovery rate measured. First, system-dependent equipment certified pursuant to § 82.158(b) typically has a higher recovery rate than self-contained equipment, because appliance compressors are usually larger and therefore faster than recovery equipment compressors. Second, the use of system-dependent equipment is limited to appliances normally containing less than 15 pounds of refrigerant. Thus, low recovery rates are not a concern for such equipment. EPA is therefore amending Section 82.158(b)(6) of the rule to clarify that equipment with no inherent liquid or vapor recovery rates need not have these rates measured.

E. Technician Certification[6]

Section 82.161(a) requires that technicians be certified. EPA exempted from this requirement technicians that are disposing of small appliances, room air conditioners, and MVACs because these technicians are only recovering the refrigerant prior to the disposal of this equipment. As discussed earlier, persons disposing of this equipment were exempt from the requirement because the nature of this work is straight-forward. As outlined above, EPA is extending this exemption to MVAC-like appliances. Throughout the rule, EPA states that since MVAC appliances and MVAC-like appliances are similar in nature and design, it is appropriate for these technicians to be treated in a similar fashion. In § 82.161(a)(5), EPA provides a method for those servicing MVAC-like appliances to be certified by attending a program designed and approved under section 609 for training and certifying MVAC technicians. Therefore, to maintain consistency as discussed in Section A of this rulemaking, EPA will extend the exemption from the certification requirement to technicians that are disposing of MVAC-like appliances. In addition, since "room air conditioners" are considered a type of small appliance, and small appliances are already excepted from the certification requirement, EPA will delete "room air conditioners" from the list of exceptions.

F. Reporting and Recordkeeping Requirements

1. Sales Restriction—Effective Date for Recordkeeping

Section 82.166(a) establishes a recordkeeping requirement for all persons who sell or distribute any class I or class II substance for use as a refrigerant. Since no effective date was specified for this particular requirement, this provision became effective June 14, 1993, the effective date of the Refrigerant Recycling Regulations. However, the restriction on selling or distributing of ozone-depleting refrigerants is not effective until November 14, 1994, pursuant to § 82.154(n). EPA does not believe it is necessary to maintain records regarding the sale and distribution of refrigerant in advance of the effective date of the actual sales or distribution restriction. Furthermore, such a requirement places an unnecessary burden on industry. Without the existence of a sales restriction, the usefulness of such records is dubious. Therefore, through this action EPA will change the effective date for maintaining records regarding sales and distribution of refrigerants from June 14, 1993 to November 14, 1994.

2. Proof of Employment of Certified Personnel

Section 82.166(b) allows the purchasers of any class I or class II refrigerants who employ certified technicians to provide evidence of each technician's certification to the wholesaler who sells them refrigerant. The wholesaler will keep this information on file. The purchaser is further required to notify the wholesaler regarding any changes in a technician's certification or employment status. Concerns have recently been brought to EPA's attention about the practicability of implementing this provision. Large organizations often employ large numbers of certified technicians that may be situated at various locations around the country. Tracking and notifying wholesalers of employee status may result in an overwhelming responsibility. EPA did not intend this requirement to place any undue burden on the employers of large numbers of technicians. In fact, EPA believed that allowing employers to purchase refrigerant for their technicians, instead of requiring the technician to be physically present at the point of sale, would actually decrease the burden for the technician, the wholesaler, and the technician's employer.

Therefore, EPA is modifying this requirement to read: Purchasers of any class I or class II refrigerants who employ certified technicians may provide evidence that at least one technician is properly certified to the wholesaler who sells them refrigerant; the wholesaler will then keep this information on file and may sell refrigerant to the purchaser or his authorized representative even if such purchaser or authorized representative is not a properly certified technician. In such cases, the purchaser must notify the wholesaler in the event that the purchaser no longer employs at least one properly certified technician. The wholesaler is then prohibited from selling class I or class II refrigerants to the purchaser until such time as the purchaser employs at least one properly certified technician. At that time, the purchaser must provide new evidence that at least one technician is properly certified.

EPA believes that this requirement will still have the intended effect of

[6] Additional revisions to § 82.161 have been proposed by EPA. (See **Federal Register** published 8–15–94) These proposed changes will more clearly delineate who is required to be certified.

lessening the likelihood that refrigerant is sold for use by non-certified personnel, while providing a more reasonable means for purchasers to comply with the sales restriction.

G. Appendix A

EPA adopted an industry standard in the final rule based on the Air-conditioning and Refrigeration Institute (ARI) Standard 700–1988. This standard appeared as Appendix A to Subpart F—Specification for Fluorocarbon Refrigerants. EPA was aware of efforts to revise ARI 700–1988 while the final regulations were being drafted. However, the revised version was not completed in time for incorporation into this appendix by EPA. As discussed above, the updated version, known as ARI 700–1993, includes changes in three areas: it adds purity standards for eleven additional refrigerants; it increases liquid phase contaminant water levels from 10ppm in ARI 700–1988 to 20ppm in ARI 700–1993 for R–11 and R–113 only; and, where ARI 700–1988 allowed 0.5 as the maximum percentage by weight of "other refrigerants," ARI 700–1993 allows 0.50 as the maximum percentage by weight of "all other organic impurities, including other refrigerants." The inclusion of all organic impurities in the limit effectively tightens the standard, and the change from 0.5 to 0.50 reduces the tolerance of the standard by a factor of ten. EPA has reviewed ARI 700–1993 and believes it should be substituted because it covers additional refrigerants, it increases liquid phase contaminant water levels, and broadens the maximum percentage of weight requirement to include all other organic impurities instead of just other refrigerants. Through this action EPA will substitute the standard based on ARI Standard 700–1988 with a standard based on ARI Standard 700–1993.

H. Appendix B

Appendix B to Subpart F—Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment was mistakenly referred to in the introduction of appendix B as ARI Standard 740–1991. However, this is incorrect. Appendix B is based upon ARI Standard 740–1993. Through this action EPA will correct the reference in the introduction to appendix B.

I. Appendix D

Appendix D to subpart F—Standards for Becoming a Certifying Program for Technicians includes reporting requirements for approved programs. Certifying programs are required to submit to EPA activity reports every six months, the first to be submitted six months following the date the program was approved. Since EPA has been approving programs on a continual basis, these reports are due at various times, instead of being submitted simultaneously. In order to maximize EPA's ability to review and respond to the information supplied by the programs, EPA is standardizing the reporting dates. Certifying programs will submit reports to EPA on January 30 and June 30, beginning with the first full six-month period for which the program has been approved. This means that if a program is approved on March 31, that program is required to submit its first activity report to EPA on the following January 30.

J. Removal of Parenthetical Statements

EPA is deleting the parenthetical notes in the individual sections of 40 CFR part 82, subpart F. The Agency consolidated its display of OMB control numbers in 40 CFR part 9 (see 58 FR 18014, 58 FR 24724, 58 FR 34198 and 58 FR 34369) including the control number for 40 CFR part 82, subpart F; this consolidated display makes the parenthetical statements in the individual sections of Subpart F duplicative. The information collection request (ICR) was previously subject to public notice and comment prior to OMB approval.

III. Effective Dates

This final action will become effective on October 18, 1994 unless EPA is notified by September 19, 1994 that any person wishes to submit adverse comment. Should EPA receive such notice, EPA will publish one subsequent action in the **Federal Register** to withdraw this final action and another action proposing this action and requesting comments. In such a case, following a public comment period, the Agency will draft the final regulation to be published in the **Federal Register**.

IV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this 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 lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect 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 entitlement, 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.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information

Collection Request document has been prepared.

V. Judicial Review

Because these regulations are nationally applicable under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: August 5, 1994.

Carol M. Browner,

Administrator.

Part 82, Chapter I, title 40 of the code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by revising paragraphs (q) and (x) to read as follows:

§ 82.152 Definitions.

* * * * *

(q) *Reclaim* refrigerant means to reprocess refrigerant to at least the purity specified in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1993, Specifications for Fluorocarbon and Other Refrigerants) and to verify this purity using the analytical methodology prescribed in appendix A. In general, reclamation involves the use of processes or procedures available only at a reprocessing or manufacturing facility.

* * * * *

(x) *Technician* means any person who performs maintenance, service, or repair that could reasonably be expected to release class I or class II substances from appliances into the atmosphere, including, but not limited to, installers, contractor employees, in-house service personnel, and in some cases, owners. Technician also means any person disposing of appliances except for small appliances, MVACs, and MVAC-like equipment.

* * * * *

3. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective October 18, 1994 until May 15, 1995, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152(g);

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective October 18, 1994 until May 15, 1995, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

4. Section 82.156 is amended by revising paragraphs (a)(1)(ii), (a)(2)(i)(B), (a)(3), (b), (c), and (i)(1), and by adding paragraphs (a)(1)(iii) and (a)(2)(iii) to read as follows:

§ 82.156 Required practices.

* * * * *

(a) * * *

(1) * * *

(ii) Due to leaks in the appliance, evacuation to the levels in Table 1 is not attainable, or would substantially contaminate the refrigerant being recovered; or

(iii) The recycling or recovery equipment was certified pursuant to § 82.158(b)(2). In any of these cases, the requirements of § 82.156(a)(2) must be followed.

(2) * * *

(i) * * *

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85° F at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123,) must not use methods, such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85° F at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure.

* * * * *

(iii) If the recycling or recovery equipment was certified pursuant to § 82.158(b)(2), technicians must follow the manufacturer's directions for achieving the required recovery efficiency.

* * * * *

(3) Persons disposing of appliances except for small appliances, MVACs, and MVAC-like appliances, must evacuate to the levels in Table 1 unless, due to leaks in the appliance, evacuation to the levels in Table 1 is not attainable, or would substantially contaminate the refrigerant being recovered. If, due to leaks in the appliance, evacuation to the levels in Table 1 is not attainable, or would substantially contaminate the refrigerant being recovered, persons disposing of the appliance must:

(i) Isolate leaking from non-leaking components wherever possible;

(ii) Evacuate non-leaking components to the levels specified in Table 1; and

(iii) Evacuate leaking components to the lowest level that can be attained without substantially contaminating the refrigerant. In no case shall this level exceed 0 psig.

* * * * *

(b) Effective October 18, 1994, all persons opening appliances except for small appliances and MVACs for maintenance, service, or repair and all persons disposing of appliances except small appliances, MVACs, and MVAC-like appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business. Persons who maintain, service, repair, or dispose of only appliances that they own and that contain pump-out units are exempt from this requirement. This exemption does not relieve such persons from other applicable requirements of § 82.156.

(c) System-dependent equipment shall not be used with appliances

normally containing more than 15 pounds of refrigerant, unless the system-dependent equipment is permanently attached to the appliance as a pump-out unit.

* * * * *

(i) * * * (1) Owners of commercial refrigeration and industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have all leaks repaired if the equipment is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period, except as described in paragraph (i)(3) of this section.

* * * * *

5. Section 82.158 is amended by revising paragraphs (b)(2) and (b)(6) to read as follows:

§ 82.158 Standards for recycling and recovery equipment.

* * * * *

(b) * * *

(2) Recovery or recycling equipment whose recovery efficiency cannot be tested according to the procedures in ARI 740–1993 may be certified if an approved third-party testing organization adopts and performs a test that demonstrates, to the satisfaction of the Administrator, that the recovery efficiency of that equipment is equal to or better than that of equipment that:

(i) Is intended for use with the same type of appliance; and

(ii) Achieves the level of evacuation in Table 2. The manufacturer's instructions must specify how to achieve the required recovery efficiency, and the equipment must be tested when used according to these instructions.

* * * * *

(6) The equipment must have its liquid recovery rate and its vapor recovery rate measured under the conditions of ARI 740–1993, unless the equipment has no inherent liquid or vapor recovery rate.

* * * * *

6. Section 82.161 is amended by revising paragraph (a) introductory text to read as follows:

§ 82.161 Technician certification.

(a) Effective November 14, 1994, persons who maintain, service, or repair appliances, except MVACs, and persons who dispose of appliances, except for small appliances, room air conditioners, MVACs and MVAC-like appliances, must be certified by an approved technician certification program as follows:

* * * * *

7. Section 82.164 is amended by revising the introductory text and paragraphs (a), (b), (c), and (d) and by redesignating paragraphs (e) and (f) as (f) and (g) and by adding a new paragraph (e) to read as follows:

§ 82.164 Reclaimer certification.

Effective October 18, 1994, persons reclaiming used refrigerant for sale to a new owner must certify to the Administrator that such person will:

(a) Return refrigerant to at least the standard of purity set forth in appendix A (based on ARI Standard 700–1993, Specifications for Fluorocarbon and Other Refrigerants);

(b) Verify this purity using the methods set forth in appendix A;

(c) Release no more than 1.5 percent of the refrigerant during the reclamation process; and

(d) Dispose of wastes from the reclamation process in accordance with all applicable laws and regulations.

(e) The data elements for certification are as follows:

(1) The name and address of the reclaimer;

(2) A list of equipment used to reprocess and analyze the refrigerant; and

(3) The owner or a responsible officer of the reclaimer must sign the certification stating that the refrigerant will be returned to at least the standard of purity set forth in appendix A, that the purity of the refrigerant will be verified using the methods set forth in appendix A, that no more than 1.5 percent of the refrigerant will be released during the reclamation process, that wastes from the reclamation process will be properly disposed of, and that the information given is true and correct. The certification should be sent to the following address: Section 608 Recycling Program Manager, Reclaimer Certification, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

8. Section 82.166 is amended by revising paragraphs (a) and (b) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

(a) Effective November 14, 1994, all persons who sell or distribute any class I or class II substance for use as a refrigerant must retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased.

(b) Purchasers of any class I or class II refrigerants who employ certified technicians may provide evidence that at least one technician is properly certified to the wholesaler who sells them refrigerant; the wholesaler will then keep this information on file and may sell refrigerant to the purchaser or his authorized representative even if such purchaser or authorized representative is not a properly certified technician. In such cases, the purchaser must notify the wholesaler in the event that the purchaser no longer employs at least one properly certified technician. The wholesaler is then prohibited from selling class I or class II refrigerants to the purchaser until such time as the purchaser employs at least one properly certified technician. At that time, the purchaser must provide new evidence that at least one technician is properly certified.

* * * * *

9. Appendix A to subpart F is revised to read as follows:

Appendix A to Subpart F—Specifications for Fluorocarbon Refrigerants

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 700–93:

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to evaluate and accept/reject refrigerants regardless of source (new, reclaimed and/or repackaged) for use in new and existing refrigeration and air-conditioning products.

1.1.1 This standard is intended for the guidance of the industry including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.2 *Review and Amendment.* This standard is subject to review and amendment as the technology advances. The dynamics of this technology is advancing so rapidly that changes to this standard must be frequent.

Section 2. Scope

2.1 *Scope.* This standard specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon refrigerants regardless of source and lists acceptable test methods. These refrigerants are R11; R12; R13; R22; R113; R114; R123; R124; R500; R502 and R503 as referenced in the ANSI/ASHRAE Standard Number Designation and Safety Classification of Refrigerants (American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Standard 34 1992). Copies may be obtained from ASHRAE Publications Sales, 1791 Tullie Circle, NE., Atlanta, GA 30329. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC in room M–1500. In addition the following blends are listed: R22/152a/124 (53/13/34); R22/152a/124 (61/11/28); R125/290/22 (60/2/38); R125/290/22 (38/2/60).

Section 3. Definitions

3.1 *"Shall", "Should", "Recommended"*, or *"It Is Recommended"*. "Shall", "should", "recommended", or "it is recommended" shall be interpreted as follows:

3.1.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.1.2 *Should, Recommended,* or *It is Recommended.* "Should ", "recommended", or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. Characterization of Refrigerants and Contaminants

4.1 *Characterization.* Characterization of refrigerants and contaminants addressed are listed in the following general classifications:

4.1.1 *Characterization:*

a. Gas Chromatography
b. Boiling point and boiling point range

4.1.2 *Contaminants*

a. Water
b. Chloride
c. Acidity
d. High boiling residue
e. Particulates/solids
f. Non-condensables
g. Impurities including other refrigerants

Section 5. Sampling, Summary of Test Methods and Maximum Permissible Contaminant Levels

5.1 *Referee Test.* The referee test methods for the various contaminants are summarized in the following paragraphs. Detailed test procedures are included in Parts 1 through 9, 12 through 15, and 19 through 23 of Appendix–93 to ARI Standard 700: Analytical Procedures of ARI Standard 700–93, 1994, the Air-Conditioning and Refrigeration Institute. These parts of Appendix–93 to ARI 700 are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, Virginia 22203. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC in room M–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. If alternate test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

5.2 Refrigerant Sampling.

5.2.1 *Sampling Precautions.* Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling and safety procedures.

5.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables. Since non-condensable gases, if present, will concentrate in the vapor phase of the refrigerant, care must be exercised to eliminate introduction of air during the sample transfer. Purging is not an acceptable procedure for a gas phase sample since it may introduce a foreign product. Since R11, R113 and R123 have normal boiling points at or above room temperature, non-condensable determination is not required for these refrigerants.

5.2.2.1 *Connection.* The sample cylinder shall be connected to an evacuated gas sampling bulb by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling bulb.

5.2.2.2 *Equalizing Pressures.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Allow the pressure to equilibrate and close valves.

5.2.3 *Liquid Phase Sample.* A liquid phase sample is required for all tests listed in this standard except the test for non-condensables.

5.2.3.1 *Preparation.* Place an empty sample cylinder with the valve open in an oven at 230 °F [110 °C] for one hour. Remove it from the oven while hot, immediately connect to an evacuation system and evacuate to less than 1 mm mercury (1000 microns). Close the valve and allow it to cool.

5.2.3.2 *Manifolding.* The valve and lines from the unit to be sampled shall be clean and dry. The cylinder shall be connected to an evacuated gas sampling cylinder by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling cylinder.

5.2.3.3 *Liquid Sampling.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Take the sample as a liquid by chilling the sample cylinder slightly. Accurate analysis requires that the sample container be filled to at least 60% by volume, however under no circumstances should the cylinder be filled to more than 80% by volume. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

5.2.3.4 *Record Weight.* Check the sample cylinder for leaks and record the gross weight.

5.3 Refrigerant Purity Characterization.

5.3.1 *Primary Method.* The primary method shall be gas chromatography (GC) as described in Appendix-93 to ARI Standard 700. The chromatogram of the sample shall be compared to known standards.

5.3.2 *Alternative Method.* Determination of the boiling point and boiling point range is an acceptable alternative test method which can be used to characterize refrigerants. The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421 B, dated March 5, 1982, section 4.4.3 which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402–9328. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC in room M–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

5.3.3 *Required Values.* The required values for boiling point and boiling point range are given in table 1, Physical Properties of Fluorocarbon Refrigerants and Maximum Contaminant Levels.

5.4 Water Content.

5.4.1 *Method.* The Coulometric Karl Fischer Titration shall be the primary test method for determining the water content of refrigerants. This method is described in Appendix-93 to ARI Standard 700. This method can be used for refrigerants that are either a liquid or a gas at room temperature, including refrigerants 11 and 113, and 123. For all refrigerants, the sample for water analysis shall be taken from the liquid phase of the container to be tested. Proper operation of the analytical method requires special equipment and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

5.4.2 *Alternative Method.* The Karl Fischer Test Method is an acceptable alternative test method to the Coulometric Karl Fischer Titration for determining the water content of refrigerants. This method is described in ASTM E700–79, (Reapproved 1990), Standard Test Method for Water in Gases Using Karl Fischer Reagent (American Society for Testing and Materials, Philadelphia, PA), which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, Philadelphia, PA. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC in room M–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

5.4.3 *Limits.* The value for water content shall be expressed as parts per million by weight and shall not exceed the maximum specified (see tables 1 and 1a).

5.5 *Chloride.* The refrigerant shall be tested for chloride as an indication of the presence of hydrochloric acid and/or metal chlorides. The recommended procedure is intended for use with new or reclaimed refrigerants. Significant amounts of oil may interfere with the results by indicating a failure in the absence of chloride.

5.5.1 *Method.* The test method shall be that described in Appendix-93 to ARI Standard 700. The test will show noticeable turbidity at chloride levels of about 3 ppm by weight or higher.

5.5.2 *Turbidity.* The results of the test shall not exhibit any sign of turbidity. Report the results as "pass" or "fail."

5.6 Acidity.

5.6.1 *Method.* The acidity test uses the titration principle to detect any compound that is highly soluble in water and ionizes as an acid. The test method shall be that described in Appendix- 93 to ARI Standard 700. This test may not be suitable for determination of high molecular weight organic acids; however these acids will be

found in the high boiling residue test outlined in 5.7. The test requires a 100 to 120 gram sample and has a detection limit of 0.1 ppm by weight calculated as HCl.

5.6.2 *Limits.* The maximum permissible acidity is 1 ppm by weight as HCl.

5.7 High Boiling Residue.

5.7.1 *Method.* High boiling residue shall be determined by measuring the residue of a standard volume of refrigerant after evaporation. The refrigerant sample shall be evaporated at room temperature or at a temperature 50 °F [28K], above the boiling point of the sample using a Goetz bulb as specified in Appendix- 93 to ARI Standard 700. Oils and or organic acids will be captured by this method.

5.7.2 *Limits.* The value for high boiling residue shall be expressed as a percentage by volume and shall not exceed the maximum percent specified (see tables 1 and 1a).

5.8 Particulates/Solids.

5.8.1 *Method.* A measured amount of sample is evaporated from a Goetz bulb under controlled temperature conditions. The particulates/solids shall be determined by visual examination of the Goetz bulb prior to the evaporation of refrigerant. Presence of dirt, rust or other particulate contamination is reported as "fail." For details of this test method, refer to Appendix-93 to ARI Standard 700.

5.9 Non-Condensables.

5.9.1 *Sample.* A vapor phase sample shall be used for determination of non-condensables. Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerants. The solubility of air in the refrigerants liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

5.9.2 *Method.* The test method shall be gas chromatography with a thermal conductivity detector as described in Appendix-93 to ARI Standard 700.

5.9.3 *Limit.* The maximum level of non-condensables in the vapor phase of a refrigerant in a container shall not exceed 1.5% by volume (see table 1 and 1a).

5.10 Impurities, including Other Refrigerants.

5.10.1 *Method.* The amount of other impurities including other refrigerants in the subject refrigerant shall be determined by gas chromatography as described in Appendix-93 to ARI Standard 700.

5.10.2 *Limit.* The subject refrigerant shall not contain more than 0.50% by weight of impurities including other refrigerants (see table 1 and 1a).

Section 6. Reporting Procedure

6.1 *Reporting Procedure.* The source (manufacturer, reclaimer or repackager) of the packaged refrigerant shall be identified. The refrigerant shall be identified by its accepted refrigerant number and/or its chemical name. Maximum permissible levels of contaminants are shown in table 1. Test results shall be tabulated in a like manner.

TABLE 1.—CHARACTERISTICS OF REFRIGERANTS AND MAXIMUM CONTAMINANT LEVELS

	Reporting units	Reference (subclause)	R11	R12	R13	R22	R113	R114	R123	R124
Characteristics*:										
Boiling Point*	F @ 1.00 atm		74.9	−21.6	−114.6	−41.4	117.6	38.8	82.6	12.2
	°C @ 1.00 atm		23.8	−29.8	−81.4	−40.8	47.6	3.8	27.9	−11.0
Boiling Point Range*	K		0.3	0.3	0.5	0.3	0.3	0.3	0.3	0.3
Typical Isomer Content	By weight						0–1%	0–30%	0–8%	0–5%
							R113a	R114a	R123a	R124a
Vapor phase contaminants:										
Air and other non-condensables.	% by volume @ 25 °C	5.9	N/A**	1.5	1.5	1.5	N/A**	1.5	N/A**	1.5
Liquid phase contaminants:										
Water	ppm by weight	5.4	20	10	10	10	20	10	20	10
All other impurities including refrigerants.	% by weight	5.10	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.05	0.01	0.03	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides***	No visible turbidity	5.5	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.

**Since R11, R113 and R123 have normal boiling points at or above room temperature, non-condensable determinations are not required for these refrigerants.

***Recognized Chloride level for pass/fail is 3ppm.

TABLE 1A.—CHARACTERISTCS OF REFRIGERANTS AND MAXIMUM CONTAMINANT LEVELS

	Reporting units	Reference (subclause)	R401A	R401B	R402A	R402B	R500	R502	R503
Characteristics*:									
Refrigerant Components.			R22/152a/124	R22/152a/124	R125/290/22	R125/290/22	R12/152A	522/115	R23/13
Nominal Comp, weight%.			53/13/34	61/11/28	60/2/38	38/2/60	73.8/26.2	48.8/51.2	40.1/59.9
Allowable Comp, weight%.			51–55/11.5–13.5/33–35	59–63/9.5–11.5/27–29	58–62/1–3/36–40	6–40/1–3/58–62	72.8–74.8/25.2–27.2	44.8–52.8/47.2–55.2	39–41/59–61
Boiling Point*	F @ 1.00 atm.		−27.6 to −16.0	−30.4 to −18.5	−56.5 to −52.9	−53.3 to −49.0			
	C @ 1.00 atm.		−33.4 to −26.6	−34.7 to −28.6	−49.1 to −47.2	−47.4 to −45.0	−33.5	−45.4	−88.7
Boiling Point Range*.	K						0.5	0.5	0.5
Vapor Phase Contaminants:									

TABLE 1A.—CHARACTERISTCS OF REFRIGERANTS AND MAXIMUM CONTAMINANT LEVELS—Continued

	Reporting units	Reference (subclause)	R401A	R401B	R402A	R402B	R500	R502	R503
Air and other non-condensables.	% by volume @ 25°C.	5.9	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Liquid Phase Contaminants:									
Water	ppm by weight.	5.4	10	10	10	10	10	10	10
All other impurities including refrigerants.	% by weight.	5.10	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue.	% by volume.	5.7	0.01	0.01	0.01	0.01	0.05	0.01	0.01
Particulates/solids	Visually clean to pass.	5.8	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Acidity	ppm by weight.	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides**	No visible turbidity.	5.5	Pass	Pass	Pass	Pass	Pass	Pass	Pass

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.
**Recognized Chloride level for pass/fail is 3ppm.

10. Appendix B to subpart F is amended by revising the introductory text to read as follows:

Appendix B to subpart F—Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 740–93.

* * * * *

11. Appendix D to subpart F is amended by revising section g to read as follows:

Appendix D to Subpart F—Standards for Becoming a Certifying Program for Technicians

* * * * *

g. Recordkeeping and Reporting Requirements

Certifying programs must maintain records for at least three years which include, but are not limited to, the names and addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.

EPA must receive an activity report from all approved certifying programs by every January 30 and June 30, the first to be submitted following the first full six-month period for which the program has been approved by EPA. This report will include the pass/fail rate and testing schedules. This will allow the Agency to determine the relative progress and success of these programs. If the certifying program believes a test bank question needs to be modified, information about that question should also be included.

Approved certifying programs will receive a letter of approval from EPA. Each testing center must display a copy of that letter

* * * * *

§§ 82.156, 82.160, 82.161, 82.162, 82.164, 82.166 and Appendix D [Amended]

12. Sections 82.156, 82.160, 82.161, 82.162, 82.164, 82.166, and appendix D are amended by removing the parenthetical statement containing the OMB control number at the end of the section.

[FR Doc. 94–20169 Filed 8–18–94; 8:45 am]

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August 19, 1994

Part V

Department of Transportation

Coast Guard

33 CFR Part 168

Escort Vessels for Certain Tankers; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 168

[CGD 91–202]

RIN 2115–AE10

Escort Vessels for Certain Tankers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring escort vessels for certain oil tankers transiting Prince William Sound, Alaska, and Puget Sound, Washington. This rulemaking is mandated by the Oil Pollution Act of 1990 (OPA 90). The regulations will reduce the chances of a tanker running aground or colliding as a result of loss of propulsion or steering control, thereby potentially reducing the risk of an oil spill.

EFFECTIVE DATE: November 17, 1994.

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

FOR FURTHER INFORMATION CONTACT: Thomas Jordan, Project Manager, OPA 90 Staff, at (202) 267–6751.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, Oil Pollution Act (OPA 90) Staff, and Mary-Jo Cooney, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

On July 7, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Escort Vessels for Certain Oil Tankers" in the **Federal Register** (57 FR 30058). When the Coast Guard received comments to the NPRM which were not as extensive as expected, it reopened the comment period (58 FR 16391, March 26, 1993) to solicit more specific comments on certain issues.

The Coast Guard also published an advance notice of proposed rulemaking (ANPRM) (58 FR 25766, April 27, 1993) seeking comment on other U.S. waters where an escort should be required, and other vessels that should also be escorted. That regulatory project (CGD 91–202a) is ongoing.

In response to many comments, public hearings were held in Anchorage, Alaska on June 3, 1993, Valdez, Alaska on June 5, 1993 and Seattle, Washington on June 7, 1993 (58 FR 25959, April 29, 1993; and 58 FR 29157, May 19, 1993). The Alaska hearings were also teleconferenced to include several outlying communities in the Exxon Valdez impact area. Transcripts of those hearings have been placed in the public dockets for these rulemakings (CGD 91–202 and CGD 91–202a) and are available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

At this time, the Prince William Sound Disabled Tanker Towing Study (DTTS) Group is sponsoring a special study concerning the present tanker escort operations in Prince William Sound (PWS). The study group is made up of representatives from five regional interest groups: the PWS Tanker Association, the PWS Regional Citizens' Advisory Council, Alyeska Pipeline Service Company, the Alaska Department of Environmental Conservation, and the Coast Guard. Although the DTTS is a separate project from this rulemaking, it is of particular value to this rulemaking because of the technical information it will develop on the maneuvering characteristics of disabled tankers under the control of different combinations of escort vessels. Part 1 of the DTTS, entitled "Evaluation of Existing Equipment, Personnel and Procedures," has been completed and is available to the public through the National Technical Information Service (NTIS). The Coast Guard published a notice of availability (NOA) (59 FR 1411; January 10, 1994) for Part 1. The NOA reprinted the Executive Summary from Part 1, and provided information for ordering copies of the study from NTIS. Part 2 of the study is expected to be completed in spring 1994; the Coast Guard will publish another NOA when details are available.

Background and Purpose

Section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) requires the Secretary of Transportation to initiate rulemaking to define areas where single-hulled tankers over 5,000 gross tons (GT) transporting oil in bulk must be escorted by at least two "towing vessels" (as defined in 46 U.S.C. 2101) or by some other vessels which the Secretary considers appropriate. By statute, these defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction). The Secretary also has the authority to extend the escort rule to other U.S. waters as appropriate.

The rulemaking authority has been delegated to the Coast Guard, which will implement section 4116(c) in two separate rulemaking projects: CGD 91–202 addresses escort requirements for the Prince William Sound and Puget Sound waters named in the statute, and CGD 91–202a addresses escort requirements for other waters.

Discussion of Comments and Changes

Comments received by the Coast Guard in response to the NPRM and public hearings are discussed as follows:

1. Role of escort vessels. Four comments suggested that the guidelines concerning the role of the escort must be clearly specified and defined. One comment stated that the principal purpose of the escort should be to prevent tanker accidents by steering or retarding disabled tankers. One comment stated that an escort should be able to safely assist a tanker moving near its maneuvering speed, alter the tanker's speed or course, apply lateral force, and overtake the tanker within confined waters.

The Coast Guard generally agrees with these comments. The role of the escort vessels is to assist a tanker that is experiencing a loss of propulsion or steering control and is therefore at risk of collision or grounding. However, it must be pointed out that escort vessels may not always be able to prevent all tanker accidents. This rule requires that reasonably capable escort vessels be immediately on hand to assist a tanker as circumstances permit. The decision to respond, however, must be left to the professional judgement of the escort vessel's master, who must always first consider the risk to the escort vessel and its crew.

2. Benefit of escort vessels. Four comments stated that they did not believe that the presence of escort vessels improves the safety of the transit; two comments further stated that safety is actually reduced because of increased vessel traffic (due to the escort vessels themselves) which increases opportunities for collisions. Additionally, another comment asserted that tug escorts would increase the risk of collision in Puget Sound. However, one comment points out that there are significant safety benefits gained by providing escorts for certain vessels.

Although escort vessels may not always be able to prevent a tanker accident, the Coast Guard believes that

escort vessels can successfully control a tanker under many circumstances. Having reasonably capable escort vessels on hand, coupled with the tanker master's duty to operate the tanker within the performance capabilities of the escort vessels, will provide the maximum feasible assurance that the transit can be safely made. The Coast Guard disagrees that vessel traffic would be substantially increased: in Prince William Sound the increased traffic would be two escort vessels once every two months; in Puget Sound the increased traffic would average four escort vessels per day, which is not a significant increase.

3. Definitions. Thirteen comments related to the various definitions proposed in the NPRM, or proposed additional definitions. Accordingly, § 168.5 of this rule adds, revises, and deletes certain terms that were proposed in the NPRM.

Definitions of "disabled tanker" and "escort transit" have been added.

The definition of "escort vessel" has been revised in order to reflect the fact that a variety of vessel types can perform escort services other than just the "towing vessels" cited in the statute. Furthermore, a vessel that may be suitable for escorting a particular tanker under certain transit conditions may not be suitable for escorting other tankers, or even the same tanker under other conditions. The necessary elements of an escort vessel are that: it is dedicated exclusively to the tanker for the duration of its transit; and it is properly equipped for its intended role in an emergency response (pushing, towing, etc.). The second element means that it is not necessary for the escort vessels to have duplicative capabilities. For example, one escorting vessel does not have to be outfitted with towing gear if another escorting vessel is adequately outfitted.

The definition of "laden" replaces the NPRM's definition of "transporting oil in bulk" because it is more precise.

The definition of "single hull tanker" has been added, although it still maintains the same vessel applicability as proposed in the NPRM: any tanker that is not double-hulled.

Definitions of "tanker owner or operator" and "tanker master" have been added. They distinguish a shoreside owner or management organization (that has overall operational control of the tanker), including a demise (bareboat) charterer, from a tanker's master (who is the licensed, onboard person in charge of the tanker).

The NPRM's definition of "static bollard pull" has been deleted because it is not used in the rule.

4. Responsibilities. The NPRM originally made the tanker master responsible for selecting the escort vessels. Six comments were received on this issue, and all of them generally expressed the opinion that the tanker master should not be responsible for selecting or deciding escort vessel suitability. Some comments argued that the tanker master may not be sufficiently familiar with the local waters, weather conditions or other navigational considerations to select the best escort vessels; these are some of the reasons why pilots are embarked when any vessel enters a port. Some comments also argued that escort vessel selections might be made by the tanker's shoreside management company, putting the tanker master under considerable pressure to accept whatever vessels have been dispatched.

The Coast Guard generally agrees that proper selection of escort vessels requires some specialized knowledge and pre-planning which might be beyond the abilities of the tanker master to accomplish. Such knowledge might have to be developed from tanker-specific maneuvering and control studies. Also, tanker owners or operators may wish to make contractual arrangements with escort vessel operators to ensure appropriate vessels are available at favorable rates. Because the resources to conduct studies or make contractual agreements are controlled by the tanker's owners or operators (shoreside management), it is more appropriate that they should be ultimately responsible for the escort vessel selection and providing the tanker master with any specialized information.

Therefore, § 168.10 makes the tanker owners or operators responsible for escort vessel selection and informing the tanker master of the performance capabilities of the escort vessels. The master is responsible for operating the tanker within those performance capabilities.

The regulations do not preclude owners or operators from authorizing masters or other agents to make selections, although the tanker owners or operators will have to furnish the necessary technical information for proper escort vessel selection.

5. Applicable vessels. OPA 90 specifically targets single hull tank ships of more than 5,000 gross tons (GT) (5,000 GT corresponds to approximately 10,000 deadweight tons (DWT), which is the tonnage measurement more commonly applied to tankers). The NPRM proposed to include tankers with only double bottoms or double sides but exclude double hulled tankers.

Eight comments to the NPRM addressed the issue of hull design (i.e. single hull, double hull, double bottom, or double sides). Most of these comments stated that double hulls should not be excluded from the escort requirements. Two comments did agree with the double hull exclusion, another comment also agreed with the double hull exclusion and stated that double bottom tankers should also be excluded. One comment suggested that the escort requirements should apply to all tankers over 5,000 GT, (regardless of construction) and another comment suggested that they should apply to all vessels carrying oil (regardless of construction or size). One comment suggested that all single-hulled oil tankers should be included whether laden or unladen. The Coast Guard is of the opinion that Congress did not intend for tankers that meet the OPA 90 double hull design requirements to be escorted. Therefore, the originally-proposed hull design standard has not been revised: double hull tankers are excluded, but all other single hull, double bottom, and double side tankers are included.

Eleven comments addressed size limits for applicable tankers, suggesting either to raise the gross tonnage threshold (thereby excluding some tankers greater than 5,000 GT) or require escorts for only those tankers carrying more than a particular quantity of oil. One comment pointed out that smaller tankers are less of a threat to the environment than larger ones, and therefore should not have to be escorted. Two of the comments support the proposed size requirements. OPA 90 specifically includes tankers down to 5,000 GT; therefore, the proposed size limit has not been changed.

Four comments were received which advocated excluding those tankers with twin screw propulsion systems, on the grounds that a simultaneous failure of both propulsion systems was unlikely. OPA 90 requires tankers that are not double-hulled to be escorted, regardless of propulsion system.

Therefore, § 168.20 makes the regulations applicable to all U.S. and foreign-flag single hull tankers of more than 5,000 GT, including tankers with only double bottoms or double sides, or double hull tankers that do not meet the dimensional standards of 33 CFR 157.10d (which are the OPA 90 double hull standards). The regulations do not apply to tankers less than 5,000 GT or tank barges of any size.

6. Applicable cargoes. The NPRM proposed to include "oil" cargoes,

without distinguishing between petroleum and non-petroleum (i.e., animal or vegetable) oils. Six comments indicated that tankers carrying animal and vegetable oils should be excluded from the escort regulations. One comment went on to say that if these oils are included, then the ruling would have a detrimental economic impact on his small business. The issue of requiring escorts for tankers carrying only animal and vegetable oils, and other non-petroleum oils, warrants further consideration. This will be addressed in the ongoing rulemaking (CGD 91–202a) which concerns other U.S. waters where an escort may be required and other criteria for defining the vessels that should be escorted. Therefore, § 168.30 of this rule applies only to petroleum oils (MARPOL Annex I), which are listed in 46 CFR Table 30.25–1 as pollution category I cargoes.

Four comments noted that many hazardous chemical cargoes can pose serious risks to the marine environment or public health, and argued that vessels carrying these cargoes should also be escorted. One comment stated that additional regulations are needed to cover the transfer of hazardous substances not covered by the proposed regulations. The Coast Guard has determined that including hazardous material cargoes is outside the statutory authority of OPA 90. However, the Coast Guard will be seeking further comment on this issue as part of the "other waters" escort vessel rulemaking and may propose regulations to include certain hazardous material and or NLS cargoes under authority of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*).

7. Applicable waters. Twenty comments addressed what U.S. waters should be included under the escort regulations.

For Prince William Sound, 12 comments stated that escorts should be continuously required all the way from Port Valdez to Hinchinbrook Entrance (including the mid-Sound region). Four comments stated that escorts should only be required at Port Valdez and Hinchinbrook Entrance but not in mid-Sound because there is enough sea room in mid-Sound for a tanker to safely drift while waiting for the arrival of assist tugs dispatched from Port Valdez. The Coast Guard agrees that escorts are appropriate for all regions of Prince William Sound, and the rule so provides.

For the Puget Sound escort zone, the NPRM proposed a western boundary of longitude 123°24.5′ West, but excluded tankers transiting to and from the Ediz Hook anchorage of Port Angeles (which would require them to skirt just inside that boundary). Three comments suggested moving the western boundary of the escort zone to the entrance to the Straits of Juan de Fuca (Cape Flattery), while 2 comments suggested moving the western boundary eastwards to coincide with the existing escort zone established by Washington state. One comment suggested the applicable area be extended to the Ediz Hook anchorage adjacent to the Port Angeles Harbor. As a result of comments, this rule revises the western boundary by shifting it approximately 11 nautical miles eastwards to include the U.S. waters east of the line connecting New Dungeness Light (Washington) with Discovery Island Light (Canada). This new boundary location therefore coincides with the existing Federal boundary line governing maximum tanker size in Puget Sound waters (33 CFR 161.143), as well as the boundary line for escorting as required by the existing Washington state regulations. This change still excludes the Ediz Hook anchorage.

The remaining comments nominated additional waters besides Prince William Sound and Puget Sound, such as Cook Inlet, Alaska, and the Olympic coast, Washington. These comments will be considered in the separate "other waters" rulemaking project (CGD 91–202a).

8. Number of escort vessels. One comment suggested that the Coast Guard define the required capabilities of an escort vessel rather than only specifying any particular number of escort vessels. Another comment supported the requirements for two escorts in Prince William Sound. Two comments suggested that smaller tankers be allowed to use only one escort vessel. Two comments disagreed with requiring the usage of two escort vessels and suggested that one would be adequate in most cases. OPA 90 requires a minimum of two escort vessels for the Prince William Sound and Puget Sound waters stipulated in the statute. Therefore, regulations for those waters which cite OPA 90 authority must incorporate this statutory minimum requirement.

9. Relative positioning of escort vessels. Among other provisions, the NPRM proposed that the escort vessels be "available in close proximity to the tanker at all times." Twelve comments addressed the issue of where the escort vessels should be positioned (relative to the tanker) during the escort transit. In lieu of a close proximity requirement, some comments suggested a specified maximum distance from the tanker, such as one-half mile. However, other comments argued that a specified distance was unnecessarily restrictive. The latter comments pointed out that the closer any vessel is to a tanker, the greater the risk of a collision. These comments argued that, in open waters, the escort vessel should have the flexibility to position itself at any safe distance as judged by its master, so long as it could still respond in a timely fashion. The Coast Guard agrees with the "timely response" approach, and has revised this rule accordingly. This will effectively require the tanker and escort vessel masters to continuously evaluate the situation and reposition themselves, as appropriate, at different points along the transit route. This does not preclude the escort vessels from remaining in the shelter of the tanker's lee if weather conditions and prudent seamanship warrant; the tanker should then adjust its speed to compensate for any delays before the escort vessels could move into position to render assistance in an emergency.

10. Performance requirements. The NPRM proposed that the escort vessels be "capable of providing sufficient maneuvering forces to substantially influence the speed and direction of travel of the tanker." Twelve comments addressed the issue of performance capabilities of the escort vessels. One comment recommended that a tug escort have the capability to push or tow a disabled ship away from the danger of grounding or collision. One comment suggested that tug escorts should have the ability to stop a disabled vessel within 10 vessel lengths from the declaration of an emergency (this comment qualified its suggestion by recognizing that such a standard would be very dependent upon the harbor conditions). Another comment suggested that tug escorts be capable of meeting the demands of assisting the escorted tanker. Another comment contended that performance and design criteria for tug escorts will be dictated by an effective escort program, and suggested that local geography, local man-made hazards, and regulated vessel speeds be considered when developing tug escort capabilities criteria. Four comments addressed the performance standards as outlined in the NPRM. One comment suggested that performance standards should be geographically-specific. Two comments recommended that performance based criteria be coupled with the tanker's tonnage, weather, or sea conditions. Additionally, one comment was specifically concerned with weather conditions and suggested that oil tankers only be allowed to operate in Prince William Sound when weather

conditions would permit safe operation of the tug escorts. This comment further suggested that the realistic adverse weather limits for safe escorting operations is approximately 40-knot wind speed in 10-foot seas. Another comment generally supported the performance-based criteria as proposed in the NPRM, but suggested that operating parameters also be considered.

The Coast Guard agrees that performance requirements should be more detailed. Accordingly, § 168.50 of this rule has been revised to include towing, stopping, holding, and turning requirements for controlling a tanker within specified parameters under various failure and weather scenarios, and to require that the tanker not be operated beyond a speed at which the escort vessels can reasonably be expected to bring it safely under control within the navigational limits of the waterway. The requirements were developed after reviewing several tanker/tug maneuvering studies that were submitted to the docket, and considering that the largest tankers in Prince William Sound are about 265,000 DWT (deadweight tons) and the largest in the Puget Sound waters are 125,000 DWT.

The underlying basis of the performance requirements is to: (1) Ensure sufficient power to perform a rescue tow of a tanker (or to substantially reduce its drift rate in severe winds); and (2) provide steering and stopping forces that are equivalent to what the tanker could do itself (with its own steering and propulsion system) at a speed of 6 knots. The Coast Guard believes that, in conjunction with an appropriate tanker speed during the transit, both conventional tugs and tractor tugs that meet the performance requirements can reasonably be expected to safely accomplish effective emergency control of disabled tankers. Discussion of the specific performance requirements is as follows:

Towing: The regulations require an escort vessel to be capable of towing the tanker at 4 knots in calm conditions and hold it in a steady position against a 45-knot headwind.

Stopping: The regulations require that the escort vessel(s) be able to stop the tanker within the same distance that the tanker would have been able to crash-stop itself from a speed of 6 knots using its own propulsion system.

Holding on steady course: The regulations require that the escort vessel(s) be able to hold the tanker on a steady course against a 35-degree locked rudder at 6 knots. This means that the escort vessels must be able to apply a counteractive turning moment equal and opposite to the turning moment generated by the locked rudder, taking into consideration the geometry of the escort vessel's applied force on the tanker's hull (points of application, angle of assist, etc.).

Turning: The regulations require that the escort vessel(s) be able to turn the tanker 90 degrees, assuming a free-swinging rudder and an initial speed of 6 knots, in the same distance (advance and transfer) as it would have been able to turn itself using a hard-over rudder. The geometry of the escort vessels' applied forces on the tanker must similarly be taken into consideration.

These requirements are based upon the 6-knot maneuvering characteristics of the tanker because this is the upper speed limit at which conventional tugs can safely make connections to the tanker. However, the Coast Guard recognizes that not all steering or propulsion failures will require immediate intervention by the escort vessels. In many instances, there could be enough sea room in the waterway for the tanker to safely drift to a stop without assistance from escort vessels. The regulations, therefore, allow a tanker to transit at any speed provided that there is sufficient sea room to accommodate the disabled tanker's travel (advance and transfer) until it has naturally slowed down to the speed where the escort vessels can move in and bring it under control. For example, a tanker can make a transit at 10 knots if there is adequate sea room on both sides of its trackline to tolerate a locked rudder at that speed. In a constrained waterway, however, or in adverse weather conditions, prudent seamanship may require the tanker to reduce its transit speed, or expand the performance capabilities of its escort vessels (such as by adding another escort vessel, pre-tethering, etc.), or both.

11. Other operational requirements. One comment concerning other operational requirements suggested that escort vessels be required to be pre-tethered to a tanker before entering especially constrained waterways (the hazard presented by Middle Rock in Valdez Narrows was specifically mentioned as an example). Although the Coast Guard agrees that, under certain conditions, pre-tethering may be appropriate, it may not be necessary under other circumstances. Pre-tethering may entail a safety risk to the escort vessel and its crew; it should be viewed as an option that the tanker and escort vessel masters may utilize after discussing the sea and weather conditions at the anticipated time of transit.

Six comments on other operational requirements urged that specific speed limits be set as part of the regulations; however, three comments disagreed. The Coast Guard also does not agree that specific speed limits are necessary because § 168.50(a)(3) requires that a tanker not be operated beyond a speed at which the escort vessels can reasonably be expected to safely bring the tanker under control.

12. Escort plans. The NPRM proposed that escort vessel operators prepare written information on the capabilities of their vessels and submit the information to the local Coast Guard Captain of the Port (COTP) for review and approval. The approved information would then be used by the tanker master to select escort vessels during the pre-escort conference. Ten comments recommended requiring tanker-specific escort plans rather than escort vessel-specific plans (on the argument that the appropriate approach to escort vessel selection must be based on the needs of the tanker rather than the abilities of the escort vessels). Two comments suggested alternatives to selecting the escort vessels at the pre-escort conference: one comment recommended that the Coast Guard COTP be responsible for prior approval and designation, and the other comment recommended that each affected port establish a clearinghouse for certified escort vessels.

Because the regulations contain specific performance criteria, and because the responsibility for selecting appropriate escort vessels is on the tanker owners or operators, the Coast Guard has reconsidered its originally proposed requirement for submittal and approval of written escort plans, and decided that there is no longer any need. Tanker and escort vessel owners or operators can work together to match tanker needs with escort vessel capabilities without Coast Guard participation. Tanker owners or operators can make arrangements for appropriate escort vessels in advance of the tanker's arrival, and retain the flexibility of making those arrangements in several ways, such as pre-contracting, establishing local clearinghouses of escort vessels, etc. Therefore, the NPRM's original requirement for submittal of written escort plans has been deleted.

13. Pre-escort conference. The NPRM originally had two purposes for the pre-escort conference: (1) for the tanker master to determine the suitability of the escort vessels (on the basis of written information submitted at the

conference); and (2) a joint conference for the tanker master, pilot and escort vessel masters to discuss and plan the escort transit.

Eight comments were received concerning the pre-escort conference. In general, the comments agreed that it could be used for exchanging safety and tactical information between the tanker master, pilot, and escort vessel masters. One comment noted that the current briefing practice in Washington state is sufficient. However, four comments pointed out that the conference, as proposed, would occur too late to actually select the escort vessels. Rejection of an escort vessel at that point could lead to tanker delays and congestion while waiting for a replacement escort. They argued that dispatching several escort vessels to meet a tanker, of which only two or three would be selected, would waste the time and expense of the non-selected vessels. Two comments were concerned that lengthy pre-escort conferences would similarly cause delays and congestion. Further, one of the comments indicated that this would cause undesirable economic pressure for the vessel master and pilot.

The Coast Guard recognizes that the pre-escort conference may be too late for selecting or rejecting the escort vessels. As previously discussed in paragraph (4), escort vessel selection is now the responsibility of the tanker owner or operators. This will allow them to make arrangements for appropriate escort vessels in advance of the tanker's arrival (or departure, if outbound).

Section 168.10 has been revised to reflect the changed responsibilities for selecting escort vessels and to state more clearly the purpose of the conference and the topics to be discussed.

14. Additional mission requirements. Fourteen comments addressed additional mission requirements for the escort vessels, nominating firefighting, salvage, lightering, and pollution response capabilities (the spill response capability of the Alyeska Pipeline Service Company's Ship Escort and Response Vessel System (SERVS) vessels in escort service in Prince William Sound were specifically mentioned). One comment stated that spill containment and firefighting are excessive secondary functions that the escort should not be expected to perform. The Coast Guard has determined that none of these capabilities can be easily retrofitted aboard the existing fleet of tugs, which will make up the bulk of the escort vessel resources. This is because most tugs do not have sufficient deck area to accommodate the additional mission equipment, nor sufficient above-water height (and associated stability) to serve as effective firefighting platforms. However, the regulations do not preclude using vessels with such capabilities if they are available.

15. Coordination with vessel response plans (VRPs). Five comments suggested coordination of the escort regulations with the special vessel response plan (VRP) requirements for tank vessels operating in Prince William Sound, as required by section 5005 of OPA 90 and the Interim Final Rule for vessel response plans (58 FR 7376, February 5, 1993). One of these special VRP requirements is to provide "escort vessels with skimming capability." The concern of the comments is that there will be two Federal definitions of "escort vessel:" one definition in the VRP regulations (which would include skimming requirements), and the other definition in the escort vessel regulations (without any skimming requirements). This could lead to confusion or unnecessary expense.

The Coast Guard agrees that there should be a single, consistent definition of "escort vessel" throughout all the OPA 90 rulemakings. The intent of the special VRP requirement is for a vessel with skimming (response) capability to accompany a laden tanker across Prince William Sound. The Coast Guard has determined that this is a spill response capability that is separate from the emergency control measures that the escort vessels are intended to provide under this rulemaking. Accordingly, the final rule for the VRP rulemaking will be revised by eliminating the term "escort vessel" and substituting in its place the term "escorting response vessel." As previously noted, this does not preclude a single, appropriately-equipped vessel from fulfilling both requirements (escorting and skimming) in Prince William Sound.

16. Prince William Sound Disabled Tanker Towing Study. Nine comments were received suggesting that the escort regulations should be postponed until completion of the Prince William Sound Disabled Tanker Towing Study (DTTS), in order to benefit from the findings of that study.

At this time the Coast Guard has reviewed Part 1 of the DTTS, as well as several other technical studies concerning escorting and control of disabled tankers, and expects that the regulations will be supported by the final DTTS results. Therefore, the Coast Guard believes that it can now move ahead with this rulemaking.

17. Discussion of other comments. Two comments suggested that the Vessel Traffic Systems (VTS) be expanded instead of requiring escort vessels. One comment, however, disagreed with the usage of the VTS system, saying that such a system failed in the EXXON VALDEZ disaster; this comment suggested using another emergency towing arrangement. Two comments recommended that VTS control be employed for small tallow tankers. Further, one of these comments suggested that when such employment is not feasible, a single escort should be used. The Coast Guard does not agree that a VTS can substitute for the immediate, on-site assistance that an escort vessel can provide. It should be noted that the VTS and escort vessel requirements of OPA 90 are separate, and the use of one does not obviate the need for the other.

One comment recommended that the Coast Guard should ensure construction of double hull U.S. flag vessels which have a redundant propulsion system. The Coast Guard has determined that this is beyond the scope of the escort vessel rulemaking.

Assessment

Because of substantial public interest, this rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A final Assessment is available in the docket for inspection or copying where indicated under ADDRESSES.

Summary of Final Assessment

Certain oil tankers transiting through both Prince William Sound and Puget Sound are already subject to state-level escort requirements. The final Assessment for this rulemaking evaluates the economic impact of the proposed Federal regulations by analyzing the incremental cost increases beyond the costs already incurred due to the state regulations. In Prince William Sound, the crude oil tankers operating out of Port Valdez are already escorted in accordance with the Alyeska Pipeline Service Company contingency plan which was approved by the State of Alaska. Therefore, there is not much incremental impact from the Federal regulations: only approximately six tankers per year deliver refined products to the Navy fuel depot at Whittier (these tankers are not required to be escorted under Alaska

regulations). In Puget Sound, an estimated 1,256 tanker transits per year are affected: approximately 879 transits where one escort vessel is already engaged (under Washington state regulations) will now require at least one additional escort vessel to meet the Federal regulations. Also, because the Federal regulations encompass tankers down to 5,000 GT (approximately 10,000 DWT), an estimated 377 additional tanker transits per year will now require at least two escort vessels (these tankers presently do not require any escorts because the Washington state regulations only extend down to 40,000 DWT). Therefore, the regulations are estimated to initially increase vessel traffic by 12 escort vessel transits per year in Prince William Sound and 1,633 escort vessel transits per year in Puget Sound. However, these numbers will decline as single hull tankers are phased out of service.

The OPA 90 phase-out schedule requires single hull tankers to be removed from service by 2010, but allows certain tankers with double sides or double bottoms to remain in service until 2015. Because it was not possible to project how many tankers of each design (single-hulled, double-bottomed, or double-sided) will be in service over the next 20 years, the Assessment assumes that all tankers subject to this rulemaking are single-hulled (i.e., will be removed from service by 2010). Therefore, the incremental escort vessel cost to the oil tanker industry will decrease to zero by that year. The Assessment conservatively assumes the same phase out schedule as used for the Regulatory Evaluation of the double hull rulemaking, although tanker owners or operators in these waters may choose to replace their single hull tankers at an earlier time.

As a result of comments to the NPRM, the regulations have been revised in certain respects. These revisions also affect some of the economic assumptions and calculations in the original preliminary Regulatory Evaluation. Accordingly, the final Assessment has been revised as follows:

(1) Certain costs have been recalculated, using new cost data for escort vessel services. The Assessment assumes the average cost of an escort vessel is $1,350 per hour;

(2) New costs have been added, recognizing that tanker owners or operators may have to conduct various sea trials and computer simulation studies (in order to determine the maneuvering and control characteristics of their tankers). Even though this information is not directly required by regulation, it is still an indirect cost that will be borne by industry;

(3) The benefit analysis has been significantly revised (discussed later);

(4) Costs and benefits have been recalculated at a 7 percent discount rate, in order to be consistent with current OMB directives and other OPA 90 regulatory assessments (the original preliminary Regulatory Evaluation discounted all costs at 10 percent).

In Prince William Sound, the Assessment estimates that the incremental escort cost is $94,500 per tanker transit from Hinchinbrook Entrance to Whittier (via Bligh Reef pilot station) and return, using two escort vessels dispatched from Port Valdez. This cost-per-transit is relatively high because the tanker must pay for the total round-trip dispatch time of the escort vessels. Because these tankers are operated or chartered by the Navy, the escort costs will ultimately be borne by the U.S. Government (Department of Defense).

In Puget Sound, the Assessment assumes that there is sufficient inbound or outbound tanker traffic such that a tanker will only be paying for one-way dispatch time of the escort vessels. However, unlike Prince William Sound, there are several possible destination terminals in Puget Sound; accordingly, escorted transit times range from 1 to 7 hours. Therefore, the average cost-per-transit is estimated to be $6,750 (5 hrs at approximately $1,350 per hour) for all tankers, in 1994 dollars.

The Assessment estimates that the first-year cost of the regulations (1995) will be $11.4 million, and the total discounted program cost (1995 to 2015) will be $57.7 million, in 1990 dollars. The tanker industry can reduce these costs by switching to double-hulled tankers earlier than assumed in the Assessment, or it can increase these costs by continuing to use double-sided or double-bottomed tankers after 2010.

The original preliminary Regulatory Evaluation attempted to statistically estimate the benefits of the regulations. The Coast Guard has subsequently determined that there is no statistical basis for such estimations without making extreme assumptions of debatable validity. This is because the occurrence of a steering or propulsion failure is not related to the size of the tanker or its cargo capacity. Further, such failures do not necessarily result in a collision or grounding, nor do collisions or groundings necessarily result in rupture of cargo tank(s). And even if a tank were ruptured, there is no predicting the actual amount of outflow that would occur.

Therefore, the final Assessment makes a presumption of effectiveness by assuming that the regulations would avert at least one collision or grounding that would otherwise spill 300,000 barrels of oil (This is derived from the approximate capacity of two cargo tanks on a midsize oil tanker of 80,000 DWT.). This averted oil spill could occur at any time during the 15-year period from 1995 (the first full year that the regulations will be in effect) to 2010 (when the last single hull oil tanker is phased out of service).

The monetary benefits of these regulations include avoided cleanup costs, third-party compensation (lost earnings to fishermen, etc.) and natural resource damages. Historically, these costs have varied enormously from spill to spill because of the great range of factors affecting the impact of oil spills, such as type of product, environment, time of year, location, and weather conditions. Accordingly, it is not possible to establish a definitive monetized (dollar) benefit value for unspilled oil. Therefore, the Assessment does not perform benefit calculations using dollar amounts. Instead, it uses the unspilled oil quantity, discounted at 7 percent back to 1990 barrels. If the averted 300,000 barrel spill were assumed to occur in 1995, the discounted quantity would be 213,896 barrels. If it were assumed to occur in 2010, the discounted quantity would be 77,526 barrels.

Accordingly, the final Assessment has determined that the cost of these regulations ranges from $270 to $744 per discounted barrel of unspilled oil.

Small Entities

The Coast Guard has evaluated the impact of this rulemaking on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The small entity impact analysis is incorporated into the final Assessment for this rulemaking.

In response to the NPRM and public hearings, only six comments have been received to date concerning the impact of escort regulations on small businesses. The comments stated that the regulations would have detrimental economic impact on small businesses in the Puget Sound region if tallow and vegetable oil cargoes were included. However, the regulations do not include non-petroleum oil cargoes.

The Coast Guard has determined that most of the tankers that are affected by the regulation in Prince William Sound and Puget Sound are owned either by oil companies or large shipping corporations. Since few small entities will be affected, the Coast Guard

certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The original NPRM contained collection of information requirements in the form of written information that had to be prepared by escort vessel operators and submitted to the local Coast Guard Captain of the Port (COTP). As discussed elsewhere, the requirement has been deleted.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule establishes standards and requirements for the escort of single hull tankers over 5,000 GT in Prince William Sound, Alaska and Puget Sound (and certain associated waters around Puget Sound), Washington. The authority to regulate such traffic is delegated to the Coast Guard by the Secretary of Transportation whose authority is committed by statute.

While these regulations establish minimal requirements for escort of certain tanker traffic through these designated areas, the Coast Guard does not intend to preempt the states from issuing more stringent requirements provided they are not in direct conflict with Federal law or this rulemaking.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that the preparation of an Environmental Impact statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under ADDRESSES.

The primary effect of the regulation will be a reduction in the probability of petroleum oil spills in Puget and Prince William Sounds. The only other impact will be a minor increase in vessel traffic (escort vessels) moving through Puget and Prince William Sounds: the estimated 1,276 additional escort vessel transits per year represent an average of 3 to 4 additional vessels per day; this will decrease as single hull tankers are phased out of service.

List of Subjects in 33 CFR Part 168

Cargo vessels, Navigation (water), Oil pollution, Water pollution control.

For the reasons set out in the preamble, the Coast Guard adds 33 CFR part 168 as follows:

PART 168—ESCORT REQUIREMENTS FOR CERTAIN TANKERS

Sec.
168.01 Purpose.
168.05 Definitions.
168.10 Responsibilities.
168.20 Applicable vessels.
168.30 Applicable cargoes.
168.40 Applicable waters and number of escort vessels.
168.50 Performance and operational requirements.
168.60 Pre-escort conference.

Authority: Section 4116(c), Pub. L. 101–380, 104 Stat. 520 (46 U.S.C. 3703 note).

§ 168.01 Purpose.

(a) This part prescribes regulations in accordance with section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380). The regulations will reduce the risk of oil spills from laden, single hull tankers over 5,000 GT by requiring that these tankers be escorted by at least two suitable escort vessels. The escort vessels will be immediately available to influence the tankers' speed and course in the event of a steering or propulsion equipment failure, thereby reducing the possibility of groundings or collisions.

(b) The regulations in this part establish minimum escort vessel requirements. Nothing in these regulations should be construed as relieving the master of a tanker from the duty to operate the vessel in a safe and prudent manner, taking into account the navigational constraints of the waterways to be traversed, other vessel traffic, and anticipated weather, tide, and sea conditions, which may require reduced speeds, greater assistance from escort vessels, or other operational precautions.

§ 168.05 Definitions.

As used in this part—

Disabled tanker means a tanker experiencing a loss of propulsion or steering control.

Escort transit means that portion of the tanker's voyage through waters where escort vessels are required.

Escort vessel means any vessel that is assigned and dedicated to a tanker during the escort transit, and that is fendered and outfitted with towing gear as appropriate for its role in an emergency response to a disabled tanker.

Laden means transporting in bulk any quantity of applicable cargo, except for clingage and residue in otherwise empty cargo tanks.

Single hull tanker means any self-propelled tank vessel that is not constructed with both double bottom and double sides in accordance with the provisions of 33 CFR 157.10d.

Tanker master means the licensed onboard person in charge of the tanker.

Tanker owner or operator means the owner or shoreside organization (individual, corporation, partnership, or association), including a demise charterer, responsible for the overall management and operation of the tanker.

§ 168.10 Responsibilities.

(a) The tanker owner or operator shall:

(1) select escort vessels that can meet the performance requirements of this part; and

(2) inform the tanker master of the performance capabilities of the selected escort vessels. This information must be provided to the master before beginning the escort transit.

(b) The tanker master shall operate the tanker within the performance capabilities of the escort vessels, taking into account speed, sea and weather conditions, navigational considerations, and other factors that may change or arise during the escort transit.

(c) In an emergency, the tanker master may deviate from the requirements of this part to the extent necessary to avoid endangering persons, property, or the environment, but shall immediately report the deviation to the cognizant Coast Guard Captain of the Port (COTP).

§ 168.20 Applicable vessels.

The requirements of this part apply to laden, single hull tankers of 5,000 gross tons or more.

§ 168.30 Applicable cargoes.

The requirements of this part apply to any petroleum oil listed in 46 CFR Table 30.25–1 as a pollution category I cargo.

§ 168.40 Applicable waters and number of escort vessels.

The requirements of this part apply to the following waters:

(a) *Prince William Sound:* Each tanker to which this part applies must be escorted by at least two escort vessels in those navigable waters of the United States within Prince William Sound, Alaska, and the adjoining tributaries, bays, harbors, and ports, including the navigable waters of the United States within a line drawn from Cape Hinchinbrook Light, to Seal Rocks Light, to a point on Montague Island at 60°14.6′ North, 146°59′ West, and the waters of Montague Strait east of a line between Cape Puget and Cape Cleare.

(b) *Puget Sound and certain associated waters:* Each tanker to which this part applies must be escorted by at least two escort vessels in those navigable waters of the United States and Washington State east of a line connecting New Dungeness Light with Discovery Island Light and all points in the Puget Sound area north and south of these lights. This area includes all the navigable waters of the United States within Haro Strait, Rosario Strait, the Strait of Georgia, Puget Sound, and Hood Canal, as well as those portions of the Strait of Juan de Fuca east of the New Dungeness-Discovery Island line.

§ 168.50 Performance and operational requirements.

(a) Except as provided in paragraph (c) of § 168.10, at all times during the escort transit each tanker to which this part applies:

(1) Must be accompanied by escort vessels that meet the performance requirements of paragraph (b) of this section (but not less than the number of escorts required by § 168.40).

(2) Must have the escort vessels positioned relative to the tanker such that timely response to a propulsion or steering failure can be effected.

(3) Must not exceed a speed beyond which the escort vessels can reasonably be expected to safely bring the tanker under control within the navigational limits of the waterway, taking into consideration ambient sea and weather conditions, surrounding vessel traffic, hazards, and other factors that may reduce the available sea room.

(b) The escort vessels, acting singly or jointly in any combination as needed, and considering their applied force vectors on the tanker's hull, must be capable of—

(1) Towing the tanker at 4 knots in calm conditions, and holding it in steady position against a 45-knot headwind;

(2) Stopping the tanker within the same distance that it could crash-stop itself from a speed of 6 knots using its own propulsion system;

(3) Holding the tanker on a steady course against a 35-degree locked rudder at a speed of 6 knots; and

(4) Turning the tanker 90 degrees, assuming a free-swinging rudder and a speed of 6 knots, within the same distance (advance and transfer) that it could turn itself with a hard-over rudder.

§ 168.60 Pre-escort conference.

(a) Before commencing an escort transit, the tanker master shall confer, by radio or in person, with the tanker pilot and the masters of the escort vessels regarding the escort operation.

(b) The purpose of the pre-escort conference is for all parties to plan and discuss particulars of the escort transit.

(c) At a minimum, the following topics must be addressed during the pre-escort conference:

(1) The destination, route, planned speed, other vessel traffic, anticipated weather, tide, and sea conditions, and other navigational considerations;

(2) The type and operational status of communication, towing, steering, and propulsion equipment on the tanker and escort vessels;

(3) The relative positioning and reaction time for the escort vessels to move into assist positions, including, if appropriate, pre-tethering the escort vessels at crucial points along the route;

(4) The preparations required on the tanker and escort vessels, and the methods employed in making an emergency towline connection, including stationing of deck crews, preparation of messenger lines, bridles, and other towing gear, and energizing appropriate deck equipment;

(5) The manner in which an emergency towline connection would be made (which escort vessel will respond, how messengers and towlines will be passed, etc.);

(6) Other relevant information provided by the tanker master, pilot or escort vessel masters.

Dated: August 12, 1994.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

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federal register

Friday
August 19, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

Final Environmental Impact Statement for Renovation of Crow Creek Dam on Crow Creek Indian Reservation, South Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement for Renovation of Crow Creek Dam on Crow Creek Indian Reservation, South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Spillway at Crow Creek Dam is on the verge of failure. Failure of the spillway could lead to the catastrophic failure of the dam, endangering lives and property in the floodplain between the dam and Lake Francis Case on the Missouri River. During its 55-year life, the reservoir has trapped approximately 5,000 acre-feet of sediment which has reduced its water-storage capacity from 7,000 to 2,000 acre-feet. An Environmental Impact Statement (EIS) was necessary to address the impact of controlled or catastrophic release of the sediment. Six alternatives for renovation are considered in the document.

This Notice is published in accordance with the National Environmental Policy Act (NEPA) regulations found in Parts 1500–1508 of 40 CFR.

DATES: The Notice of Intent to prepare an EIS was published in the **Federal Register** on September 21, 1992. Two scoping meetings were held on September 30, 1992. The draft EIS was released on December 31, 1993. A public hearing was held on April 13, 1994; and a tribal council informational meeting was held on April 14, 1994.

ADDRESSES: Comments should be addressed to Mr. Don Whitener, Acting Area Director, Bureau of Indian Affairs, 115 4th Avenue, S.W., Aberdeen, South Dakota 57401.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Alberts, Safety of Dams Coordinator, Bureau of Indian Affairs, Branch of Natural Resources, 115 4th Avenue, S.W., Aberdeen, South Dakota 57401. Telephone (605) 226–7621.

SUPPLEMENTARY INFORMATION: The Crow Creek Sioux Tribe has a contract with the Bureau of Indian Affairs (BIA) to perform Safety of Dams activities at Crow Creek Dam. The Tribe contracted the EIS work to Morrison-Maierle/CSSA of Helena, MT; a private engineering consultant.

Six alternatives were considered, including No Action. The BIA has chosen Alternative 6 as a preferred alternative. Alternative 6 will breach the dam, drain the reservoir, naturally stabilize the reservoir sediments, and eventually return the reservoir area to a naturally vegetated condition. The existing concrete spillway will be removed and the reservoir will be lowered by excavation of the underlying material. A period of 5 years will be used to stage the breaching of the dam so that the amount of sediment released downstream will be minimized.

The Crow Creek Sioux Tribe favors Alternative 6 as an interim remedy to relieve the existing safety hazard since funding for other alternatives is not available. The tribe prefers, as a permanent rehabilitation, Alternative 2 which involves rehabilitation of the dam with a design flood capacity of 55,000 cfs and operation to flush sediment. The five-year phased breaching of the dam will be performed in a manner that will allow pursuit of Alternative 2 if funds become available. Alternative 2 would include the construction of a new spillway, a new outlet works, and possibly installation of roller-compacted concrete overtopping protection for the dam embankment. The outlet works would have a greater capacity for flushing of sediment. While sediment flushing would prolong the life of the reservoir, it would make establishment of fish populations very difficult. Eventually the reservoir would fill with sediment and become wetlands and riparian habitat.

The BIA has committed to monitoring sediment losses from the reservoir during the implementation period of Alternative 6. Appropriate mitigation will be developed if significant impacts occur during the staged breach.

Dated: August 12, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–20378 Filed 8–18–94; 8:45 am]

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Friday
August 19, 1994

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Flight Attendant Duty Period Limitations and Rest Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 27229; Amendment Nos. 121–241; 125–21; 135–52]

RIN 2120–AE91

Flight Attendant Duty Period Limitations and Rest Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations that require air carriers, air taxi, and commercial operators to provide duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. This action results from public and congressional interest in regulating flight attendant work hours and from data contained in a Federal Aviation Administration (FAA) study of industry practice relating to flight attendant flight, duty, and rest times. This rule contributes to an improved aviation safety system by providing the opportunity for flight attendants to be rested sufficiently to perform their routine and emergency safety duties.

EFFECTIVE DATE: This regulation is effective September 19, 1994, except §§ 121.683(a)(1), 135.63(a)(3), 135.63(a)(4)(x), 135.63(a)(5), and 135.63(b) which are not effective until the Office of Management and Budget (OMB) has approved the Paperwork Reduction Requirements. FAA will publish a document in the **Federal Register** following OMB approval of the Paperwork Reduction Requirements.

COMPLIANCE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Air Transportation Division, AFS–203, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3735.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this amendment by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the amendment number of this final rule.

Background

Statement of the Problem

Flight attendants are crewmembers who perform essential routine and emergency safety duties. Routine duties include ensuring that carry-on baggage is correctly stowed; verifying that exit seating requirements are met, that passenger seat belts are fastened, and that galley service times are properly stowed; and conducting passenger briefings before takeoff. Emergency duties include conducting land and water evacuations, controlling inflight fires, handling passengers who threaten the safety of other passengers or the flight, managing medical emergencies such as passenger illness or injury, managing inflight emergencies such as smoke or fire in the cabin, and managing turbulent air penetrations, airplane decompression, and hijackings. Additionally, because flight attendants are crewmembers performing safety-related functions, they must satisfactorily complete indoctrination, initial, transition, and recurrent training requirements. In addition, they are subject to the alcohol and drug use regulations and drug testing regulations. Currently, flight attendants are the only safety-sensitive aviation group that has no regulations with respect to flight, duty, or rest periods. Such regulations exist for flight crewmembers, dispatchers, air traffic control tower operators, and aviation maintenance technicians.

This final rule is comparable to flight, duty, and rest requirements for other safety-sensitive aviation groups because it enhances public safety by requiring "rest periods" and limiting duty periods for flight attendants. These requirements protect flight attendants from work related fatigue that interferes with their ability to perform essential safety duties. No accident/incident data currently exists to provide a direct correlation between flight attendant fatigue and passenger survivability. However, the FAA recognizes that a flight attendant who is excessively fatigued is less likely to be capable of performing safety duties than an adequately rested flight attendant. This is an unacceptable safety risk. Therefore, the FAA adopts this final rule in the interest of air transportation and air commerce safety. The justification stated herein includes that which was included in Notice of Proposed Rulemaking No. 93–3, published in the **Federal Register** on March 31, 1993 (58 FR 17024).

Historical Review

In 1985, the FAA received two petitions for rulemaking requesting limits on flight and duty hours for flight attendants. One petition [1] sought to establish flight and duty time regulations similar to current regulations for flight crewmembers. The other petition [2] recommended establishing maximum duty time limits and minimum daily, weekly, and monthly rest periods. Both petitions recommended certain flight time limitations and rest requirements for flight attendants that were more restrictive than those that existed for flight crewmembers. The FAA denied both petitions in a Denial of Petition issued on January 23, 1989, because the action sought by the petitioners was not warranted by the information, views, and arguments contained in the petitions.

Congressional legislation (H.R. 638 and S. 1170) was introduced in 1989 to establish flight attendant duty time limitations. On May 17, 1989, the Subcommittee on Aviation of the House Committee on Public Works and Transportation held a public hearing on H.R. 638. At the hearing, the FAA stated its intent to initiate further studies of air carrier flight attendant scheduling practices.

The FAA completed its "Report on the Study of Current Industry Practice-Flight Attendant Flight, Duty, and Rest Times" on September 12, 1989 (hereafter referred to as "the Industry Study" [Docket No. 27229]), and submitted a copy of the study to the House Subcommittee on Aviation. The study focused on U.S. air carrier scheduling practices and flight attendant actual work hours and highlighted cases of extended duty periods and minimum rest periods. The study indicated that flight attendant duty hour problems may occur more frequently among certain industry segments because of fundamental operational differences. The study noted that most air carriers had policies to address these problems. The study provided a framework for the FAA to address this issue with appropriate regulatory action, which is provided in this final rule.

The House Subcommittee on Aviation held another hearing on flight attendant duty and rest on March 13, 1991. The FAA did not recommend rulemaking at that hearing. Subsequent legislation on flight attendant duty and rest, H.R. 14, was passed in the House of Representatives. In 1992, the language

[1] This petition was submitted by the Association of Flight Attendants and summarized in the **Federal Register** (50 FR 6185) on February 14, 1985.

[2] This petition was submitted by the Joint Council of Flight Attendant Unions and summarized in the **Federal Register** (50 FR 25252) on June 18, 1985.

of H.R. 14 was incorporated into a provision in the House and Senate versions of the FAA's appropriations bill; however, that provision was deleted later by the conference committee. On January 5, 1993, H.R. 14 was reintroduced in the House of Representatives.

On March 26, 1993, the FAA issued a notice of proposed rulemaking (NPRM), Notice No. 93–3, Flight Attendant Duty Period Limitations and Rest Requirements (58 FR 17024; March 31, 1993) that proposed duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. The FAA has incorporated into this final rule comments on the NPRM received from the public during the comment period, as appropriate.

Discussion of Comments

Fifty-one commenters submitted comments in response to the NPRM. The commenters included trade and professional associations, individual flight attendants, labor organizations, part 121 and 135 operators, public interest groups, a government agency, a Member of Congress, and other individuals. Among the commenters were the Air Line Pilots Association (ALPA); the Air Transport Association (ATA); the Allied Pilots Association (APA); the American Cyanamid Company; AMR Combs; the Coalition of Flight Attendant Unions; Delta Airlines; Great American Airways; the National Air Carrier Association (NACA); the National Transportation Safety Board (NTSB); North American Airlines (NAA); the Regional Airline Association (RAA); Southwest Airlines (SWA); Sun Country Airlines (SCA); Transport Workers Union Local 556 (TWU Local 556)—Southwest Airlines; and flight attendants, some of whom are employed by America West Airlines; Continental Airlines, Delta Airlines, and Sun Country Airlines.

Commenters addressed general and specific issues such as scheduled versus unscheduled operations; the application of flight crewmember flight, duty, and rest requirements to flight attendants; rest period requirements; duty period requirements; augmented crew requirements; reserve and deadhead status for flight attendants; flight attendant responsibility; the costs contained in the initial regulatory evaluation; and the implementation period for this final rule. Commenters also addressed the issues of flight attendant fatigue, the Industry Study, international versus domestic operations, part 125 operations, and flight attendant duty limitations and rest regulations in other nations.

Overview of the General Issues

Thirty-nine comments addressed the concept of regulating flight attendant duty period limitations and minimum "rest period" requirements. Fourteen comments did not support establishing flight attendant duty period limitations and rest requirements while 18 comments did support establishing such limits and requirements based on certain revisions to the proposed rule.

The commenters who supported regulating flight attendant duty period limitations and rest requirements included ALPA, APA, The Coalition of Flight Attendant Unions, NTSB, nine commenters who identified themselves as flight attendants, and a member of Congress who strongly supports the comments of the Coalition of Flight Attendant Unions. The commenters stated that, because a flight attendant's primary duties are safety related, establishing regulations would enhance public safety.

The 14 commenters who did not support the NPRM include Great American Airways, RAA, SCA, and nine commenters who identified themselves as flight attendants. Several of the commenters who identified themselves as flight attendants stated that the provisions in the NPRM would limit a flight attendant's opportunities to work extra trips and that flight attendants are capable of handling safety procedures and emergencies even when working longer duty periods.

Specific Issues

Apply Flight Crewmember Flight, Duty, and Rest Requirements to Flight Attendants

In the NPRM, the FAA invited comments on the possibility of modifying the proposed rule, as presented in the NPRM, to add an option for operators to either follow the proposed duty limitations and rest requirements or apply flight crewmember flight, duty, and rest requirements to flight attendants.

Eleven commenters responded to the FAA's request for comments. Seven of the commenters supported the option to permit operators to either follow the proposed duty limitations and rest requirements or apply flight crewmember requirements to flight attendants. Three commenters opposed the option. Although Delta Air Lines did not oppose the option, it expressed no interest in exercising the option.

ATA, Great American Airways, NACA, RAA, and Southwest Airlines agreed that operators should be permitted to apply flight crewmember requirements to flight attendants. ATA specified that applying flight crewmember requirements should remain an option at the operator's discretion. Great American Airways, Horizon Air, NACA, RAA, and Southwest Airlines noted that there are scheduling and economic advantages to using the same set of rules of flight crewmembers and flight attendants.

The Coalition of Flight Attendant Unions and SCA opposed establishing the option to permit operators to apply flight crewmember flight, duty, and rest requirements to flight attendants. The Coalition of Flight Attendants Unions stated that flight crewmember rules do not provide adequate protection from fatigue. SCA noted that, if this option had been a requirement in 1992, SCA would have had to hire an additional 20 flight attendants. According to SCA, the cost burden of hiring 20 flight attendants would have increased SCA domestic operating costs by $1.75 million.

FAA Response

The FAA recognizes that giving operators the option to apply flight crewmember flight, duty, and rest requirements to flight attendants provides additional scheduling flexibility and eliminates the need for an operator to have two sets of scheduling requirements for its flight crewmembers and flight attendants. This provision also will permit flight attendants on such operations to be scheduled with the same limitations as the flight crewmembers. Therefore, the FAA has adopted this option, which appears in §§ 121.467(c) and 135.273(c) of this final rule.

If an operator chooses to apply flight crewmember flight, duty, and rest requirements to flight attendants, the operator must establish written procedures for applying the requirements and the procedures must be approved by the Administrator and referenced in the certificate holder's operations specifications. The written procedures must apply to all flight attendants used in the certificate holders operation. In addition, written procedures must be applied to the certificate holder's entire operation. Certificate holders may obtain approval by submitting their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that are charged with the overall inspection of their operations. This approval process is similar to those used for exit seating and passenger

carry-on baggage requirements. Because flight crewmember regulations were designed specifically for pilots, FAA approval is required to ensure that flight crewmember rules are adequately applied to flight attendants. In addition, the written procedures for domestic, flag, and supplemental air carriers and for commercial operators must apply the flight crewmember limitations contained in subparts Q, R, or S of part 121, except for the provisions for on-board rest facilities, as appropriate to the operation being conducted. Therefore, operators must consider the type of operation being conducted for each flight segment when scheduling flight attendants according to the option.

In addition, the written procedures for establishing duty period limitations and rest requirements for operators certificated under part 135 must include the limitations contained in subpart F, except for provisions for on-board rest facilities, as appropriate to the operation being conducted. Part 121 and 135 certificate holders are required to provide flight attendants on aircraft with certain passenger seating configurations in accordance with §§ 121.391, 135.107, or the certificate holder's operations specifications, as appropriate. The number of flight attendants required on an aircraft to meet the provisions of §§ 121.391, 135.107, or the certificate holder's operations specifications, whichever is greater, is referred to as the minimum flight attendant crew complement.

Any operator that elects the option to apply flight crewmember flight, duty, and rest requirements to flight attendants and has established written procedures for augmenting the minimum flight crewmember complement must establish procedures for augmenting the minimum flight attendant complement. The augmenting procedures must be based on the number of flight crewmembers assigned to the flight that is in addition to the minimum flight crewmember complement as specified in the aircraft type certificate data sheet. For example, if the minimum flight crewmember complement on a Boeing 747–300 is three, as specified in the aircraft type certificate data sheet, an operator that schedules four flight crewmembers for an extended long-range flight will be required to schedule one flight attendant in addition to the minimum flight attendant crew complement that is required by §§ 121.391, 135.107, or the certificate holder's operations specifications. For example, if the operations specifications for a certain airplane requires 8 flight attendants, and if the operator adds 1 flight crewmember, that operator would be required to add 1 additional flight attendant, for a total of 9 flight attendants.

In addition, any operator that elects the option of applying the flight crewmember flight, duty, and rest requirements to flight attendants, must ensure that the definition of "rest period" in this final rule is applied to those flight attendants. (See the detailed discussion on "Rest Period Requirements" and "Reserve Status, Stand-by Status, or Similar Assignments" in this final rule.)

Under the provision for applying flight crewmember flight, duty, and rest requirements to flight attendants, if the Administrator finds that revisions to the written procedures are necessary for the continued adequacy of the procedures for applying flight crewmember flight, duty, and rest requirements to flight attendants, the Administrator will require the operator to make necessary changes within 30 days after being notified by the Administrator. In addition, an operator may petition the Administrator to reconsider the notice to change the procedures.

This procedure for requiring changes is consistent with the current regulatory language for aircraft inspection programs and pilot training programs contained in §§ 91.415 and 121.405, respectively, as well as a number of other regulations.

Any operator that establishes written procedures to apply the flight crewmember flight, duty, and rest requirements to flight attendants and that subsequently wishes to revise this practice and schedule flight attendants according to the duty period limitations and rest requirements in §§ 121.467 or 135.273 must amend their operations specifications in accordance with §§ 121.79(c) and 135.17(b). These sections require a certificate holder to file an application for an amendment of operations specifications at least 15 days before the effective date proposed by the applicant for the amendment, unless a shorter filing period is approved by the Flight Standards District Office charged with the overall inspection of the certificate holder.

Unscheduled Operations

The NPRM proposed duty period limitations and rest requirements for flight attendants in all domestic, flag, supplemental, and commercial operations conducted under part 121 and part 125, and in all operations conducted under part 135. No new requirements for operations conducted under part 91 were proposed. The FAA received comments from part 121 and 135 operators about the applicability of the proposed requirements to certain unscheduled operations. Those commenters included AMR Combs, ATA, American Cyanamid Company, Delta Airlines, Great American Airways, North American Airlines, and Southwest Airlines.

ATA, Delta Airlines, North American Airlines, and Southwest Airlines said that the proposed duty period limitations and rest requirements should not apply to military flights, e.g., Civil Reserve Air Fleet (CRAF) and Military Airlift Command (MAC). ATA and Southwest Airlines also said that special charters for sports teams should be excluded from duty period limitations and rest requirements. Commenters stated that because of the short notification associated with military and special charters it would not be possible to obtain a waiver from the regulation to conduct them. North American Airlines stated that the proposed requirements should not apply to flights flown to remote destinations on a weekly or ad hoc basis.

AMR Combs and American Cyanamid Company believe that the proposed requirements should not apply to operations that do not require a flight attendant. AMR Combs stated that many unscheduled operators do not employ full-time flight attendants and that a flight attendant may serve more than one certificate holder.

FAA Response

In response to commenters who stated that the proposed duty period limitations and rest requirements should not apply to military flights and special charters, this final rule does not except military or special charter operations from duty period limitations and rest requirements. If a certificate holder chooses to apply the flight crewmember flight, duty, and rest time limitations option to flight attendants when conducting military and special charter flights to retain operational flexibility by scheduling the flight attendants with the flight crewmembers, §§ 121.467(c) and 135.272(c) require that the flight crewmember flight, duty, and rest requirements option be applied to all flight operations conducted by the certificate holder.

In response to AMR Combs and American Cyanamid Company, the FAA agrees with these commenters. The final rule will not apply to those operations where flight attendants are not required. However, all flight attendants who are assigned to duties in an aircraft for operations that require a flight

attendant, including flight attendants in excess of the minimum flight attendant crew complement, are subject to duty limitations and rest requirements.

For example, an operator conducting operations on an aircraft with 19 passenger seats or less, which does not require a flight attendant under § 135.107, will not be required to meet flight attendant duty period limitations and rest requirements for flights conducted on that aircraft. However, if the operator's operations specifications state that the operator will provide a flight attendant for flights on that aircraft, then the operation does require a flight attendant. Therefore, for any flight attendant assigned to flight duties on that aircraft the certificate holder is required to meet the duty period limitations and rest requirements of § 135.273.

Duty Period Limitations

The NPRM proposed limiting flight attendant duty periods. Proposed §§ 121.466(a) and 135.273(a) defined a duty period as the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The NPRM proposed that the time be calculated using either Coordinated Universal Time or the local time of the flight attendant's home base.

Eleven commenters submitted comments supporting or recommending revisions to this proposed definition.

Delta Air Lines, Southwest Air Lines, and TWU Local 556 agreed with the FAA's proposed definition.

ALPA, APA, and the Coalition of Flight Attendant Unions stated that duty periods should include non-flight duties. ALPA noted that ground duties can be as fatiguing as flight duties. The Coalition of Flight Attendant Unions recommended that the definition of a duty period be replaced with: "Any continuous period during which a flight attendant is required to carry out any task associated with the business of an aircraft operator."

To ensure that the definition of duty period explicitly excludes reserve status, ATA recommended that the following phrase be added to the definition of duty period: " 'Duty period' does not include time when a flight attendant is on reserve status assignment, free of any specifically assigned duties other than to report for a flight assignment within a specified period of time, pursuant to a collective bargaining agreement or company work rules."

In addition to receiving comments on the definition of a duty period, the FAA also received comments on the duty period limitations proposed in the NPRM. The NPRM proposed to limit flight attendant duty periods based on the length of the duty period, the number of flight attendants assigned to a crew, and the amount of rest following the duty period. The proposed rule contained provisions (proposed §§ 121.466(b) and 135.273(b)) to prohibit an operator from assigning a flight attendant to a scheduled duty period of more than 14 hours unless certain conditions are met. An operator would be allowed to assign a flight attendant to a scheduled duty period up to 20 hours, if the operator: (1) Assigns flight attendants in addition to the minimum flight attendant complement; and (2) schedules an extended rest period following the duty period.

Thirteen commenters submitted comments on issues pertaining to flight attendant duty period limits. The comments addressed the use of "scheduled" versus "actual" duty periods, addressed the effect of the proposed duty limits on unscheduled operators, made recommendations to the proposals, and provided proposed duty period limits.

The Coalition of Flight Attendant Unions, Southwest Airlines, and TWU Local 556 addressed the use of "scheduled" duty periods as opposed to "actual" duty periods. Southwest Airlines and TWU Local 556 agreed that the proposed duty period limitations should be "scheduled," not "actual." TWU Local 556 stated that, if this flexibility is not retained, the following would occur: (1) Flight attendants would be replaced after 14 hours of actual duty, which inconveniences passengers and causes delays because of the need to locate crew replacements; (2) reserves would be placed at out stations; (3) crews would be rerouted to cover flights that the original crews cannot perform; (4) flight attendants would lose days off and have their schedules disrupted; (5) additional costs for crews and stranded passengers would be incurred; and (6) aircraft repositioning would be required. However, the Coalition stated that there is no justification for having no limit on actual hours and added that the actual number of flight attendant duty hours per day needs to be limited.

AMR Combs stated that scheduled duty period limitations should apply only to scheduled operations with more than 19 passenger seats.

Four commenters, including NAA, recommended revisions to the proposed duty period limitations. NAA recommended that a layover of 4 to 5 hours during which a hotel room is provided should not count as duty time. Other comments recommended limiting duty to: (1) 16 hours in 24 hours with 11 hours of flight time in domestic operations; (2) 30 hours in 5 days; (3) 16 hours with no more than 10 hours of flight time; or (4) 12 hours for flights with multiple stops.

The Coalition of Flight Attendant Unions submitted an alternative proposal to the NPRM that included duty period limitations. This alternative divided duty period limitations according to domestic, international, and long-range flights. The Coalition's alternative proposed to limit: (1) Scheduled duty periods on domestic flights to no more than 14 hours and actual duty periods to 15 hours; (2) scheduled duty periods on international flights to no more than 16 hours and actual duty periods to 17 hours; and (3) actual duty periods on long-range flights to no more than 4 hours greater than the scheduled duty time, not to exceed 20 hours. The Coalition distinguished between domestic and international duty periods and stated that it reluctantly includes a 20-hour duty period for long range international flights to accommodate new generation aircraft, but only if additional rest is provided.

FAA Response

In establishing duty period limitations, the FAA has considered a variety of alternatives submitted by commenters, including the proposals to set different limits for different types of operations. In an effort to establish requirements that are conducive to safety and compatible with air carrier operations, the FAA also has reviewed current industry practices used to schedule flight attendants. To provide the least complicated method of establishing effective limitations for scheduling duty periods for flight attendants, the FAA has decided to adopt the scheduled duty period limitations as proposed, with a slight modification that distinguishes cosmetic and international scheduled duty periods.

The FAA has revised the definition of a duty period in this final rule to state that the time is calculated using Coordinated Universal Time or local time to reflect the total elapsed time. The phrase "or the local time of the flight attendants's home base" was replaced with "or local time" to be consistent with the definition of a calendar day. The FAA has determined that any time zone can be used, as long as the operator is consistent.

Duty period limitations are established to enhance the safety of the flying public by ensuring that flight

attendants do not become overly fatigued during flight assignments. In addition, the duty period limitations are designed to suit all operations that require flight attendants without imposing a significant burden on operators.

In response to the Coalition of Flight Attendant Unions, the final rule does not provide actual duty period limitations because such provisions may unreasonably reduce operational flexibility. However, the final rule requires that a flight attendant "be given" a scheduled rest period between scheduled duty periods, i.e., rest periods must be provided. Because duty periods are scheduled in combination with actual rest periods, the objective of ensuring the flight attendants are provided an opportunity to be rested will be met.

After further review of the Coalition comments and an analysis of flight schedules, the FAA finds that scheduled duty periods of operations wholly within the 48 contiguous states and the District of Columbia should not be allowed to exceed 18 hours. The FAA is not aware of any scheduled duty periods for these operations that currently do exceed 18 hours. However, duty periods that contain one or more flights that land or take off outside the contiguous 48 states and the District of Columbia may extend up to 20 hours, provided that an extended rest period is scheduled following the duty period and that additional flight attendants are assigned to each flight segment in the duty period. This provision will allow air carriers to conduct extended long-range operations with new generation aircraft. Moreover, sections 121.467(b)(14) and 135.273(b)(14) will allow a flight attendant for a domestic air carrier to continue on duty beyond the time when duty would normally terminate, if circumstances exist that are unanticipated and beyond the control of the air carrier such as adverse whether conditions). This same exception will apply to flag and supplemental operations.

A duty period as defined in this final rule means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment. In response to ATA's recommendation that the definition of a duty period should state that a duty period does not include the time when a flight attendant is assigned to reserve status, the FAA refers to the definition of a duty period in §§ 121.467(a) and 135.273(a) of the final rule, which indicates that a duty period does not begin until a flight attendant reports for an assignment involving flight time. Reserve status is discussed in further detail under the heading "Reserve Status, Stand-by Status, or Similar Assignments."

In response to NAA, all duty period assignments, including those assignments with a 4- to 5-hour break in duty at a hotel, must be assigned within duty period limitations and must meet minimum rest requirements. The FAA would not consider this to be a break in, or cessation of, the duty period.

In response to AMR Combs, this final rule applies to operations, both scheduled and unscheduled, that require flight attendants. Therefore, operators are not required to meet duty period limitations and rest requirements of this final rule for operations that do not require a flight attendant.

Duty Period Following Reduced Rest

Sections 121.466(i) and 135.273(i) of the NPRM proposed that an operator be permitted to reduce a 12-hour rest period to 10 hours following a duty period of more than 14 hours. In conjunction with this proposed provision, the FAA also proposed §§ 121.466(j) and 135.273(j), which would limit the scheduled duty period following a 10-hour reduced rest period to less than 14 hours.

ATA, Delta Air Lines, and NACA submitted comments on limiting duty periods following reduced rest. The commenters recommended that the FAA permit an operator to schedule a 16-hour duty period following a reduced rest period of 10 hours. ATA noted that this flexibility is needed for international operations.

Delta Air Lines also recommended that the phrase "14 or more hours" appearing in proposed §§ 121.466(j) and 135.273(j) be replaced with "no more than 14 hours." Delta noted that the proposal would limit the duty period following reduced rest to 13 hours 59 minutes.

FAA Response

Sections 121.467(b)(9) and 135.273(b)(9) of the final rule adopt the provisions as proposed in §§ 121.466(j) and 135.273(j) of the NPRM, except that the provisions are revised, in response to Delta Airlines' comment, so that an operator may not schedule a flight attendant for a duty period of more than 14 hours following reduced rest. This revision permits an operator to assign a flight attendant to a duty period of up to and including 14 hours following a reduced rest period of 10 hours.

The FAA does not agree with those commenters that state that an operator should be allowed to schedule a 16-hour duty period following a reduced rest period of 10 hours. This was not proposed in the notice as it might promote problems of cumulative fatigue.

Duty Time That Exceeds Scheduled Duty Time When Beyond the Certificate Holder's Control

Sections 121.466(o) and 135.273(o) proposed that a flight attendant would not be considered scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but, because of circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

ALPA, APA, the Coalition of Flight Attendant Unions, Southwest Airlines, and TWU Local 556 commented on this provision.

ALPA and APA stated that the maximum duty period limit should not be exceeded by more than 2 additional hours regardless of circumstances beyond the control of the operator.

The Coalition of Flight Attendant Unions stated that this provision is unacceptable. The Coalition further stated that operators consider all delays outside their control.

Southwest Airlines and TWU Local 556 stated that this provision should apply to a flight attendant who is reassigned after reporting for work and the reassignment is beyond the operator's control.

FAA Response

The FAA has adopted this provision as proposed so that air carriers will not be penalized for operational delays such as those due to weather and air traffic control. The FAA recognizes that delays are costly and that operators avoid delays whenever possible. Sections 121.467(b)(14) and 135.273(b)(14) of this final rule apply to flights that are assigned and scheduled and that normally terminate within allowable duty limitations. However, this provision does not apply to operational delays relating to flight attendant staffing problems. A flight attendant's duty period begins when the flight attendant reports for a flight assignment and ends when the flight attendant is released by the air carrier. Changes to a flight attendant's schedule after a duty period begins must be made in accordance with the duty period limitations and rest requirements set forth in this final rule. In addition, if a flight attendant reports for duty and is later reassigned, the scheduled duty

time before reassignment must be counted as part of the total duty period.

Example: A flight attendant is scheduled for a 13-hour duty period on flight staffed with the minimum cabin crew complement. The duty period consists of two flight segments—a flight from New York to Frankfurt followed by a flight from Frankfurt to Rome. Because of adverse weather conditions, the flight leaving New York is delayed 2 hours, causing the flight attendant's duty period to exceed the scheduled 14-hour duty period limitation. Although it is apparent at the time of departure that the flight attendant's duty period will exceed 14 hours, completion of the assignment will still comply with duty period limitations, because the flight attendant was scheduled and assigned to flights that normally terminate within the allowable duty period limitations.

However, if, for example, the flight attendant is reassigned in Frankfurt to a flight to Athens, the flight attendant's revised scheduled duty period cannot exceed a total of 14 scheduled hours, unless the flight attendant crew is augmented in accordance with §§ 121.467 (b)(4), (b)(5), or (b)(6), as appropriate, and each flight attendant is given the minimum required rest. The flight attendant's duty period did not start over in Frankfurt because of the reassignment.

Rest Period Requirements

The FAA received numerous comments on issues related to the rest requirements proposed in the NPRM. Commenters addressed issues including the definition of a rest period, scheduled rest versus actual rest, minimum rest, reduced rest, subsequent rest, relief from duty in air transportation and air commerce for 24 consecutive hours of rest in any 7 consecutive calendar days, and on-board rest requirements.

The NPRM defined a rest period as the period when a flight attendant is free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and is free of all responsibility for work or duty should the occasion arise. ATA, the Coalition of Flight Attendant Unions, and Southwest Airlines recommended revisions to the definition of rest period. The comments submitted by ATA and the Coalition of Flight Attendant Unions addressed reserve status in their recommended definitions of rest. Southwest Airlines stated that the definition of rest period should be defined as actual hours of rest, not scheduled hours of rest. Two commenters, including Delta Airlines, agreed with the definition of rest period as proposed in the NPRM.

The NPRM proposed requirements for scheduling rest and reduced rest periods. Sections 121.466 (c) and (h) and 135.273 (c) and (h) of the NPRM proposed requiring that a flight attendant scheduled for 14 hours or less of duty be given 9 consecutive hours of rest, and that a flight attendant scheduled for more than 14 hours but less than 20 hours be given 12 consecutive hours of rest. Proposed §§ 121.466 (d) and (i) and 135.273 (d) and (i) proposed permitting an air carrier or commercial operator to reduce these rest periods to 8 and 10 consecutive hours, respectively. Three commenters (Southwest Airlines, TWU Local 556, and TWU of America) supported the minimum rest requirements proposed in the NPRM and also indicated that the rest requirements should not be increased.

The RAA expressed concern that the requirement to provide 9 hours of rest for duty periods of more than 14 hours implies that a flight attendant who reports for a flight that is canceled is required to receive 9 hours of rest before the next duty period begins.

Commenters, including APA and individual flight attendants, indicated that the actual time available for rest during a rest period is often less than the scheduled rest period and may be as much as 2 to 3½ hours less than the number of hours scheduled in the rest period. The commenters stated that this often occurs because of time lost due to assisting passengers in deplaning, travel to and from a rest facility, and other activities such as eating. One commenter stated that it may take 35 minutes to 1 hour for passengers to deplane, for the crew to gather its belongings, and for travel to the hotel; 1 hour to eat; and 1 to 1½ hours to prepare for duty again and travel back to the airport.

The FAA received several alternatives to the proposed rest requirements. APA recommended that a flight attendant scheduled for a duty period of 14 hours or less be given a scheduled rest period of at least 10 consecutive hours. The rest period could be reduced but not scheduled as a reduced rest period as long as the rest period is reasonably calculated to provide 8 consecutive hours at a suitable rest facility and the flight attendant is provided a subsequent rest period of at least 11 consecutive hours. Under the APA proposal, scheduled rest periods and reduced rest periods would have to occur during the 24-hour period preceding the scheduled end of a duty period. APA recommended that a flight attendant scheduled for a duty period of more than 14 hours but no more than 18 hours be given a scheduled rest period of at least 12 consecutive hours. This rest period could not be reduced and must occur after the completion of the scheduled duty period and immediately prior to the commencement of the subsequent duty period. The Coalition of Flight Attendant Unions proposed rest requirements based on domestic and international operations (see the discussion of Domestic and International Operations). The Coalition of Flight Attendant Unions' proposal recommended a minimum of 10 hours of rest following domestic flights, 12 hours of rest following international flights, and a rest period equal to twice the scheduled flight time for long-range international flights. The Coalition of Flight Attendant Unions' proposal did not include a provision for reduced rest RAA requested that minimum rest requirements for flight attendants be aligned with flight crewmember requirements. One commenter suggested that a rest period should be at least 9½ hours at a hotel or 12 hours from the time of release to the beginning of the next report. Another commenter stated that the proposed minimum subsequent rest is satisfactory for domestic flights but not realistic for international flights The commenter suggested that the rest period following international flights should be 24 hours.

Several commenters recommended that the FAA establish provisions for on-board rest. APA recommended that a domestic, flag, or supplemental air carrier or commercial operator be permitted to assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the inflight duties assigned to flight attendants by the air carrier or commercial operator were such that each of the cabin crew could be free of all duty for "25 percent of the scheduled block time less 1 hour." APA stated that reclining seats suitable for rest reserved for 25 percent of the assigned attendant complement would have to be available throughout the flight. APA also recommended that a domestic, flag, or supplemental air carrier or commercial operator be permitted to assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the inflight duties assigned to flight attendants by the air carrier or commercial operator were such that each of the cabin crew could be free of all duty for "33 percent of the scheduled block time less 1 hour." APA added that reclining seats suitable for rest reserved for 33 percent of the assigned attendant

complement would have to be available throughout the flight. The Coalition of Flight Attendant Unions recommended that a flight attendant be provided at least 1 hour of continuous rest for any flight segment scheduled for 8 or more hours of flight time, and that a passenger seat or bunk be assigned for crew rest.

FAA Response

This final rule adopts the definition of rest period and the minimum rest requirements as proposed in the NPRM. The FAA has considered the various rest requirement alternatives proposed by commenters and has determined that the rest requirements proposed in the NPRM and adopted in this final rule are adequate to ensure that flight attendants are provided the opportunity to be sufficiently rested to perform their routine and emergency safety duties without imposing a significant burden on operators. A discussion of the comments recommending that reserve status be addressed in the definition of rest is contained under the heading, "Reserve Status, Stand-by Status, or Similar Assignments."

In response to Southwest Airlines' comment that rest should be "actual" hours of rest and not "scheduled," the FAA considers that the opportunity to rest, as provided by the rest period, to be "actual" rest. As proposed in the NPRM, this final rule requires that a flight attendant "be given" a scheduled rest period. This provision makes the operator responsible for ensuring that a flight attendant is scheduled for and receives the scheduled rest period. The FAA recognizes that how the flight attendant utilizes this rest period cannot be regulated. Requiring operators to schedule rest periods ensures that flight attendants know in advance when rest periods will occur and that they will be of a specified duration.

A minimum rest period of 9 consecutive hours is required for all duty period assignments of 14 hours or less, unless the rest period is reduced in accordance with § 121.467(b)(3) or § 135.273(b)(3). A flight attendant who reports for duty to find that the flight has been canceled would have begun a duty period and would require minimum rest. However, in response to RAA's concern, a carrier could either keep the flight attendant on duty for reassignment or release the flight attendant for a complete rest period.

Rest periods are required to occur between the completion of a scheduled duty period and the commencement of a subsequent duty period. Consequently, this final rule does not require that a required rest period be given immediately prior to a flight assignment. Because duty periods are defined as assignments involving flight time, a rest period is not required following assignments that do not involve flight time, such as training or ground duty assignments.

In response to commenters who indicated that the actual time available to rest is typically less than scheduled rest, the FAA considers a flight attendant to be free of all restraint or duty upon release from an assignment involving flight time. The FAA understands that the time available for sleep during a rest period may vary depending on the amount of time a flight attendant spends in other activities during the rest period. The FAA also recognizes that it cannot compel a flight attendant to use rest periods for actual rest.

Additionally, this final rule regulates the frequency and duration of required rest periods. This final rule does not regulate the quality of rest facilities nor does it require certificate holders to provide on-board rest for flight attendants.

Reduced Rest

Sections 121.466 (d) and (i) and 135.273 (d) and (i) of the NPRM included provisions for operators to schedule 8-hour and 10-hour reduced rest periods in conjunction with certain scheduled duty period limitations. ALPA stated that a rest period should never be scheduled for less than 10 consecutive hours. However, ALPA believes that it may be permissible for an operator to reduce a rest period to less than 10 hours because of circumstances beyond the control of the certificate holder. APA opposed the concept of reduced rest and stated that an air carrier or commercial operator should not be permitted to schedule a reduced rest period.

FAA Response

The FAA has adopted the reduced rest provisions as proposed. This final rule permits an air carrier or commercial operator to schedule a flight attendant for reduced rest. However, no flight attendant will receive a rest period of less than 8 hours. This provision enables operators to retain a certain degree of scheduling flexibility. The reduced rest provision is adopted in conjunction with the requirement to schedule a longer rest period subsequent to an 8- or 10-hour reduced rest period. Together, these provisions prevent a flight attendant from being assigned two consecutive reduced minimum rest periods and are designed to protect flight attendants by minimizing the effects of cumulative fatigue.

24-Consecutive-Hour Rest Period During Any 7 Consecutive Calendar Days

Sections 121.466(n) and 135.273(n) of the NPRM proposed that a certificate holder be required to relieve a flight attendant engaged in air transportation or air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days. For convenience, hereafter, this requirement will be referred to as the 24-hour-in-7-day rest requirement. Proposed §§ 121.466(a) and 135.273(a) of the NPRM defined a calendar day as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later. Labor organizations, operators, and an association commented on the proposed 24-hour-in-7-day rest requirement.

Several of the comments submitted included discussion of the term "calendar day." ATA stated that the term "calendar day" is confusing because it is unclear on which day an assignment begins or ends. APA stated that the term calendar day should specify that the local time used is that of the flight attendant's home base. In the Coalition of Flight Attendant Unions' alternative to the NPRM, the Coalition deleted the definition of the term "calendar day" but retained the provision for 24 consecutive hours of rest in 7 consecutive calendar days.

ATA and Delta Air Lines recommended that the FAA revise the proposed 24-hour-in-7-day rest requirement by replacing the phrase "every 7 consecutive calendar days" with the phrase "every 168-consecutive-hour period."

Southwest Airlines and TWU Local 556 requested that the final rule permit a flight attendant to voluntarily waive the 24-hour-in-7-day rest requirement in order to be able to work extra hours. Southwest Airlines states that, if flight attendants cannot waive this provision, Southwest would be required to hire an additional 100 flight attendants at an initial cost of $710,000 and an annual recurring cost of $660,000. TWU Local 556 stated that they applied this provision to a sample of 13 flight attendant schedules for February 1993. According to TWU Local 556, if the 13 flight attendants were not permitted to fly their schedule, which had been altered to include extra flights, each flight attendant would have lost $11,063 in extra annual income. The total lost income for 2,200 flight attendants would be $24 million.

ATA and Delta Air Lines recommended that the FAA include a provision in the final rule similar to a statement included in the preamble to the NPRM that indicated that the requirement for a 24-consecutive-hour rest period in any 7 consecutive calendar days could be postponed under certain circumstances.

AMR Combs and American Cyanamid Company noted that current §§ 135.267(f) and 135.269(d) require unscheduled operators to provide flight crewmembers with at least 13 rest periods of at least 24 consecutive hours in each calendar quarter. AMR Combs stated that the 24-hour-in-7-day rest requirement proposed in the NPRM only should apply to scheduled operations. American Cyanamid Company suggested that flight attendants could be required to meet pilot weekly rest requirements as an alternative.

Other comments submitted included: (1) A recommendation by TWU Local 556 that the FAA could require four 24-hour breaks in 30 days or require a 12-hour rest preceding the seventh duty day; and (2) a Carnival Airlines flight service schedule indicating that a flight attendant had been scheduled for 11 consecutive days of duty without receiving a 24-consecutive-hour rest period.

FAA Response

The 24-hour-in-7-day rest requirement is designed to supplement daily rest requirements and to ensure that flight attendants receive the opportunity to obtain adequate rest. The FAA proposed the definition of a calendar day to provide a unit of measure that could be used to determine whether the 24-hour-in-7-day rest requirement is met. In response to ATA's concern that the term "calendar day" causes confusion, the FAA refers to the definition of "calendar day" in §§ 121.467(a) and 135.273(a) of the final rule, which indicates that a calendar day begins at midnight and ends 24 hours later at the next midnight. "Seven consecutive calendar days" as used in §§ 121.467 and 135.273 of this final rule means a period of 7 consecutive days beginning at midnight on the first day and ending at midnight 7 days later. In response to APA's recommendation that the definition of calendar day specify that the local time be that of the flight attendant's home base, the FAA has determined that any time zone can be used to determine whether the 24-hour-in-7-day rest requirement is met, as long as the carrier is consistent. In other words, a certificate holder may not manipulate the use of time zones when calculating 7 consecutive calendar days so as to vary the number of hours that comprise any 7 consecutive calendar days.

The FAA has considered the commenters' request to replace the proposed 7 consecutive calendar days with a 168-consecutive-hour period. The FAA notes that the NPRM used language consistent with the language contained in the current flight crewmember flight time limitations rule. The FAA has decided that it should not introduce at this final rule stage an inconsistency between the flight crewmember flight time limitations rule language and the flight attendant duty period limitations and rest requirements rule language. The FAA will consider whether rulemaking should be initiated to replace 7 consecutive calendar days with 168-consecutive-hours.

The FAA has reviewed requests to permit flight attendants to voluntarily waive the 24-hour-in-7-day rest requirement. The FAA has not included that alternative in this final rule because the purpose of requiring 24 consecutive hours free from duty in any 7 consecutive calendar days is to ensure that flight attendants receive the opportunity to obtain adequate rest. As with rest requirements following reduced rest, the requirement for 24 consecutive hours of rest in any 7 consecutive calendar days is designed to protect flight attendants by minimizing the effects of cumulative fatigue.

In response to comments received from ATA and Delta Airlines, the FAA has determined that it is not necessary to include in this final rule provisions for permitting the 24-hour-in-7-day rest requirement to be delayed. This final rule imposes restrictions for flight attendants that parallel the restrictions that currently exist for flight crewmembers. The absence of provisions to permit the 24-hour-in-7-day rest requirement to be delayed does not preclude a flight attendant from completing a duty period assignment that has extended into the seventh calendar day because of a delay that is beyond the control of the operator. In addition, the 24-hour-in-7-day rest requirement may be delayed for reasons such as deadheading, assignment to training, and others. However, if the requirement is delayed, the flight attendant must be given the 24-consecutive-hour rest period before beginning any subsequent duty period assignment.

In response to unscheduled operators, the FAA notes that unscheduled part 135 operators conducting operations that require flight attendants have the option to apply the flight crewmember flight time limitations to flight attendants instead of using the duty period limitations and rest requirements contained in this final rule. Sections 135.267(f) and 135.269(d) require certificate holders to provide each flight crewmember with at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter. Among other requirements, operators that choose to apply flight crewmember requirements to flight attendants would be required to provide flight attendants with at least 13 rest periods of at least 24 consecutive hours in each calendar quarter instead of relief from duty for 24 consecutive hours every 7 consecutive calendar days.

Comments on the costs associated with the 24-hour-in-7-day rest requirement are addressed in the Regulatory Evaluation Summary.

Compensatory Rest Periods

Although there was no specific proposal in the notice, the FAA requested comments on the feasibility of establishing compensatory rest periods for flight attendants when scheduled duty periods are exceeded. ATA, the Coalition of Flight Attendant Unions, and Delta Air Lines opposed the establishment of compensatory rest periods.

FAA Response

In response to the comments submitted, the FAA will not mandate compensatory rest periods in this final rule. The FAA has determined that compensatory rest is not necessary, because the duty period limitations and rest requirements contained in this final rule ensure that flight attendants receive the opportunity to be adequately rested to perform safety duties.

Reserve Status, Stand-by Status, or Similar Assignments

The FAA recognizes that current industry practice varies with regard to the use of these terms and their relationship to duty or rest. In the NPRM, the FAA requested comments on the most appropriate way to address reserve status, stand-by status, or a similar assignment. The FAA received 13 comments, primarily from air carrier associations and labor organizations. Commenters described different types of reserve status and suggested situations when reserve should be considered duty or rest.

ATA recommended adding the following phrase to the definition of rest period: "except that reserve status assignments shall be considered 'rest' for purposes of this rule, provided that the only work-related restriction shall be to report for a flight assignment

within a specified period of time pursuant to a collective bargaining agreement or company work rules." The Coalition of Flight Attendant Unions recommended that the definition of rest period be revised to "the time period free of all restraint or duty from a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility, or interruption by, work or duty."

In addition, commenters indicated that different types of reserve status including "call-in" reserve and "on-call" reserve are commonly found in the aviation industry. As described by commenters, call-in reserve requires that a flight attendant contact, or be available to be contacted by, the operator at designated times for flight assignments. The commenters added that on-call reserve typically requires that a flight attendant be available for an assignment on short notice (usually within 1 hour) if contacted by the operator.

A majority of the commenters on this issue discussed whether reserve status should be considered rest. ATA, NACA, and Southwest Airlines stated that the time a flight attendant is assigned to reserve status and is not assigned to a duty period should be considered rest for the purpose of meeting the 24-hour-in-7-day rest requirement proposed in § 121.466(n) of the NPRM. RAA stated that the type of reserve in which a person must contact the company for future assignments—rather than being available for an assignment on short notice—should be considered rest because it is free of all duty except for the possibility of communication with the operators. Two individual commenters stated that the time a flight attendant spends on reserve should not be considered rest.

Four of the commenters, including ATA, Delta Air Lines, and RAA, commented on whether reserve status should be considered part of a duty period. ATA and Delta Air Lines stated that the time a flight attendant spends on reserve should not be considered a duty period. ATA noted that, if reserve is considered duty, operators will need to increase staff by 20 to 30 percent. ATA estimates that the annual cost would be $100 to $130 million for salaries, benefits, and associated training and administrative costs. Delta Air Lines expressed concern that if "on-call" reserve is considered duty, flight attendants would request at-home pay. RAA stated that the type of reserve in which a person is expected to report on short notice should be considered duty. TWU Local 556 stated that duty time for a reserve flight attendant should be calculated from actual report time to release time for a flight assignment.

FAA Response

In response to the commenters who stated that reserve status should be considered rest, the FAA notes that the time during which a flight attendant is responsible for contacting a certificate holder or for being available to be contacted by a certificate holder for an assignment (e.g., reserve or stand-by status) does not meet any rest period requirements, because the FAA has defined a rest period as free of all restraint or duty and free of all responsibility for work or duty should the occasion arise.

Specifically in response to ATA's, NACA's, and Southwest Airlines' suggestions that reserve assignments should fulfill the 24-hour-in-7-day rest requirement if no duty period is assigned, the FAA reiterates that rest period requirements are not met when a flight attendant is assigned to reserve status even if the flight attendant is not given a duty period assignment. A duty period, as defined in this final rule, does not begin until a flight attendant reports for an assignment involving flight time. For example, a flight attendant who has been assigned to reserve status for 24 hours but has not reported for a duty period assignment during that time will not have satisfied the 24-hour-in-7-day rest requirement. The rest requirement is not satisfied, because the reserve assignment is a restraint and includes present responsibility for work as a flight attendant if the occasion arises.

Some commenters stated that reserve status should not be restricted by duty period requirements. The FAA refers the commenters to the definition of duty period in §§ 121.467(a) and 135.273(a) of the final rule, the first sentence of which reads: "Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment. * * *" It should be clear that reserve status alone does not meet the definition of duty period. On the other hand, it also should be clear that reserve status may not be performed during a rest period. The definition of rest period in §§ 121.467(a) and 135.273(a) of the final rule states that "Rest period means the time period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise."

Augmented Cabin Crews

This final rule permits operators to schedule flight attendants for duty periods of more than 14 hours provided an operator: (1) Assigns flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications; and (2) schedules an extended rest period following the duty period.

Ten commenters submitted comments on the proposed augmented cabin crew requirements addressing: (1) The concept of augmenting cabin crews in proportion to the type of aircraft; (2) the relationship between augmented cabin crews and flight attendant fatigue; and (3) the effect of augmented crew requirements on unscheduled operators.

APA, NAA, and RAA noted that the proposed augmented cabin crew requirements are not based on the size of the aircraft. APA stated that if the FAA intends the provision for augmented cabin crews to be used only for long-range operations, this should be clarified in the final rule. APA noted that, under the proposed provisions, one flight attendant would be added to either a two-person crew or an eight-person crew. NAA noted that, one additional flight attendant on a Boeing 757 is a 20 percent increase in crew; one additional flight attendant on a wide-body airplane is a 7 percent increase in crew. NAA recommended that the FAA distinguish between wide-body and narrow-body airplanes by requiring one additional flight attendant for any duty period between 14 and 20 hours on a narrow-body airplane. RAA stated that operators of airplanes that require one or two flight attendants should not be required to augment cabin crews in order to schedule duty periods longer than 14 hours. RAA added that a passenger seat will be needed for an additional flight attendant. RAA also noted that regional operators schedule some duty periods longer than 14 hours; however, many of these include an intermediate rest period.

APA, the Coalition of Flight Attendant Unions, and RAA addressed the relationship between augmented cabin crews and fatigue. APA and the Coalition stated that a larger crew does not necessarily result in a less fatigued crew and noted that American Airlines, Trans World Airlines, United Air Lines, and USAir currently assign flight attendants in addition to the minimum crew complement. APA and the Coalition of Flight Attendant Unions noted that the proposal does not require an operator to provide a flight attendant with inflight rest. RAA stated that requiring augmented cabin crews for the purpose of reducing fatigue has been inadequately justified.

ATA and Delta Air Lines stated that the rule should permit a flight to operate if an augmented crew is assigned but not present for a flight because of unforeseen circumstances (e.g., illness or injury during a layover). Delta suggested that 1 hour of on-board crew rest for the remaining flight attendant crew could be provided in this circumstance.

AMR Combs noted that a change is needed for on-demand operators. They stated that a "larger" aircraft such as a Gulfstream or a Challenger cannot accommodate up to four flight attendants. AMR Combs stated that these operators would either apply for an exemption or not use a flight attendant.

FAA Response

This final rule provides scheduling flexibility by permitting an operator to schedule a flight attendant for a duty period of more than 14 hours if the flight attendant crew is augmented in accordance with § 121.467 (b)(4), (b)(5), or (b)(6), or § 135.273 (b)(4), (b)(5), or (b)(6). The augmented flight attendant crew provision permits extended duty periods to accommodate certain operational requirements such as those for long-range international flights, but this provision also may be applied to domestic operations.

The provision for augmented cabin crews is designed to reduce fatigue by decreasing flight attendant work load on a flight and by providing an extended rest period following a long duty day. Although the FAA recognizes that the provision will not require flight attendant crews to be augmented proportionally for each aircraft type, it provides the least complicated method for reducing fatigue and accommodating certain operational requirements. Therefore, in this final rule, the FAA adopts the provision for augmenting cabin crews on a flight or flights with a scheduled duty period of more than 14 hours but not more than 18 hours, and scheduled duty periods that do not exceed 20 hours for duty periods that contain one or more flights that land or take off outside the 48 contiguous states and the District of Columbia.

In response to comments from AMR Combs, Delta Airlines, and RAA, this final rule contains no provision to except an operator from meeting minimum augmented cabin crew requirements when a flight attendant duty period is scheduled for more than 14 hours in operations that require a flight attendant. This includes instances in which a required crewmember is not available following a layover, e.g., due to illness or injury. Additionally, the use of an approved passenger seat is required for operators that schedule flight attendants for duty periods of more than 14 hours on aircraft that are not configured with a flight attendant jumpseat for the additional flight attendant(s).

In response to AMR Combs' comment regarding the use of flight attendants in Gulfstream and Challenger aircraft, this final rule applies to operations that require a flight attendant. Typically, Gulfstream and Challenger aircraft are not configured with more than 19 passenger seats and a flight attendant is not required to be on board. Therefore, flight attendants assigned to such operations are not subject to the duty period limitations and rest requirements in this final rule. In addition, operators have the option to apply flight crewmember flight, duty, and rest requirements to flight attendants.

Deadhead Transportation

Proposed §§ 121.466(m) and 135.273(m) described deadhead transportation as time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home base. Under the proposal, time spent in deadhead transportation is not rest.

ATA, Delta Air Lines, and NACA requested that the final rule provide scheduling flexibility for flight attendants in deadhead transportation. ATA requested that the FAA permit: (1) Operators to schedule 2 hours of deadhead transportation to a domicile that is not counted within duty time limitations; (2) flight attendants to waive all duty time limitations when returning to a domicile and count the time as rest; and (3) flight attendants to delay the weekly rest requirement to return to the flight attendant's home base. Delta Air Lines stated that the FAA should permit a flight attendant to alter schedules to exceed the scheduled maximum duty time after the last flight segment to return to the flight attendant's home base. Delta also recommended that an operator be permitted to deadhead a flight attendant for up to 20 hours regardless of the number of assigned flight attendants. NACA suggested that the final rule clarify that the time a flight attendant spends deadheading is not limited by duty periods or the requirement to augment the flight attendant crew because no inflight duties are involved.

ATA and NACA stated that the final rule should clarify that a deadheading flight attendant is not a working member of the cabin crew for the purpose of determining if staffing requirements must be augmented.

The Coalition of Flight Attendant Unions and NACA agreed with the NPRM that the time a flight attendant spends in deadhead transportation is not rest.

FAA Response

Deadhead transportation as adopted in §§ 121.467(b)(12) and 135.273(b)(12) of this final rule is not considered part of a rest period. This use of deadhead transportation in relation to flight attendant duty period limitations and rest requirements is consistent with the application of flight crewmember flight time limitations and rest requirements.

In addition, a flight attendant scheduled for deadhead transportation is not assigned to duty in an aircraft and is not considered a working crewmember. Therefore, for the purpose of determining duty period limitations and rest requirements, deadhead transportation is not considered an assignment involving flight time and is not part of a duty period. In response to the comments submitted, the FAA reiterates that an operator is not required to augment flight attendant crews for flights when a flight attendant is assigned to deadhead transportation because the time spent in deadhead transportation is not part of a duty period. For example, an operator may schedule a flight attendant crew for a flight to Europe with a duty period of 14 hours. Immediately following the flight and before beginning a 9-hour rest period, the operator requires the flight attendant crew to deadhead for 2 hours to position the crew for the next duty period assignment. In this example, the operator is not required to augment the flight attendant crew because the deadheading portion of the assignment is not considered part of the duty period. However, the 2 hours spent positioning the crew for the next assignment are not considered part of the 9-hour rest period.

Flight Attendant Responsibility

Proposed §§ 121.466 and 135.273 state that a flight attendant may not accept a work assignment that does not meet the duty time limitations and rest requirements. Six commenters responded to this provision.

ATA, APA, Delta Air Lines, and RAA opposed this provision. The commenters stated that, if the provision were adopted, flight attendants would be subject to FAA civil penalties. The

commenters also expressed concern that the provision would interfere with labor-management relations. APA noted that a flight attendant could be permitted to complete a flight assignment that the flight attendant believes to be improper and to inform the FAA at the next opportunity.

The Coalition of Flight Attendant Unions included in its alternative the provision for a flight attendant to refuse a work assignment that does not meet the Coalition's proposed duty time limitations and rest requirements. In contrast, TWU Local 556, representing the flight attendants of Southwest Airlines, commented that the provision of flight attendant responsibility could place a flight attendant in the impossible position of risking either a fine from the FAA or discipline for insubordination from the airline if the carrier's scheduling department makes a mistake.

FAA Response

In light of comments received, the FAA has determined that only an operator, not a flight attendant, should be responsible for ensuring that duty limitations and rest requirements are met. The FAA bases its decision on the fact that a flight attendant could be called upon to decide between the violation of a regulation and possible disciplinary action from the company. That misunderstanding and conflict between company scheduling personnel and flight attendants could occur at a time when flight attendants should be giving their full attention to the passengers. In cases in which a flight attendant is aware that an assignment does not meet duty period and rest requirements, the FAA recommends that the flight attendant bring the situation to the air carrier's attention. If the situation is not corrected, the flight attendant should then inform the FAA. However, this recommendation does not preclude a flight attendant from informing the FAA before contacting the air carrier. In addition, flight attendant duty and rest time records are subject to FAA review. Air carriers found to be in noncompliance with the regulation are subject to enforcement action.

Recordkeeping

Sections 121.683(a)(1) and 135.63(a)(5) of the NPRM proposed requiring certificate holders to maintain current records on flight attendant duty and rest time requirements. The Coalition of Flight Attendant Unions, Southwest Airlines, TWU Local 556, and TWU of America agree with the proposed recordkeeping requirements. The Coalition of Flight Attendant Unions does not anticipate that the recordkeeping requirements as proposed in the NPRM would be unduly burdensome.

NAA stated that the cost of tracking crew time for duty and rest could be very expensive. NAA noted that many small carriers do not have expensive computer tracking systems and cannot afford to do manual tracking.

Delta Airlines stated that the one-time cost for computer software changes would be $368,000. NACA noted that one of its members estimates that the proposed recordkeeping requirements would cost $50,000 annually.

FAA Response

The information and recordkeeping requirements of this final rule are currently under review by the Office of Management and Budget. Provided that they are approved by OMB, the FAA adopts the recordkeeping requirements as proposed in the NPRM. These requirements will become effective when they have been approved by OMB. The FAA anticipates that this approval will be given soon.

The FAA recognizes that a concern of the aviation industry has been the potential cost involved in tracking crew time for duty and rest periods. The regulation provides that carriers maintain current records for each flight attendant to verify compliance with flight, duty, and rest time periods. The FAA intends to be as flexible as possible in interpreting this recordkeeping requirement. Records may be maintained by computer, by hand documentation, or by any other method that will permit a carrier to assure compliance with the regulatory requirements.

Since many carriers already track flight attendant duty periods to ensure that union contract or company guidelines on duty and rest time are met, the FAA expects that recordkeeping systems already in place will be sufficient to meet the recordkeeping requirements of the final rule with minimal modification. Carriers that do not currently track flight attendant duty periods will incur costs in developing recordkeeping systems; however, the flexibility built into the final rule should help to minimize these costs. Further, the FAA intends to assist these carriers by providing information and guidance based on already-implemented recordkeeping systems maintained by other air carriers.

Implementation Time of the Final Rule

ATA and Delta Air Lines requested that the FAA not implement this final rule immediately. They noted that operators will need time to revise their computer programs. ATA requested a 12-month implementation period; Delta requested an 18-month implementation period.

FAA Response

The FAA has considered the implementation periods proposed by ATA and Delta. However, in the interest of public safety, the FAA has determined that the final compliance date of this rule should be no later than March 1, 1995. Because most operators are currently using scheduling guidelines and tracking systems for flight attendants, the FAA has determined that the March 1, 1995, date is reasonable.

Additional Issues

Fatigue

Commenters who addressed flight attendant fatigue include ATA, the Coalition of Flight Attendant Unions, NACA, NTSB, RAA, SCA, and Southwest Airlines.

ATA emphasized that flight attendant fatigue caused by abusive scheduling or duty periods is not a problem in the scheduled airline industry. NACA, RAA, SCA, and Southwest Airlines emphasized that studies have found no correlation between flight attendant fatigue and the ability of a flight attendant to perform safety-sensitive functions. SCA point out that accident data do not specify flight attendant fatigue as a factor in delay of evacuation or in injuries or fatalities that occurred.

The Coalition of Flight Attendant Unions provided a summary of research on circadian dysrhythmia and fatigue with an extensive bibliography. NTSB reiterated Recommendation I–89–1, which stated that the Department of Transportation should "expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety." Other commenters submitted copies of articles and recommendations related to fatigue.

FAA Response

The FAA has reviewed the extensive amounts of literature provided by commenters on fatigue related to travel and extended work periods as well as to shift work. Although consideration has been given to numerous fatigue studies, no accident/incident data is available to provide a direct correlation between flight attendant fatigue and passenger safety. However, it is evident that fatigue may affect flight attendant performance and that proper scheduling practices may help avoid compromising

flight attendant performance. The FAA recognizes that flight attendants perform essential safety duties and has determined that the requirements contained in this final rule enhance safety by protecting flight attendants from acute and chronic fatigue. This final rule addresses the potential safety problems that could occur if fatigued flight attendants work excessive duty hours or receive inadequate rest.

Industry Study

The principal commenters who addressed the Industry Study include AMR Combs, American Cyanamid Company, the Coalition of Flight Attendant Unions, and SCA.

American Cyanamid Company stated that the Industry Study does not indicate that there is a pattern of air carriers willfully scheduling long duty days or long series of days without a day off. The Coalition of Flight Attendant Unions indicated that the Industry Study has been used as evidence that extreme examples of scheduling abuse are isolated and that the actual occurrences of scheduling abuse were most likely under-reported because the instances provided in the Industry Study were "self-selected." The Coalition further stated that, even though the instances were self-selected, the Industry Study found industry-wide flight attendant duty and rest period problems. SCA stated that the Industry Study does not provide evidence to establish any correlation among flight attendant duty time, flight attendant safety duties, and risk to passengers. AMR Combs and American Cyanamid Company noted that the Industry Study did not consider unscheduled part 135 operators.

FAA Response

The FAA conducted the Industry Study to determine if scheduling extremes exist, and, if so, to determine the nature of the extremes, not to determine the statistical frequency with which they occur or to correlate passenger risk with extreme scheduling. Access to records was gained through the cooperation of air carriers. The air carriers did not choose individual records for examination. Based on the purpose of the study, records were selected for review when flight attendant scheduling extremes were expected to be likely. Therefore, statistical inferences cannot be made. However, the data contained in the Industry Study provides fundamental background information on flight attendant scheduling practices.

The Industry Study included a review of data from major, national, regional, and supplemental carriers. The study did not include a review of unscheduled part 135 operators because relatively few of these operators conduct operations that require a flight attendant. As previously discussed, air carriers and commercial operators conducting operations for which the FAA does not require a flight attendant will not be required to comply with flight attendant duty period limitations and rest requirements even if flight attendants are involved in those operations.

International and Domestic Operations

The proposed amendment did not make a distinction between domestic and international operations in determining flight attendant duty limitations and rest requirements. Five commenters commented on whether there should be a distinction between domestic and international operations for determining flight attendant duty period limitations and rest requirements. Four commenters, including the Coalition of Flight Attendant Unions and the International Association of Machinists and Aerospace Workers (IAM & AW), supported making a distinction. The Coalition provided definitions for a domestic flight, an international flight, and a long-range international flight. One commenter stated that flight attendants assigned to international flight require more rest than flight attendants assigned to domestic flights because flight attendants on international flights are in a state of physical desynchronization. Another commenter stated that duty period limits should be 12 hours for domestic flights and 14 hours for international flights. NAA stated that no distinction should be made between international and domestic flights because some domestic flights are as long as international flights and the work load is the same for the crew.

FAA Response

After a review of the Coalition comments and an analysis of flight schedules, the FAA finds that scheduled duty periods for operations wholly within the 48 contiguous states and the District of Columbia should not be allowed to exceed 18 hours. The FAA is not aware of any scheduled duty periods for these operations that currently do exceed 18 hours. However, for duty periods involving one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, the duty period may not exceed 20 hours. Thus, the final rule makes this distinction between domestic and international operations.

Part 125 Operators

The NPRM proposed that each flight attendant be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

Two commenters, including the Coalition of Flight Attendant Unions, addressed this proposal. The Coalition recommended that the 8-hour period free of duty be replaced with a 10-hour period free of duty.

FAA Responses

Section 125.37, Duty time limitations, currently requires a flight crewmember to be relieved from duty for at least 8 consecutive hours during any 24-hour period. The final rule incorporates flight attendants into the current provision, thus providing parallel duty time limitations for flight attendants and flight crewmembers.

Rules for Flight Attendants in Other Nations

APA, the Coalition of Flight Attendant Unions, and the IAM & AW noted that flight attendants in other nations have regulations that provide flight attendant duty time limitations and minimum rest requirements. APA stated that the proposed Joint Aviation Authorities (JAA) regulations address issues related to fatigue. The Coalition provided a copy of the proposed JAA rules.

FAA Response

During the Industry Study, the FAA conducted a review of the International Civil Aviation Organization's (ICAO) regulations relating to flight attendant flight, duty, and rest times including a review of ICAO Circular Flight Crew Fatigue and Flight Time Limitations (52–AN/47/6). The Industry Study identified 23 countries that have government regulations for flight attendant flight and duty limitations and rest requirements, and 24 countries that do not have such regulations. The FAA notes that the Joint Aviation Regulations currently do not include flight time limitations for flight attendants; however, the JAA have proposed flight time limitations for flight crewmembers and flight attendants that are currently under review by the European Community. Based on this information, the FAA has determined that flight attendant flight and duty limitations and rest requirements of some countries are less stringent than the final rule adopted by the FAA, and the requirements of other countries are more stringent than those

being adopted. Therefore, the FAA considers the final rule to be within the range of worldwide governmental regulations governing flight attendant duty limitations and rest requirements.

Changes to the NPRM

The FAA amended several provisions of the proposed rule in response to comments received from the public. Any changes that significantly altered the requirements of the duty period limitations and rest requirements are discussed previously and are summarized in this section.

The NPRM made no distinction between domestic and international operations. In the final rule domestic operations are limited to up to 18-hour scheduled duty periods. However, scheduled duty periods that involve one or more flights that land or take off outside the 48 contiguous states and the District of Columbia may be scheduled up to 20 hours, providing required augmentation is provided.

The FAA moved flight attendant duty period limitations and rest requirements from proposed § 121.466 in the NPRM to § 121.467 in the final rule to facilitate the incorporation of future amendments. In addition, paragraphs describing duty period and rest period provisions in the NPRM have been revised and renumbered in the final rule to incorporate new and revised requirements. The FAA also revised the NPRM to include minor editorial changes and revised the list of subjects to include additional terms.

Based on comments receive, the FAA removed the proposed requirement that a flight attendant be responsible for ensuring compliance with duty period limitations and rest requirements before accepting any flight assignments. The FAA determined that this is an operator's responsibility and not the responsibility of a flight attendant.

The NPRM included the proposal that an operator may not assign a flight attendant a duty period of 14 or more hours following a 10-hour reduced rest period. In §§ 121.467(b)(9) and 135.273(b)(9), the FAA revised the NPRM to restrict an operator from assigning a flight attendant to a duty period of "more than 14 hours" following a 10-hour reduced rest period. This change permits an operator to assign a flight attendant to a duty period of up to and including 14 hours following the reduced rest period.

The FAA incorporated provisions into the final rule to give operators the option to apply the flight crewmember flight, duty, and rest requirements to flight attendants. The FAA permits this option provided that the operator establishes written procedures that are referenced in the certificate holder's operations specifications for applying the appropriate flight crewmember flight, duty, and rest requirements to flight attendants.

The following chart depicts the scheduled duty period, rest period, and augmented flight attendant crew requirements for this final rule.

Scheduled duty period	Minimum rest period	Reduced rest period	Rest period following reduced rest	No. of flight attendants
14 hrs or less	9 hrs	8 hrs	10 hrs	Minimum.
14–16 hrs	12 hrs	10 hrs	14 hrs	Minimum + 1.
16–18 hrs	12 hrs	10 hrs	14 hrs	Minimum + 2.
*18–20 hrs	12 hrs	10 hrs	14 hrs	Minimum + 3.

*Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous States and the District of Columbia.

Costs

In the NPRM, the FAA requested additional information on the costs of the proposed rule. The FAA received comments from associations, labor organizations, and part 121 operators.

ATA, which primarily represents part 121 scheduled operators, stated that the proposal would cost its members at least $8 million annually to revise current computer crew scheduling programs, hire additional personnel, extend layovers, and schedule reserves. ATA believes that the costs were understated in the NPRM and noted that they did not include an inflation factor. ATA indicated that the 15-year cost of the proposed rule would be $88,947,099 using a 7-percent discount rate and a 3-percent inflation rate. RAA stated that the costs associated with the proposed rule are significantly understated. In addition, RAA believes that the economic effect of the proposed rule should reflect the cost burden of other recent rulemakings. NACA stated that the proposal would cost one of its members an estimated $372,000 annually for additional staffing and $50,000 annually to meet recordkeeping requirements.

The Coalition of Flight Attendant Unions stated that the median flight attendant salary, based on the average salary for supplemental air carrier flight attendants represented by the Association of Flight Attendants (AFA), is $18,461. According to the Coalition, if 6,000 flight attendants are hired by supplemental operators, the cost in salaries will be $1,107,660 [sic]. The Coalition noted that this is one tenth the cost of random drug testing.

Delta Airlines, a scheduled part 121 operator, indicated that the initial cost to comply with the proposed rule would be $2,863,416. This cost includes the cost of hiring 36 additional flight attendants, estimated at $1,348,000; paying flight attendants during deplaning, estimated at $749,000; providing additional meals, estimated at $400,000; and modifying computer software, estimated to be a one-time cost of $367,000. Delta estimates that the annual cost to comply with the proposed rule would be $2.5 million.

Sun Country Airlines, an unscheduled part 121 operator, stated that it would be required to augment cabin crews on domestic flights more often than it now does. Sun Country Airlines also stated that, if the NPRM had been effective in 1992, the carrier would have hired an additional 34 flight attendants and the cost to domestic operations would have been $2.6 million in salaries, benefits, training, hotels, meals, deadhead travel, and administrative burden. Sun Country Airlines pointed out that the NPRM estimated that supplemental operators would absorb 60 percent of the proposal's costs while supplemental operators employ only 1 percent of all flight attendants.

Great American Airways, an unscheduled part 121 operator, stated that the proposed rule would impose substantially greater costs on supplemental air carriers. Positioning flight attendants would become a major expense for supplemental operators. Unanticipated schedule and routing changes could severely curtail current flexibility. However, Great American Airways stated that the disruptions mentioned above would be minimized if supplemental air carriers had the option to apply the same work rules to both flight attendants and pilots. Great American Airways estimates that the total cost savings that would be derived

from implementing a single set of duty limitations for its cabin and flight crewmembers, as opposed to adopting the requirements proposed in the NPRM, would be more than $100,000 annually.

FAA Response

The comments that address the costs associated with this final rule are addressed in the Regulatory Evaluation Summary.

Paperwork Reduction Act

Information collection requirements for parts 121, 125, and 135 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers as follows: For part 121, OMB Control Number 2120–0008; for part 125, OMB Control Number 2120–0085; and for part 135, OMB Control Number 2120–0039. The FAA has prepared changes to these control numbers to reflect the additional paperwork requirements of this final rule and has submitted these changes to OMB.

In completing this rulemaking, the FAA has been mindful that it is the policy of the agency and the Administration to avoid imposing unnecessary paperwork burdens on industry. To that end, the FAA has carefully considered all comments on recordkeeping and has made every attempt to minimize the paperwork burden for carriers. For example, allowing carriers to employ a single scheduling system for entire crews—pilots and flight attendants—will enable them to avoid maintaining two separate duty schedules. Indeed, for many carriers, the FAA believes the final rule will create little or no net additional paperwork.

Regulatory Evaluation Summary

The FAA has determined that this rule: (1) Is a significant regulatory action as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, summarized below, are available in the docket.

Cost-Benefit Analysis

Benefits

The FAA expects the final rule to help ensure that flight attendants are rested and alert when performing emergency and routine safety related duties and thereby reduce injuries and fatalities in air carrier accidents. However, as in the NPRM, the FAA has not quantified the benefits associated with this rulemaking because there is a lack of accident/incident data that can be used to directly correlate flight attendant fatigue with passenger fatalities and injuries. Instead, the FAA has examined the potential benefits of this rulemaking from a qualitative perspective.

Increased Safety

The FAA received comments both supporting and opposing the correlation between flight attendant duty period limitations and rest requirements and passenger safety. One commenter stated that fatigue increases during the work period, and duty times that exceed 12 hours for domestic flights and 14 hours for international flights can be expected to potentially derogate safety performance. Another commenter stated that the FAA has provided no sufficient foundation for concluding that the absence of the proposed regulations constitutes a derogation of aviation safety, and that the absence of any experience in which a flight safety problem was attributable to undue flight attendant fatigue is a strong argument that no such problem exists.

FAA Response

The FAA agrees with commenters who stated that inadequate rest or excessive duty periods could derogate safety. However, the commenters did not define acceptable or unacceptable levels of risk, and did not provide any justification for the distinction. Because quantifiable data was not available, the FAA was unable to calculate the quantitative benefits of the rule.

The FAA recognizes that inadequate rest periods for flight attendants could create a potential safety problem. Therefore, the FAA expects that this final rule will ensure that flight attendants receive the opportunity to be rested and alert when performing emergency and routine safety-related duties, thereby reducing passenger and crew injuries and fatalities.

Increased Worker Productivity

The Coalition stated that, in addition to improving the safety of air travel, the regulatory evaluation should take into account the cost savings from improved worker productivity. That commenter also stated that a careful review of various studies would likely reveal that the benefits of more reasonable duty hours and adequate rest include decreased absenteeism and health problems related to fatigue. The Allied Pilot Association stated that "the welfare of regulated employees ought to be one of the concerns of rulemakers."

FAA Response

The FAA has examined the impact of improved worker productivity as it relates to safety and has determined that reduced rest for flight attendants could impede flight attendant performance during emergency evacuations or during routine safety duties requiring a high degree of alertness. Cost savings could result from improved worker productivity; however, no information is available to quantify this benefit.

The change in duty hours coupled with adequate rest could decrease absenteeism and improve health. However, the information needed to quantify this, is not currently available.

In addition, the FAA is concerned with passenger and crewmember safety, and is sensitive to crewmember health and welfare. The FAA recognizes that employee health could improve if employees get more rest.

Costs

Cost estimates contained in this summary are based on 1993 dollars and are discounted at an annual effective rate of 7 percent. The FAA estimates that the cost to the air carrier industry of establishing flight attendant duty period limitations and rest requirements will be $42.7 million over a 15-year period. The FAA expects that operators would incur costs in the areas of recordkeeping and additional staffing.

Cost estimates for supplemental air carriers and scheduled major, national, and regional/commuter operators are separated. The FAA estimates that the nondiscounted cost for all supplemental air carriers for the first year will be approximately $2.5 million, and the annual nondiscounted cost for all supplemental carriers would be approximately $2.23 million. The FAA estimates that the total discounted costs for supplemental air carriers over 15 years will be approximately $20.8 million. The FAA estimates that the first-year nondiscounted cost for scheduled major, national, and regional/commuter operators will be approximately $2.9 million, and the annual nondiscounted cost for these operators would be approximately $1.2 million. The FAA estimates that the total discounted costs for scheduled major, national, and regional/commuter over 15 years will be approximately $21.9 million. Therefore, over 15 years, the discounted cost for the air carrier industry will be $42.7 million.

The above cost estimate is based on the assumption that air carriers must augment their flight attendant crews. In

some situations, augmentation under the flight attendant rule requirements may be avoided if an air carrier adopts and applies to flight attendants, by option, the international, supplemental carrier pilot rules covering flight and duty period.

Twenty-Four Consecutive-Hour Rest Period During any Seven Consecutive Days

Southwest Airlines stated that the requirement for 24 consecutive hours of rest during any 7 consecutive days would make it necessary for the air carrier with which the commenter is affiliated to hire about 100 additional flight attendants at a first-year cost of $710,000 and a subsequent annual cost of $600,000. A commenter representing Transport Workers Union of America on behalf of Southwest Airlines flight attendants indicated that the proposed rule, if adopted, would create a financial burden for flight attendants and their employers and would result in an average annual loss of $11,063 in extra income for each flight attendant. This loss, projected for 2,200 flight attendants for 1 year, would total $24 million in lost income.

FAA Response

The requirement for 24 consecutive hours of rest in any 7 consecutive days is designed to supplement daily rest requirements and to ensure that flight attendants receive the opportunity for adequate rest. The FAA did not verify lost flight attendant income, because the annual loss of extra income to some flight attendants represents a gain to flight attendants who would be hired. This income transfer is not considered a cost of this rulemaking.

Single Set of Duty Time Rules for Cabin and Flight Crew Members

Great American Airways stated that the total cost savings derived from implementing a single set of duty time rules for its cabin and flight crewmembers, as opposed to adopting the rules proposed in the NPRM, would exceed $100,000 per year.

FAA Response

The FAA recognizes that giving operators the option to apply flight crewmember flights, duty, and rest requirements to flight attendants may provide a cost savings to certain operators, particularly supplemental operators. The FAA expects that the operators that choose the option will incur costs that are lower than those estimated in the final regulatory evaluation.

However, the FAA recognizes that operators who choose to apply the flight crewmember regulations for duty limitations and rest requirements must submit an application to the appropriate Flight Standards District Office for approval. This is a minor, one-time cost, and the FAA assumes that operators who choose to incur this cost would do so because it would obviate those operators from designing and establishing a tracking system for flight attendants. Instead, this option would allow them to use whatever system is in place for flight crewmembers. The application process chosen was selected deliberately out of concern that recordkeeping costs be kept to a minimum. That is, the FAA chose an application process that is very familiar to carriers, the commonly-used procedure for changes to operations specifications.

Limiting Scheduled Duty Period to Fourteen Hours

Great American Airways stated that limiting scheduled flight attendant duty periods to 14 hours would force the air carrier and other supplemental air carriers to add flight attendants at intermediate stops. The commenter stated that, because company-required deadhead transportation would be considered part of a duty period under the FAA's proposal, it would be necessary to schedule flight attendants for required rest after they completed a deadhead flight segment and before they began the next duty period.

This commenter also stated that the proposed rules would impose substantially greater costs on supplemental air carriers than other air carriers because supplemental air carriers rarely have travel privileges with scheduled carriers, and, when they do, they are often very restrictive. Finally, this commenter stated that unanticipated schedule and routing changes occur more frequently among charter operators than scheduled carriers and could severely curtail the flexibility of supplemental air carriers.

FAA Response

The FAA agrees that the greatest costs will be incurred by air carriers that schedule flight attendants for the longest duty periods. However, the commenter does not appear to provide any information on the air carrier's ability to augment existing crews. The FAA points out that costs could be minimized by using crew argumentation as a means of compliance. In addition, time spent in deadhead transportation is not considered part of a duty period; therefore, an operator is not required to provide a rest period for flight attendants following time spent in deadhead transportation.

Overall Costs

ATA stated that the FAA has understated costs considerably. This commenter stated that the annual cost of complying with the proposed regulation would be at least $8.0 million. This cost would include programming expenses, additional personnel costs, costs associated with extended layovers, and costs associated with reserve scheduling (assuming that carrier reserve scheduling practices are not modified). Assuming a discount rate of 7.0 percent and an inflation rate of 3.0 percent, the 15-year present value cost for the association's members would be approximately $88.9 million.

FAA Response

The survey of ATA members indicates that the annual cost would be at least $8.0 million. ATA stated that added annual personnel costs for air carrier operators would be $4.0 million, additional meal/hotel expenses would be $1.5 million, and additional reserve staffing would be $2.5 million. Finally, ATA stated that carriers can expect to incur a one-time expense of between $2.0 million and $3.0 million for computer system program modifications. After contracting ATA twice after the comment period closed to obtain clarifying information, the FAA concluded that their estimate could not be used in its entirety because information such as the number of affected carriers, wage rates, additional employees needed, or hours worked was not provided.

In addition, ATA did not provide information on the cost of augmenting the existing crew. The FAA permits longer duty periods with the use of augmented crews. FAA data indicates that many flights are staffed with more than the minimum flight attendant crew complement; therefore, little or no additional cost would be incurred to meet the crew argumentation requirements.

ATA also stated that the 15-year present value cost for its members would be $88.9 million. This estimate assumed a discount rate of 7.0 percent and an inflation rate of 3.0 percent. The basis for the commenter's estimate of the annual cost ($8.0 million) was not detailed enough for the FAA to use it or the 15-year estimate derived from it.

The FAA has nevertheless attempted to develop an industry cost estimate by recalculating the ATA estimate to exclude the ATA inflation factor and by accounting for the fact that ATA

members only represent a portion of the industry that would be affected. As shown in the Regulatory Evaluation, that figure would be $78.8 million. However, the original information provided could not be fully substantiated, which suggests that the ATA estimate may not be representative of the total industry.

Supplemental Carriers

The Coalition stated that the median flight attendant salary at supplemental air carriers is $18,461. The commenter indicated that this estimate may be high because it represents the average salary at supplemental carriers that have a collective bargaining agreement with their flight attendant workforce. The commenter also stated that the FAA assumed that the rule would lead to the hiring of 6,000 flight attendants at supplemental carriers, and that the additional cost for these new hires would be $1,107,600. The FAA received revised salary information from the commenter stating that the average salary of a flight attendant working for a supplemental carrier is $24,552, which includes $6,092 in benefits.

FAA Response

The final regulatory evaluation assumes that, in the case of supplemental operators, each flight attendant works 150 duty periods, and that a carrier's cost per duty period is $163.68. Therefore, the cost of 6,000 additional duty periods would be $982,100. To the extent practicable, this cost estimate for supplemental operations was used in developing the final regulatory evaluation.

Irregular Operations

Delta Air Lines stated that the proposed rule would cause the air carrier to incur costs associated with irregular operations. The air carrier estimated that it would have to hire 36 flight attendants at an annual salary cost of $1.3 million for irregular operations. Other costs associated with hiring additional flight attendants to meet the requirements of the proposed rule, if adopted, would total $2.86 million in the initial year. The recurring annual cost of the proposed rule, if adopted, would be nearly $2.5 million.

This commenter stated that, based on operations in June/July 1992 and January/February 1993, 62 flight attendants working together did not meet the requirements of the NPRM and would require crew replacement. The commenter typically schedules flight attendants for 3-day city pairings with an average flight attendant crew of six. Because most of the replacements that were needed were on domestic flights, the commenter used an average of four flight attendants. These results showed that 744 additional duty days would be required. The commenter calculated that an additional 36 flight attendants would be needed because a reserve flight attendant is available to fly an average of 20.5 days per month. Given an average monthly salary of almost $2,500, plus monthly hotel, meal, and transportation expenses of almost $650 for irregular operations, the cost for a flight attendant would be about $3,100 per month, or $1.3 million annually.

The commenter also stated that they do not have a deplaning period. That is, pay and expenses cease at the block-in time of the last flight in the duty period for the trip. This commenter calculates that the cost of a 15-minute deplaning period would result in the hiring of 20 additional flight attendants. The cost would amount to $749,000 annually.

Finally, the commenter provided information documenting the carrier's one-time cost of computer software changes, including recordkeeping. The only additional information is that the cost of programming and testing per man-hour is $40.

FAA Response

The FAA received clarification from the commenter stating that "An Ad Hoc Computer Program was developed to search through our crew tracking systems to identify irregular operations that had occurred that would have required crew replacement under the NPRM." The commenter also stated that the NPRM "Would require crew replacement." Finally, the commenter stated that they used an average crew of four flight attendants in their calculations, which implies that they were replacing their existing crew. This leads the FAA to assume that the commenter did not consider crew augmentation. However, the FAA did use some of the salary and cost data provided by the commenter.

With regard to hiring additional flight attendants for a 15-minute deplaning period, the FAA notes that there is no new requirement in this rule concerning deplaning; deplaning of the aircraft is a current requirement.

Small Operators

Sun Country Airlines operates a fleet of 10 aircraft with 520 employees, 170 of whom are flight attendants. Based on 1992 operations, the proposed rule would have required the commenter to hire 34 additional flight attendants, which would have increased operating costs (i.e., salaries, benefits, costs of training, hotels, meals, deadhead travel, and general administrative overhead) by $2.6 million in 1992. However, this air carrier stated that, by applying crewmember flight, duty, and rest requirements to flight attendants, the air carrier would need to employ 20 additional flight attendants rather than 34 additional flight attendants, with increased operating costs of $1.75 million rather than $2.6 million. However, these lower costs still exceeded the entire 1992 new profit for this carrier.

The Regional Airline Association stated that the proposed rule would either require an additional jump seat in the cabin for which there is insufficient space or it would require that a passenger seat be set aside for the additional flight attendant. This commenter stated that daily or routine loss of a revenue seat on a fleet of regional aircraft with 20 to 50 seats would be enormous. It also pointed out the added costs associated of layover lodging, meals, and per diem, and the significant incremental weight of an added crewmember.

The National Air Carrier Association stated that the proposed rule would impose costs of approximately $372,000 in additional flight attendant staffing, and approximately $50,000 in recordkeeping.

FAA Response

The FAA received additional clarification from Sun Country indicating that the proposed rule would cost $2.6 million. The annual cost to deadhead flight attendants to their domicile would be $632,000. In addition, hotel accommodations would be $842,000, added per diem cost would be $308,000, initial and recurrent training would be $10,200, and administrative costs would be $58,000. Because this commenter does not have any interline agreements, it would have to pay the added costs for deadhead tickets. This commenter estimated that these costs would be $579,000.

Based upon this cost estimate, the cost per added flight attendant would be about $76,500 per flight attendant ($2.6 million divided by 34 additional flight attendants). If this commenter did not have to incur the costs for deadhead tickets, then the added cost would be $60,300 per flight attendant.

The commenter also provided information stating that the annual cost of applying the part 121 supplemental carrier pilot flight, duty, and rest requirements to flight attendants would be $1.75 million. The added cost of 20 flight attendants would be $489,000. Hotel expenses would be $679,000; per diem costs would be $244,000; training

would cost $6,000; and administrative costs would be $34,000. Finally, the annual cost of deadheading flight attendants back to their place of domicile would be $289,000.

Based upon their total cost estimate, the cost per added flight attendant would be $1.75 million divided by 20 additional flight attendants, or about $87,000 per flight attendant. If this commenter did not have to incur the costs for deadhead tickets, then the added cost would be $72,600 per flight attendant.

The FAA contends that these cost estimates represent the costs associated with replacing the existing crew. The cost estimates do not appear to represent the costs associated with augmenting the existing crew with additional flight attendants. An air carrier whose goal is profit maximization and cost minimization would choose the least costly means of achieving compliance with the proposed rule, and, in most cases, that appears to be the crew augmentation option.

RAA asserted that the final rule would impose costs based on the fact that some aircraft would fly longer than 14 hours and full. The FAA contacted this commenter and asked a clarifying question on the number of times that an aircraft would fly more than 14 hours full. The commenter was unable to provide information to substantiate this assertion, and therefore, while a problem may exist, the FAA is unable to determine the magnitude of it.

The FAA received additional information from a NACA member (American Trans Air) stating that, to calculate annual costs, they multiplied the average number of block hours in the fleet by the percentage of flight hours the NPRM is expected to affect. The product is the total number of affected block hours.

The number of affected block hours was then divided by the expected number of flight attendant utilization hours, which varies by aircraft type, and multiplied by the number of flight attendants to compute crew requirements. Based on this calculation, 20 additional flight attendants would be needed to meet the requirements of the proposed rule. This commenter then multiplied the number of additional flight attendants by their annual salary, including fringe benefits and training, to arrive at a cost estimate of $372,000. Administrative costs of $80,000 were added.

The FAA received additional clarification that the percentage of flight hours was based upon the commenter's examination of all flights that exceeded 14 hours. The commenter did not look at flights of 14 to 16 hours, 16 to 18 hours, or 18 to 20 hours.

The commenter divided the number of affected block hours by the expected flight attendant utilization hours (Boeing 727, 60 hours; Boeing 757 and Lockheed L–1011, 56 hours). The commenter did not know how many duty periods this represented. After multiplying this number by the number of flight attendants needed to complete crew requirements, the commenter concluded that 20 additional flight attendants would be needed to augment its flights.

The $13,000 annual salary represents a flight attendant's first-year salary without overtime. The 20 percent benefits estimate represents the company's portion of employee benefits.

To the extent practicable, the cost information provided by commenters was used to revise the cost estimates in the final regulatory evaluation.

Recordkeeping Costs

Several commenters provided the FAA with information on recordkeeping. The Air Transport Association estimated that air carriers would incur a one-time expense for computer system program modifications of $2.0 million to $3.0 million. Delta Air Lines stated that the one-time cost of software computer changes, including recordkeeping, would be $367,200. American Trans Air, a member of the National Air Carrier Association, stated that administrative costs would be $80,000, approximately $54,000 of which would be the cost to program and upgrade software, and $26,000 of which would be the cost of data entry and associated labor.

FAA Response

Because of limited supporting documentation, a wide variation between commenters' estimates, and the difficulty of ascertaining what portion of the recordkeeping costs could be attributed to the implementation of this final rule versus the cost to upgrade current systems, the FAA stands by its original recordkeeping cost estimate.

Summary of Benefits and Costs

The FAA estimates that the cost of compliance with the requirements of this final rule will be $42.7 million, discounted.

Although benefits cannot be quantified, the FAA concludes that the establishment of flight attendant duty period limitations and rest requirements are warranted, because they will contribute to an overall enhancement of transport category airplane safety and utility that will both promote and enhance the U.S. air transportation system.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA.

The fleet size for an operator of aircraft for hire to be considered a small entity is nine or fewer aircraft. The threshold annualized cost levels for operators of aircraft for hire in 1993 dollars are $117,800 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $67,000 for scheduled operators whose fleets have aircraft with seating capacities of 60 or less (other scheduled operators), and $4,570 for unscheduled operators. The proposals in the NPRM would affect air carriers that provide passenger-carrying operations in aircraft for which flight attendants are required. Other types of aviation companies would not be affected. A "substantial number" of small entities is a number that is not less than 11 and that is more than one-third of the small entities subject to this rule.

According to FAA records of small entity air carriers that provide passenger-carrying operations in aircraft that require flight attendants, there are 23 part 125 and 135 operators that could be affected by the final rule. Of these 23 operators, 7 are part 121/135 operators, 12 are part 125 operators, and 4 are part 135 operators. The affected operators are those with nine or fewer aircraft. At least one of the aircraft that they own have a seating configuration of more than 19 as described in either § 125.269 or § 135.107 and therefore would have at least one flight attendant on board. There are also 8 part 121 operators that would be affected by the final rule. In July 1993, there were a total of 25 part 121/135 operators, 39 part 125 operators, and 3,040 part 135 operators. There are also more than 100 part 121 operators. The number of carriers that could be affected by the rule does not exceed one-third of the total number of carriers in any of the four categories of operators (parts 121, 121/125, 125 and 135). The FAA has therefore determined that a regulatory flexibility analysis is not necessary.

International Trade Impact Statement

This final rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States.

The FAA has determined that the amendments to parts 121 and 135 will not have a significant impact on international trade. The final rule is not expected to have an impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. This finding is based in large part upon the review of foreign civil aviation regulations governing flight attendant flight and duty time practices and minimum rest requirements found in the Industry Study as well as information supplied by commenters to the public docket.

The Industry Study review shows that 23 countries, including Argentina, Belgium, Brazil, Denmark, the Netherlands, France, Norway, Portugal, Sweden, Switzerland, and West Germany, have government regulations on flight attendant flight and duty times and rest periods.

The comment provided by the Flight Attendants states that the European Community, through its Joint Aviation Authority (JAA) "is poised to issue flight attendant duty time and rest provisions which would be based on state of the art research concerning work schedules and fatigue." They state that the JAA rule would base duty time and rest limits on the time of departure and the number of segments flown.

On the other hand, the Industry Study noted that 24 countries, including Australia, Canada, Greece, Ireland, Italy, Japan, and Mexico, do not regulate flight attendant work time.

The FAA concludes that there are many countries with flight attendant flight and duty times and rest periods and many countries without these regulations. Second, many firms in the United States appear to be already in compliance or near compliance with the final regulation. Therefore, the FAA has determined that the amendments to parts 121, 125, and 135, will not have a significant impact on international trade.

Federalism Implications

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

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this regulation is a significant regulatory action under Executive Order 12866. In addition, the rule is considered significant under DOT Regulatory Policies and Procedures. However, the FAA has determined that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities or on international trade. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act Approval

Sections 121.683(a)(1), 135.63(a)(3), 135.63(a)(4)(x), 135.63(a)(5), and 135.63(b) are not effective until the OMB has approved the Paperwork Reduction Requirements. The FAA will publish a document in the **Federal Register** following OMB approval of the Paperwork Reduction Requirements.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Hours of work, Pilots, Reporting and recordkeeping requirements, Safety.

14 CFR Part 125

Aircraft, Airmen, Airplanes, Aviation safety, Hours of work, Pilots.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Airplanes, Aviation safety, Hours of work, Pilots, Reporting and recordkeeping requirements, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121, 125, and 135 of the Federal Aviation Regulations (14 CFR parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. The heading for subpart P is revised to read as follows:

Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators

3. Section 121.461 is revised to read as follows:

§ 121.461 Applicability.

This subpart prescribes—

(a) Qualifications and duty time limitations for aircraft dispatchers for domestic and flag air carriers; and

(b) Duty period limitations and rest requirements for flight attendants used in air transportation by domestic, flag, and supplemental air carriers, and in air commerce by commercial operators.

4. Section 121.467 is added to subpart P to read as follows:

§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental air carriers and commercial operators.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the domestic, flag, or supplemental air carrier or commercial operator. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by a domestic, flag, or supplemental air carrier or commercial operator, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

Rest period means the period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraph (c) of this section, a domestic, flag, or

supplemental air carrier or commercial operator may assign a duty period to a flight attendant only when the applicable duty period limitations and rest requirements of this paragraph are met.

(1) Except as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, no domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours.

(2) Except as provided in paragraph (b)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(4) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(5) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(6) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, and if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the domestic air carrier's or the commercial operator's operations specifications.

(7) Except as provided in paragraph (b)(8) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(8) The rest period required under paragraph (b)(7) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(9) Notwithstanding paragraphs (b)(4), (b)(5), and (b)(6) of this section, if a domestic, flag, or supplemental air carrier or commercial operator elects to reduce the rest period to 10 hours as authorized by paragraph (b)(8) of this section, the air carrier or commercial operator may not schedule a flight attendant for a duty period of more than 14 hours during the 24-hour period commencing after the beginning of the reduced rest period.

(10) No domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant any duty period with the air carrier or commercial operator unless the flight attendant has had at least the minimum rest required under this section.

(11) No domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to perform any duty with the air carrier or operator during any required rest period.

(12) Time spent in transportation, not local in character, that a domestic, flag, or supplemental air carrier or commercial operator requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(13) Each domestic, flag, or supplemental air carrier must relieve each flight attendant engaged in air transportation and each commercial operator must relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(14) A flight attendant is not considered to be scheduled for duty in excess of duty period limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but due to circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the scheduled time.

(c) Notwithstanding paragraph (b) of this section, a domestic, flag, or supplemental air carrier or commercial operator may apply the flight crewmember flight time and duty limitations and rest requirements of this part to flight attendants for all operations conducted under this part provided that—

(1) The certificate holder establishes written procedures that—

(i) Apply to all flight attendants used in the certificate holder's operation;

(ii) Include the flight crewmember requirements contained in subparts Q, R, or S of this part, as appropriate to the operation being conducted, except that rest facilities on board the aircraft are not required;

(iii) Include provisions to add one flight attendant to the minimum flight attendant complement for each flight crewmember who is in excess of the minimum number required in the aircraft type certificate data sheet and who is assigned to the aircraft under the provisions of subparts Q, R, and S, as applicable, of this part;

(iv) Are approved by the Administrator and are described or referenced in the certificate holder's operations specifications; and

(2) Whenever the Administrator finds that revisions are necessary for the continued adequacy of the written procedures that are required by paragraph (c)(1) of this section and that had been granted final approval, the certificate holder must, after notification by the Administrator, make any changes in the procedures that are found necessary by the Administrator. Within 30 days after the certificate holder receives such notice, it may file a

petition to reconsider the notice with the FAA Flight Standards District Office that is charged with the overall inspection of the certificate holder's operations. The filing of a petition to reconsider stays the notice, pending decision by the Administrator. However, if the Administrator finds that an emergency requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

5. Section 121.683 is amended by revising paragraph (a)(1) to read as follows:

§ 121.683 Crewmember and dispatcher record.

(a) * * *

(1) Maintain current records of each crewmember and each aircraft dispatcher (domestic and flag air carriers only) that show whether the crewmember or aircraft dispatcher complies with the applicable sections of this chapter, including, but not limited to, proficiency and route checks, airplane and route qualifications, training, any required physical examinations, flight, duty, and rest time records; and

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

6. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1421 through 1430, and 1502.

7. Section 125.37 is amended by revising the heading and paragraph (a) to read as follows:

§ 125.37 Duty period limitations.

(a) Each flight crewmember and flight attendant must be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

8. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–499, January 12, 1983).

9. Section 135.63 is amended by revising paragraphs (a)(3) and (a)(4)(x), adding new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 135.63 Recordkeeping requirements.

(a) * * *

(3) A current list of the aircraft used or available for use in operations under this part and the operations for which each is equipped;

(4) * * *

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this part; and

(5) An individual record for each flight attendant who is required under this part, maintained in sufficient detail to determine compliance with the applicable portions of § 135.273 of this part.

(b) Each certificate holder must keep each record required by paragraph (a)(3) of this section for at least 6 months, and must keep each record required by paragraphs (a)(4) and (a)(5) of this section for at least 12 months.

* * * * *

10. Subpart F is amended by revising the heading to read as follows:

Subpart F—Crewmember Flight Time and Duty Period Limitations and Rest Requirements

11. Section 135.261 is amended by revising the introductory text of the section and by adding a new paragraph (e) to read as follows:

§ 135.261 Applicability.

Sections 135.263 through 135.273 of this part prescribe flight time limitations, duty period limitations, and rest requirements for operations conducted under this part as follows:

* * * * *

(e) Section 135.273 prescribes duty period limitations and rest requirements for flight attendants in all operations conducted under this part.

12. Section 135.273 is added to Subpart F to read as follows:

§ 135.273 Duty period limitations and rest time requirements.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by the certificate holder, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

Rest period means the period free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraph (c) of this section, a certificate holder may assign a duty period to a flight attendant only when the applicable duty period limitations and rest requirements of this paragraph are met.

(1) Except as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, no certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours.

(2) Except as provided in paragraph (b)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(4) A certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the certificate holder has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(5) A certificate holder may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the certificate holder has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(6) A certificate holder may assign a flight attendant to a scheduled duty

period of more than 18 hours, but no more than 20 hours, if the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, and if the certificate holder has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(7) Except as provided in paragraph (b)(8) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(8) The rest period required under paragraph (b)(7) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(9) Notwithstanding paragraphs (b)(4), (b)(5), and (b)(6) of this section, if a certificate holder elects to reduce the rest period to 10 hours as authorized by paragraph (b)(8) of this section, the certificate holder may not schedule a flight attendant for a duty period of more than 14 hours during the 24-hour period commencing after the beginning of the reduced rest period.

(10) No certificate holder may assign a flight attendant any duty period with the certificate holder unless the flight attendant has had at least the minimum rest required under this section.

(11) No certificate holder may assign a flight attendant to perform any duty with the certificate holder during any required rest period.

(12) Time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(13) Each certificate holder must relieve each flight attendant engaged in air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(14) A flight attendant is not considered to be scheduled for duty in excess of duty period limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the scheduled time.

(c) Notwithstanding paragraph (b) of this section, a certificate holder may apply the flight crewmember flight time and duty limitations and rest requirements of this part to flight attendants for all operations conducted under this part provided that—

(1) The certificate holder establishes written procedures that—

(i) Apply to all flight attendants used in the certificate holder's operation;

(ii) Include the flight crewmember requirements contained in subpart F of this part, as appropriate to the operation being conducted, except that rest facilities on board the aircraft are not required; and

(iii) Include provisions to add one flight attendant to the minimum flight attendant complement for each flight crewmember who is in excess of the minimum number required in the aircraft type certificate data sheet and who is assigned to the aircraft under the provisions of subpart F of this part, as applicable.

(iv) Are approved by the Administrator and described or referenced in the certificate holder's operations specifications; and

(2) Whenever the Administrator finds that revisions are necessary for the continued adequacy of duty period limitation and rest requirement procedures that are required by paragraph (c)(1) of this section and that had been granted final approval, the certificate holder must, after notification by the Administrator, make any changes in the procedures that are found necessary by the Administrator. Within 30 days after the certificate holder receives such notice, it may file a petition to reconsider the notice with the FAA Flight Standards District Office that is charged with the overall inspection of the certificate holder's operations. The filing of a petition to reconsider stays the notice, pending decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

Issued in Washington, DC, on August 15, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–20372 Filed 8–16–94; 12:44 pm]

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federal register

Friday
August 19, 1994

Part VIII

Department of Transportation

Office of the Secretary

49 CFR Part 40
Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket 49713; RIN 2105–AB95]

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Department of Transportation is making a series of minor or technical amendments to its drug and alcohol testing procedures. The most significant of these include revising the initial test cutoff level for marijuana metabolites, changing split specimen collection procedures to be consistent with those of the Department of Health and Human Services, revising the temperature range for urine drug specimens, revising the drug testing custody and control form and modifying the alcohol testing form, clarifying laboratory reporting procedures to consortiums, deleting a requirement for a second "air blank" after alcohol confirmation tests, specifying procedures related to the display of the sequential number for alcohol tests, and clarifying chain of custody requirements. The changes have the purposes of updating the procedures to be consistent with Department of Health and Human Services guidelines and addressing implementation problems of which the Department has become aware.

DATES: This rule is effective September 19, 1994, with the following exceptions:

(1) The amendments to § 40.23(a) are effective February 16, 1995, but compliance with these amendments is authorized on August 19, 1994;

(2) The amendments to §§ 40.25(f)(10)(ii) (B) and (C) and 40.29(b)(1) are effective August 15, 1994;

(3) The amendments to § 40.29 (e) and (f) are effective September 1, 1994; and

(4) The amendments to § 40.25 (c) and (h) are effective on August 19, 1994.

Comments should be received by September 19, 1994, except that comments on the amendment to § 40.23 should be received by October 18, 1994. Late-filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, S.W., Room 10424. 202–366–9306. Information may also be obtained from the Office of Drug Enforcement and Program Compliance, 202–366–3784.

SUPPLEMENTARY INFORMATION: The Department is publishing this final rule to make several minor or technical amendments to its drug and alcohol testing procedures, 49 CFR Part 40. The changes to Part 40 are described below. The changes are intended, among other things, to conform Part 40 to a number of provisions in the recently revised Department of Health and Human Services (DHHS) guidelines (59 FR 29908; June 9, 1994) and to correct a misinterpretation of the Department's chain of custody requirements. The Department is seeking comments on these amendments and will publish a notice in the **Federal Register** responding to comments received including, if appropriate, any changes to the amendments based on the comments.

The Drug Testing Custody and Control Form

As the result of a lengthy process of consultation among the Department of Transportation, the Department of Health and Human Services (DHHS), and other interested parties, the Department has made modifications to the drug testing custody and control form. This form will be used in Federal employee testing as well as testing under DOT rules. The form is reproduced in Appendix A. OMB has approved the form under the Paperwork Reduction Act.

Under the current rule, program participants have had the discretion to modify the drug testing custody and control form, as long as the contents of the form met the requirements of the regulatory text describing the form in § 40.23(a). In the Department's experience, this has led to a proliferation of different forms, with consequent confusion and increased probability of error. In the alcohol testing procedures, we required employers to use the Department's alcohol testing form without modification. Now that we have an improved drug testing custody and control form, we believe that it should be used universally in the program, without exception and without modification. For this reason, we are amending § 40.23 to delete the regulatory text description of the form (which is no longer needed, since everyone would be using exactly the form printed in Appendix A) and to require participants in the program to use the Department's form without modification.

We recognize that participants have stocks of existing forms. To provide participants a reasonable time to exhaust these stocks and begin to obtain new forms, this amendment will not be made effective until February 16, 1995. In addition, we are providing 60 days for interested persons to comment on this amendment (i.e., on the requirement to use the form without modification, not on the content or format of the form itself). Employers and other participants are authorized to use the new form immediately. We believe it would be very useful for those employers who must begin split sample testing on August 15, 1994, to begin using the new form as soon as possible, since we believe the new form is better suited to split sample testing than its predecessors.

We emphasize that seven-part forms must be used in all cases for split samples. Older seven-part split sample forms may continue to be used during the six month transition period (six-part forms may *never* be used in split sample testing). After that, the new seven-part form must be used. RSPA and Coast Guard employers who choose to use *single* sample collection may continue to use old six-part forms during the six month transition period, and thereafter must use the new form, discarding copy three.

The Alcohol Testing Form and Log Book

Currently, Copy 1 of the Alcohol Testing Form (the original) is designated as the breath alcohol technician's (BAT's) copy of the form, for which there is no record retention requirement stated. Copy 3 is designated the employer's copy, which the employer must retain. It makes more sense, in our view, for the original of the form to be retained by the employer, rather than a copy. Consequently, we are switching the form designations, so that Copy 1 will be the employer's copy and Copy 3 will be the BAT's copy. The statement to be signed by the employee in Step 4 of the form is reworded slightly to emphasize the employee's agreement that the test reflected on the form is the test that the employee took and that the result is recorded accurately.

In § 40.59(c), in the context of the discussion of the log book, the rule requires the notation of the "quantified test result." The Department intends that this result be the numerical result displayed by the EBT. The term has the same meaning as the term "result displayed on the EBT" elsewhere in the rule (e.g., § 40.63(d)(1)(i)), and we are changing the term for the sake of consistency.

Clarification of Reference to NHTSA CPL in Definition of "EBT"

The National Highway Traffic Safety Administration (NHTSA) Conforming Products List (CPL) for Evidential Breath Testing Devices (EBTs) includes both devices that meet September 1993 amendments to NHTSA's model specifications and devices that meet only the previous version of the model specifications. Only those devices on the CPL that meet the September 1993 model specifications may be used in the DOT alcohol testing program. Other devices on the CPL (those designated by an asterisk on the published CPL; see for instance 59 FR 18840 (April 20, 1994)) are not authorized for use in DOT-mandated alcohol testing programs. We are adding a reference to the September 1993 model specifications in the definition of "EBT" in § 40.3 to clarify this point.

Split Sample Collection Procedures

The Department's procedures for collecting split samples for drug testing direct the collection site person to pour the urine from a collection container into one or two specimen bottles (depending on the collection method used). Some concern has been raised that this requirement would preclude the use of newer technologies that would subdivide a specimen into a primary and a split specimen without the necessity of a collection site person physically pouring the urine from one vessel into another. The Department does not intend its procedures to preclude the use of such methods or systems, as long as they result in primary and split samples that can be transmitted to laboratories and tested in ways that fully comply with Part 40 requirements. We have added language to this effect. The Department does not endorse drug testing products, and this change should not be construed as an endorsement of any particular product.

In using whichever of the authorized methods of collecting split samples, the Department advises collectors that we believe the preferred practice is to have temperature strips attached to the collection container, which can reduce the time lag in checking the temperature and reduce the likelihood of errors or delays. The temperature should be read, of course, from the collection container itself, rather than from another bottle into which the split specimen may be poured.

Section 40.25(f)(10)(ii)(C) of the Department's current regulation describes one of the alternative split specimen collection procedures. In this procedure, a single specimen bottle is used as the collection container. The collection site person pours 30 ml of the urine from this container into a second specimen bottle, which is then used as the primary specimen. The urine remaining in the collection container becomes the split specimen. When DHHS published its revised drug testing guidelines, however, DHHS provided that, in this situation, the collection site person would pour 15 ml of the urine into the second bottle, to be used as the split specimen, with 30 ml remaining in the collection container, to be used as the primary specimen. In other words, the DHHS procedure was the reverse of the one we issued in February. While there are advantages to the procedure in the current Part 40, we believe, on balance, that it is more important that the DHHS guidelines and Part 40 be consistent on this point. Consequently, we are changing our procedures to conform with those of DHHS.

Change in Temperature Range

The revised DHHS guidelines modify the temperature range within which a specimen must fall in order to avoid creating a reason to believe that a urine specimen has been altered or substituted. The old range is 32.5–37.7C/90.5–99.8F. The new range is 32–38C/90–100F. Part 40 references are being changed to conform with the DHHS revision.

Clarification of Chain of Custody Requirement

Section 40.25 contains a number of references to use of chain of custody documentation in the handling and transportation of urine specimens. Recently, an arbitrator misinterpreted these provisions, determining that a chain of custody was invalid, and that the test must be canceled, because persons involved solely in the transportation of the intact shipping container did not make a chain of custody entry. This interpretation is contrary to Part 40 procedures, wholly unnecessary in order to preserve the integrity of the process, and, if followed, would result in a wholesale disruption of the DOT testing program. As DHHS recently pointed out in its revised drug testing guidelines, "Since specimens are sealed in packages that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the package during transit."

The Department interprets its *existing* regulatory provisions as not requiring couriers, postal employees, and other personnel involved in the transportation of urine specimens to make chain of custody form entries. Likewise, the Department interprets its *existing* rules as not requiring making entries on the chain of custody form when a sealed shipping container is put into or removed from temporary, secure storage. In present § 40.25(c), for example, handling or transportation of a specimen from one "place" to another must be accomplished through chain of custody procedures. The Department interprets this as meaning that as long as there is an entry from an individual authorized to release the specimen from the collection site ("Place" #1) and another from an individual authorized to receive it on behalf of the laboratory ("Place" #2), the persons who perform intervening, ministerial transportation services (e.g., couriers, truck drivers, airplane pilots, postal service employees, mail room employees) need not make such entries.

Present paragraph 40.25(h) authorizes chain of custody documentation to be "enclosed" in the shipping container for shipment to the laboratory. This container is sealed with tamper-evident tape. As a program matter, the Department recommends enclosing chain of custody documentation in the shipping container, as opposed to attaching it to the exterior of the container, since this minimizes the likelihood of loss of or damage to the documents. Interpreting the rule to require persons performing intervening transportation services to make chain of custody entries would nullify this important provision of the rule. In order to make chain of custody entries, intervening transportation personnel would have to break the tamper-evident seal, dig out the documentation, make an entry, reinsert the documentation, and re-seal the container. Of course, a shipping container with a seal that had been broken and re-sealed a number of times would make it unlikely, if not impossible, for a valid test to be conducted of the specimen it contained. The Department could not interpret its regulations to create such an absurd result.

Present § 40.25 (k) directs the use of a chain of custody form "from the point of collection to the final disposition of the specimen." This provision directs that every individual "in the chain" be identified. Unlike authorized collection site and laboratory personnel, who actually handle the specimen, intervening transportation personnel are not, properly speaking, "in the chain" at all, a point which the Department has understood to be consistent with long-standing case law in a variety of

contexts. Consequently, the Department never understood or intended this language to require that intervening transportation personnel make chain of custody entries.

A related issue, raised in the same arbitration decision, concerns temporary secure storage. That is, a collection site person conducts the test, fills out the custody and control form, places the specimen and form in a sealed shipping container, and places the container in secure, temporary storage at the collection site, where a courier picks it up subsequently for transportation to the laboratory. Again, any tampering would be revealed by the tamper-evident seal. Here, too, requiring an entry in the chain of custody for putting the package into and removing it from the temporary secure storage is unnecessary and disruptive. Alternatives, such as not sealing the chain of custody documentation in the shipping container until immediately before pickup, or attaching the chain of custody documentation to the outside of the shipping container when it is ready for pickup, multiply the possibilities for error. We emphasize that the collector should, as a matter of good practice, document in its own records the times at which sealed shipping containers are put into and removed from temporary secure storage.

Notwithstanding the Department's reasonable construction of its existing regulatory language, which has been communicated in the past to persons raising the question, at least one arbitrator did misinterpret these provisions. To prevent the possibility of any such mistakes in the future, the Department it taking this opportunity to clarify its regulations. To this end, we are adding language very similar to that of DHHS to § 40.25 (c), (h), and (k), as well as an additional sentence that strongly emphasizes and underlines that chains of custody need not include entries from such personnel in order to be valid. In addition, the amendments to these paragraphs make clear that the absence of entries in the chain of custody relating to the putting the package into or retrieving it from temporary secure storage of the collection site does not invalidate the chain of custody.

The Department is making this amendment effective immediately, because it is essential to protect DOT drug testing procedures from misinterpretations that, if followed, could invalidate virtually all chains of custody for DOT drug tests, even though they follow Part 40 requirements. This necessity constitutes the good cause required by the Administrative Procedure Act to make a regulation effective without the normal 30-day effective date.

Untestable, Inadequate, or Unavailable Split Specimens

In split sample testing, there could be situations in which the primary specimen reaches the laboratory unscathed, but the split specimen does not. Instead, the split specimen is untestable, inadequate, or unavailable. For example, the split specimen container may have leaked, leaving an inadequate amount of urine for testing. What is a laboratory to do? To answer this question, which the Department has been asked on a number of occasions, we are adding a paragraph to § 40.29. The paragraph directs the laboratory to go ahead and test the primary specimen in the usual way. The laboratory then sends the result of the test of the primary specimen to the MRO in the usual way. If the test result from the laboratory was a confirmed positive, and the MRO verifies the result as positive, then the employee has 72 hours to request a test of the split specimen. If the employee does so, the MRO will pass the request on to the laboratory. It is only at this point, and not before, that the laboratory informs the MRO that the split specimen is untestable, inadequate, or unavailable. The MRO would then cancel the test. This approach is consistent with existing DOT guidance and the DHHS guidelines.

The vast majority of tests of primary specimens have negative results. Of those that test positive, a portion are verified negative by MROs. Of those verified positive by MROs, not all will result in a timely request by the employee for a test of the split specimen. In view of these facts, it would be counterproductive for the laboratory to reject an otherwise testable primary specimen because the split specimen was unavailable, inadequate, or untestable. Nor would it be cost-effective for the laboratory to notify the MRO of the problem with the split specimen at an earlier stage of the process, which could result in the cancellation of tests that may otherwise stand up. There is no loss of protection to the employee, who will be in no worse position than if there was a testable split specimen. As a general matter, employers using split sample collection should not, as a matter of prudence, take irrevocable action (e.g., terminate, as opposed to suspend) against an employee until the result of the split specimen is available.

Split specimens may become unavailable for testing at other stages of the process (e.g., the receiving laboratory mishandles or loses the split specimen in storage, the split specimen is lost in transit between the receiving laboratory and the second laboratory which would analyze the split). In all these cases, the same rule applies. The MRO is not notified of the unavailability, inadequacy, or untestability of the split specimen unless and until there is a verified positive test and the employee has made a timely request for a test of the split specimen.

Reduction of Marijuana Initial Test Level

In its June 9, 1994, revision to its drug testing guidelines, DHHS reduced the initial test level for marijuana metabolites from 100 ng/ml to 50 ng/ml. This rule changes the initial test level for marijuana in Part 40 to conform with the revised DHHS guidelines. This change is consistent with the existing language of § 40.29(e)(2), which states that the initial test levels for drugs are subject to change by DHHS. Since the new DHHS guidelines go into effect September 1, 1994, this provision will be effective on that date, so that DHHS and DOT testing level requirements remain consistent with one another.

Methamphetamine Levels

The Department is also adding to the chart in this section showing confirmation test levels a new footnote 3, stating that, to be confirmed positive, a specimen containing methamphetamine must also contain amphetamine at a concentration equal to or greater than 200 ng/ml. This footnote is also added to be consistent with the revised DHHS guidelines.

Reports to Employers and Consortia

Section 40.29(g)(6), concerning monthly statistical summary reports from laboratories to employers, has been the subject of some confusion since it does not specify the role of consortia in the reporting chain. Laboratories had expressed concern that they were not authorized, by the present language of the paragraph, to provide these reports to a consortium instead of to individual employers. The Department is revising this paragraph to clarify this matter. Suppose a laboratory tests specimens originating with employers 1–100, all of whom are part of Consortium X. The laboratory may send its report summary only to Consortium X, rather than sending 100 single reports to each of the employers. However, the data provided to Consortium X must include employer-specific information for each of the employers and, within 14 days of

ceiving the laboratory report, onsortium X is responsible for sending e employer-specific data to each of the 00 employers. When, as provided in e last sentence of § 40.29(g)(6), mployer-specific data is withheld ecause no testing pertinent to the mployer was held, or because release f the data would permit inferences bout individual employees' identity, e written reports concerning the ithholding of the data may also be rovided to the employer via the onsortium, through the mechanism escribed above.

RO Conflicts of Interest

In its revised guidelines, DHHS has dded a new provision prohibiting elationships between laboratories and edical review officers (MROs) that ould have the reality or create the ppearance of a conflict of interest. HHS added this provision in the elief, with which DOT concurs, that ny such relationship that could be nstrued as a conflict of interest may e sufficient to undermine the integrity f the program. For this reason and to main consistent with DHHS uidelines on this important issue, the epartment is adding the DHHS nguage to § 40.29(n).

emoval of Requirement for Second Air lank

The alcohol testing procedures in ubpart C, as originally issued, ntained a requirement that the breath cohol technician conduct an "air lank" (i.e., an internal check of libration) both before and after every nfirmation test. Failure to do so, or a sult for an air blank that exceeded 00, is a "fatal flaw" that automatically validates a test. We have decided, on ther reflection, that the air blank after e confirmation test is unnecessary. he main point of an air blank is to sure that each employee has a testing evice that is a "clean slate," unaffected any alcohol from previous tests or her sources. The pre-test air blank complishes this objective fully; the st-test air blank is not necessary for is purpose. Moreover, on some breath sting devices, particularly where a test as shown a high alcohol concentration, may take several minutes for all cohol to clear from the device. Under e existing rule, if the breath alcohol chnician were to do a post-test air ank under these circumstances too on, it could result in a reading above 00, invalidating an otherwise valid st. Because it is unnecessary, and to oid problems of this kind, we are leting the provision requiring a post-st air blank and the provision making the failure to conduct such a test a "fatal flaw."

Display of Sequential Test Numbers

Section 40.53(b)(2) requires that EBTs used for confirmation tests be capable of assigning a unique sequential number to each test, which can be read by the BAT and the employee before the test and printed out on each copy of the test result. Section 40.79(a)(7) makes it a "fatal flaw" if the sequential number displayed on the EBT before the test is not the same as the sequential number printed on the test result. However, the existing regulation leaves a gap between these two points, since the procedures for conducting alcohol tests (§§ 40.63 and 40.65) do not specify the handling of sequential numbers in the testing process.

The Department is adding language to fill this gap. Section 40.65(e) is being revised to require the BAT to ensure that the BAT and the employee read the displayed sequential number before the confirmation test, and § 40.65(h)(3) is revised to direct the BAT to enter in the "Remarks" section of the form any disparity between that number and the sequential test number on the printed result. Such a disparity, per § 40.79, is a fatal flaw. We have made parallel changes to § 40.63 (d)(1) and (e)(2), which apply to situations in which a screening test is conducted with an EBT that has the features specified in § 40.53(b) for EBTs that can be used for confirmation tests.

Record Retention Requirement for BAT Training

The alcohol testing requirements of Part 40 currently call on employers or their agents to keep records of breath alcohol technician (BAT) training and proficiency for two years. The Department is concerned that, for BATs who work as such for longer than two years, this record retention requirement may not be sufficient. The Department requests comment on whether this record retention requirement should be extended (e.g., to require retention of records of the training of a BAT for as long as that BAT works for the employer). Such an extension would not apply, presumably, to BATs who were no longer working for the employer.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties and may, to a limited extent, reduce regulatory burdens (e.g., the provisions concerning reporting and post-test air blanks). Consequently, a regulatory evaluation has not been prepared.

The Department finds, for purposes of the Administrative Procedure Act, that issuance of a notice of proposed rulemaking on these subjects is unnecessary, impracticable, or contrary to the public interest. This is because the amendments are conforming changes to actions of the Department of Health and Human Services or joint DOT/DHHS actions (the change in the marijuana initial test level, the new Federal drug testing custody and control form), important clarifications the rapid issuance of which is in the public interest (the clarifications to the split sample collection procedures, the chain of custody requirements, and the laboratory reporting procedures regarding consortia), or a correction of what we have come to regard as a mistake in procedures that have not been implemented (removal of the post-test air blank requirement).

The particular effective dates are established for the following reasons. The 180-day effective date for the requirement to use the new drug testing custody and control form is established in order to give participants time to exhaust stocks of existing forms and also to give interested persons a 60-day opportunity to comment on this matter. The August 15 effective date for amendments pertaining to split sample testing procedures was established in view of the August 15 starting date for mandatory split sample testing in the aviation, motor carrier, and railroad industries. The September 1 effective date for the amendments to the initial test level for marijuana is established to be consistent with the September 1 effective date of the revised DHHS guidelines, with which the Department's requirements in this matter should be consistent. The immediate effective date for the amendments to the chain of custody is established because of the necessity of immediately correcting an error that could create potentially serious damage to the program.

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 10th day of August 1994, at Washington, DC.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends Title 49, Code of Federal Regulations, part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

§ 40.3 [Amended]

2. In § 40.3, the definition of the term "EBT" is amended by changing the period at the end of the definition to a comma and by adding the following: "and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs."

3. Section 40.23(a) is revised to read as follows:

§ 40.23 Preparation for testing.

* * * * *

(a) Use of the drug testing custody and control form prescribed under this Part. This form is found in Appendix A to this part. Employers and other participants in the DOT drug testing program may not modify or revise this form, except that the drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

* * * * *

4. § 40.25(c) is revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(c) Chain of Custody. The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

5. In § 40.25(e)(2)(i), the words "32°–38° C/90°–100° F" are substituted for the words "32.5°–37.7° C/90.5°–99.8° F".

6. § 40.25(f)(10)(ii)(B) and (C) are revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(f) * * *

(10) * * *

(ii) * * *

(B)(*1*) If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.

(*2*) If a single specimen bottle is used as a collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

(C) Nothing in this section precludes the use of a collection method or system that does not involve the physical pouring of urine from one container or bottle to another by the collection site person, provided that the method or system results in the subdivision of the specimen into a primary (30 ml) and a split (at least 15 ml) specimen that can be transmitted to the laboratory and tested in accordance with the requirements of this Subpart.

* * * * *

7. In § 40.25(f)(13), the words "32°–38° C/90°–100° F" are substituted for the words "32.5°–37.7° C/90.5°–99.8° F".

8. § 40.25(h) is revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimen shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and the containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or its form. On the tape sealing the shipping container, the collection site person shall sign and enter the date specimens were sealed in the shipping container for shipment. The collection site person shall ensure that the chain of custody documentation is enclosed in each container sealed for shipment to the drug testing laboratory. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site.

* * * * *

9. § 40.25(k) is revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(k) *Use of chain of custody form.* A chain of custody form (and a laboratory internal chain of custody document, where applicable), shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred

and every individual in the chain of custody shall be identified. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

10. The existing text of § 40.29(b)(1) is redesignated as § 40.29(b)(1)(i), and a new § 40.29(b)(1)(ii) is added, to read as follows:

§ 40.29 Laboratory analysis procedures.

* * * * *

(b) * * *

(1) * * *

(ii) Where the employer has used the split sample method, and the laboratory observes that the split specimen is untestable, inadequate, or unavailable for testing, the laboratory shall nevertheless test the primary specimen. The laboratory does not inform the MRO or the employer of the untestability, inadequacy, or unavailability of the split specimen until and unless the primary specimen is a verified positive test and the MRO has informed the laboratory that the employee has requested a test of the split specimen.

* * * * *

11. In § 40.29(e), the chart is revised to read as follows:

(e) * * *

	Initial test cutoff levels (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

* – 25 ng/ml if immunoassay specific for free morphine.

12. In § 40.29(f), the chart is revised to read as follows:

(f) * * *

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine [3]	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.

[2] Benzoylecgonine.

[3] Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

13. § 40.29(g)(6) is revised to read as follows:

§ 40.29 Laboratory analysis procedures.

* * * * *

(g) * * *

* * * * *

(6) The laboratory shall provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided that the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employers within 14 days of receipt of the laboratory report. The laboratory shall provide the report to the employer or consortium not more than 14 calendar days after the end of the quarter covered by the summary. Laboratory confirmation data only shall be included from test results reported within that quarter. The summary shall contain only the following information:

(i) Number of specimens received for testing;

(ii) Number of specimens confirmed positive for—

(A) Marijuana metabolite

(B) Cocaine metabolite

(C) Opiates;

(D) Phencyclidine;

(E) Amphetamines;

(iii) Number of specimens for which a test was not performed.

Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory shall not send such a report until data are sufficiently aggregated to make such an inference unlikely. In any quarter in which a report is withheld for this reason, or because no testing was conducted, the laboratory shall so inform the consortium/employer in writing.

14. A new paragraph (n)(6) is added to § 40.29(n), to read as follows:

§ 40.29 Laboratory analysis procedures.

* * * * *

(n) * * *

* * * * *

(6) The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO.

15. § 40.59(b) is revised to read as follows:

§ 40.59 The breath alcohol testing form and log book.

* * * * *

(b) The form shall provide triplicate (or three consecutive identical) copies. Copy 1 (white) shall be transmitted to the employer. Copy 2 (green) shall be provided to the employee. Copy 3 (blue) shall be retained by the BAT. Except for a form generated by an EBT, the form shall be 8½ by 11 inches in size.

* * * * *

16. In § 40.59(c), the words "result displayed on the EBT" are substituted for the words "quantified test result".

17. In § 40.63, paragraphs (d)(1), (2), and (3) are redesignated as paragraphs (d)(2), (3), and (4), respectively, and a new paragraph (d)(1) is added to read as follows:

§ 40.63 Procedures for screening tests.

* * * * *

(d)(1) If the EBT does meet the requirements of § 40.53(b)(1) through (3), the BAT shall ensure, before the screening test is administered for each employee, that he or she and the employee read the sequential test number displayed by the EBT.

* * * * *

18. In § 40.63, paragraphs (e)(2), (3), and (4) are respectively redesignated as paragraphs (e)(3), (4), and (2).

19. Redesignated § 40.63(e)(3) is revised to read as follows:

§ 40.63 Procedures for screening tests.

* * * * *

(e) * * *

(3) If a test result printed by the EBT (see paragraph (d)(3) or (d)(4) of this

section) does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the screening test (see paragraph (d)(1) of this section), the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial and sign the notation. In accordance with § 40.79, the test is invalid and the employee shall be so advised.

* * * * *

20. § 40.65 (d) and (e) are revised to read as follows:

§ 40.65 Procedures for confirmation tests.

* * * * *

(d) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument, which shall be taken out of service. However, testing may proceed on another instrument. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is completed and the EBT is found to be within tolerance limits.

(e) Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential test number displayed by the EBT.

* * * * *

21. § 40.65(h) (2) and (3) are revised to read as follows:

§ 40.65 Procedures for confirmation tests.

* * * * *

(h) * * *

* * * * *

(2) If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section.

(3) If a test result printed by the EBT (see paragraph (g)(1) or (g)(2) of this section) does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the confirmation test (see paragraph (e) of this section), the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial and sign the notation. In accordance with § 40.79, the test is invalid and the employee shall be so advised.

* * * * *

§ 40.65 [Amended]

22. § 40.65(h)(4) is removed.

23. In § 40.65(i)(2), the comma after the words "in writing" is removed and the words "(the employer copy (Copy 1) of the breath alcohol testing form)," are added at that place.

§ 40.79 [Amended]

24. In § 40.79(a)(3), following the words "0.00 prior to," the words "or after" are removed.

25. Appendix A to part 40 is revised to read as follows:

Appendix A to Part 40—Federal Drug Testing Custody and Control Form

BILLING CODE 4910-62-P

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

▶ **STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE**

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

▶ **STEP 2: TO BE COMPLETED BY COLLECTOR** - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

▶ **STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR** - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

▶ **STEP 4: TO BE COMPLETED BY DONOR** - Go to copy 4 (pink page); STEP 4

▶ **STEP 5: TO BE COMPLETED BY COLLECTOR**

COLLECTION SITE LOCATION:

Collection Facility _____ ( ) Collector's Business Phone No. _____

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address _____ City _____ State _____ Zip _____

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) _____ X Signature of Collector _____ Date (Mo./Day/Yr.) / / _____ Time _____ AM PM

▶ **STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER**

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS*

☐ NEGATIVE ☐ POSITIVE for the following: ☐ CANNABINOIDS as Carboxy—THC ☐ COCAINE METABOLITES as Benzoylecgonine ☐ PHENCYCLIDINE

☐ TEST NOT PERFORMED ☐ OPIATES: ☐ codeine ☐ morphine ☐ AMPHETAMINES: ☐ amphetamine ☐ methamphetamine ☐ OTHER _____

REMARKS _____

TEST LAB (if different from above) _____ NAME _____ ADDRESS ( ) PHONE NO.

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

(PRINT) Certifying Scientist's Name (First, MI, Last) _____ Signature of Certifying Scientist _____ Date (Mo. / Day / Yr.) / / _____

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo. / Day / Yr.) / / _____

COPY 1 - ORIGINAL - MUST ACCOMPANY SPECIMEN TO LABORATORY

A (PLACE OVER CAP)

SPECIMEN ID NO.

Donor's Initials _____

Date (Mo. Day. Yr.) / /

B (SPLIT) (PLACE OVER CAP)

SPECIMEN ID NO.

Donor's Initials _____

Date (Mo. Day. Yr.) / /

Paperwork Reduction Act Notice (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated for each respondent to average: 5 minutes/donor; 4 minutes/collector; 3 minutes/laboratory; and 3 minutes/Medical Review Officer. Federal employees may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Rm 721-B, 200 Independence Ave. S.W., Washington, D.C. 20201. Individuals from the private sector may send comments/suggestions to: Department of Transportation, Drug Enforcement and Program Compliance, Rm 9404, 400 Seventh St. S.W., Washington, D.C. 20590. In addition, copies of all comments/suggestions may be sent to: Office of Management and Budget, Paperwork Reduction Project, Rm 3001, 725 Seventeenth St. N.W., Washington, D.C. 20503.

Back of Copy 1, 2, 3, 4, and 6.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No. B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

Collection Facility _____ ( ) Collector's Business Phone No. _____

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address _____ City _____ State _____ Zip _____

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) _____ Signature of Collector _____ Date (Mo./Day/Yr.) / / _____ Time _____ AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below.

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS*

☐ NEGATIVE ☐ POSITIVE, for the following: ☐ CANNABINOIDS as Carboxy—THC ☐ COCAINE METABOLITES as Benzoylecgonine ☐ PHENCYCLIDINE

☐ TEST NOT PERFORMED ☐ OPIATES: ☐ codeine ☐ morphine ☐ AMPHETAMINES: ☐ amphetamine ☐ methamphetamine ☐ OTHER _____

REMARKS _____

TEST LAB (if different from above) _____ NAME _____ ADDRESS ( ) PHONE NO

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

(PRINT) Certifying Scientist's Name (First, MI, Last) _____ Signature of Certifying Scientist _____ Date (Mo. / Day / Yr.) / /

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo. / Day / Yr.) / /

COPY 2 - 2nd ORIGINAL - MUST ACCOMPANY SPECIMEN TO LABORATORY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. -B LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Collection Facility _____ ( ) Collector's Business Phone No. _____

Address _____ City _____ State _____ Zip _____

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) _____ Signature of Collector _____ Date (Mo./Day/Yr.) / / _____ Time _____ AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below.

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE PROCEDURES ESTABLISHED BY THE HHS MANDATORY *GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS*

☐ RECONFIRMED for the following: ☐ CANNABINOIDS as Carboxy—THC ☐ COCAINE METABOLITES as Benzoylecgonine ☐ PHENCYCLIDINE
☐ FAILED TO RECONFIRM ☐ OPIATES: ☐ codeine ☐ morphine ☐ AMPHETAMINES: ☐ amphetamine ☐ methamphetamine
☐ TEST NOT PERFORMED ☐ OTHER _____

REMARKS _____

TEST LAB (if different from above) _____ NAME _____ ADDRESS ( ) _____ PHONE NO.

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

(PRINT) Certifying Scientist's Name (First, MI, Last) _____ Signature of Certifying Scientist _____ Date (Mo. / Day / Yr.) / / _____

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Reconfirmed ☐ Failed to reconfirm- Both tests cancelled ☐ Test not performed Both tests cancelled REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo. / Day / Yr.) / / _____

COPY 3 - SPLIT SPECIMEN MUST ACCOMPANY SPLIT SPECIMEN TO LABORATORY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No. B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility ( ) Collector's Business Phone No.

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address City State Zip

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) Signature of Collector Date (Mo./Day/Yr.) / / Time AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No. ( ) _____ Evening Phone No. ( ) _____ Date of Birth / / Mo. Day Yr.

I certify that I provided my urine specimen to the collector, that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each specimen bottle is correct.

(PRINT) Donor's Name (First, MI, Last) X Signature of Donor Date (Mo. / Day / Yr.) / /

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5).—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) Signature of Medical Review Officer Date (Mo. / Day / Yr.) / /

COPY 4 - SEND DIRECTLY TO MEDICAL REVIEW OFFICER - DO NOT SEND TO LABORATORY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO

LABORATORY ACCESSION NO

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility _____ Collector's Business Phone No ( )

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address _____ City _____ State _____ Zip _____

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) _____ Signature of Collector _____ Date (Mo./Day/Yr.) / / Time _____ AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No ( ) _____ Evening Phone No ( ) _____ Date of Birth / / (Mo Day Yr)

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each specimen bottle is correct

(PRINT) Donor's Name (First, MI, Last) _____ X _____ Signature of Donor _____ Date (Mo / Day / Yr.) / /

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5).—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo. / Day / Yr.) / /

COPY 5 - GIVE TO DONOR DO NOT SEND TO LABORATORY

Privacy Act Statement: (For Federal Employees Only)

Submission of the information on the attached form is voluntary. However, incomplete submission of the information, refusal to provide a urine specimen, or substitution or adulteration of a specimen may result in delay or denial of your application for employment/appointment or may result in removal from the Federal service or other disciplinary action.

The authority for obtaining the urine specimen and identifying information contained herein is Executive Order 12564 ("Drug-Free Federal Workplace"), 5 U.S.C. § 3301 (2), 5 U.S.C. § 7301 and Section 503 of Public Law 100-71, 5 U.S.C. § 7301 note. Under provisions of Executive Order 12564 and 5 U.S.C. 7301, test results may only be disclosed to agency officials on a need-to-know basis. This may include the agency Medical Review Officer, the administrator of the Employee Assistance Program, and a supervisor with authority to take adverse personnel action. This information may also be disclosed to a court where necessary to defend against a challenge to an adverse personnel action.

Submission of your SSN is not required by law and is voluntary. Your refusal to furnish your number will not result in the denial of any right, benefit, or privilege provided by law. Your SSN is solicited, pursuant to Executive Order 9397, for purposes of associating information in agency files relating to you and for purposes of identifying the specimen provided for urinalysis testing for illegal drugs. If you refuse to indicate your SSN, a substitute number or other identifier will be assigned as required to process the specimen.

In the event laboratory analysis determines the presence of one or more illegal drugs in the specimen you provide, you will be contacted by an agency Medical Review Officer (MRO). The MRO will determine whether there is a legitimate medical explanation for the drug(s) identified by urinalysis.

Paperwork Reduction Act Notice (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated for each respondent to average: 5 minutes/donor, 4 minutes/collector, 3 minutes/laboratory, and 3 minutes/Medical Review Officer. Federal employees may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Rm. 721-B, 200 Independence Ave. S.W., Washington, D.C. 20201. Individuals from the private sector may send comments/suggestions to: Department of Transportation, Drug Enforcement and Program Compliance, Rm. 9404, 400 Seventh St. S.W., Washington, D.C. 20590. In addition, copies of all comments/suggestions may be sent to Office of Management and Budget, Paperwork Reduction Project, Rm. 3001, 725 Seventeenth St. N.W., Washington, D.C. 20503.

Back of Copy 5.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility ( ) Collector's Business Phone No.

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address City State Zip

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) Signature of Collector Date (Mo./Day/Yr.) Time AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No. Evening Phone No. Date of Birth ___/___/___ Mo. Day Yr.

I certify that I provided my urine specimen to the collector, that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each specimen bottle is correct.

(PRINT) Donor's Name (First, MI, Last) Signature of Donor Date (Mo / Day / Yr)

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5).—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) Signature of Medical Review Officer Date (Mo. / Day / Yr.)

COPY 6 COLLECTOR RETAINS DO NOT SEND TO LABORATORY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility _____ ( ) Collector's Business Phone No. _____

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address _____ City _____ State _____ Zip _____

REMARKS: _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) _____ Signature of Collector _____ Date (Mo./Day/Yr.) / / Time _____ AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No. _____ Evening Phone No. _____ Date of Birth / / Mo. Day Yr

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each specimen bottle is correct.

(PRINT) Donor's Name (First, MI, Last) _____ Signature of Donor _____ Date (Mo. / Day / Yr.) / /

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger" THIS LIST IS NOT NECESSARY If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5).—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS _____

(PRINT) Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo. / Day / Yr.) / /

COPY 7 FORWARD TO EMPLOYER - DO NOT SEND TO LABORATORY

INSTRUCTIONS FOR COMPLETING DRUG TESTING CUSTODY AND CONTROL FORM

The following instructions are in accordance with procedures established by the Department of Health and Human Services and the Department of Transportation mandatory guidelines for federal and transportation workplace drug testing programs.

NOTE: Use ballpoint pen, press hard, and check all copies for legibility.

STEP 1

If the information in STEP 1 has not been completed, collector (not donor) completes STEP 1 (A-E).

NOTE: Donor refusal to provide SSN or Employee I.D. number must be annotated in STEP 5, collector's REMARKS section.

STEP 2

Upon receiving specimen from donor, check specimen temperature. This must be accomplished within 4 minutes.

Check block marked "Yes" if temperature is within range.

If specimen temperature is not within range, check block marked "No," and record specimen temperature.

STEP 3 FOR SPLIT SPECIMEN COLLECTIONS ONLY

Secure caps on both specimen bottles and affix specimen bottle seal labelled A over the cap and down the sides of the primary specimen (bottle containing at least 30ml of urine).

Affix specimen bottle seal labelled B (split) on the split specimen (bottle containing at least 15ml of urine) in the same manner.

Record date on both specimen bottle seals.

Instruct donor to initial both specimen bottle seals.

FOR SINGLE SPECIMEN COLLECTION ONLY

Secure cap on specimen bottle (containing at least 30ml of urine) and affix specimen bottle seal labelled A over the cap and down the sides of the specimen bottle.

Record date on specimen bottle seal.

Instruct donor to initial the specimen bottle seal.

STEP 4.

Turn to Copy 4 (pink page), STEP 4.

Instruct donor to complete STEP 4.

Ensure donor provides his/her daytime and evening phone number and date of birth.

Instruct donor to read certification statement. Ensure donor prints his/her name and signs and dates the certification statement.

NOTE: Donor refusal to sign must be annotated in STEP 5, collector's remarks section.

Upon completion, check donor entries, return to Copy 1.

STEP 5.

After returning to Copy 1, go to STEP 5.

Complete the name and address of the facility at which the collection is taking place.

List a business telephone number where collector can be reached.

Place a check in the box indicating whether or not a split specimen was collected.

Record any unusual occurrences concerning the collection (e.g. donor refusal to provide information/sign certification statement, specimen collected under direct observation, suspected adulteration) in the remarks section.

Collector completes collection certification section by printing and signing his/her name, recording the date and time of collection. Be sure to circle A.M. or P.M.

STEP 6. CHAIN OF CUSTODY SECTION

NOTE: Each time the specimen is handled, transferred, or placed into storage prior to being packaged for shipment, every individual must be identified (including a direct observer, if required) and the date and purpose of change recorded. The following instructions pertain to a collection in which the donor provides a specimen directly to the collector who seals, packages, and ships the specimen to the laboratory.

Record date of collection.

In the "Specimen Received By" column, sign and print your name indicating that you have received the specimen from the donor.

The "Purpose of Change" entry in the next column is pre-printed (Provide Specimen for Testing) and explains the transfer of the specimen from the donor to the collector.

On the next line, record the date the specimen was released by you.

Complete the "Specimen Released By" block by signing and printing your name.

If you are preparing the specimen for shipment to the laboratory complete the "Specimen Received By" block by printing the carrier or shipment provider name only. (See Example)

Complete the "Purpose of Change" block explaining the transfer of the specimen from the collector to the carrier or shipment provider (e.g. Ship Specimen to Lab).

DATE MO.	DAY	YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
1	12	93	DONOR - NO SIGNATURE	Signature: Minnie McDonald Name: Minnie McDonald	PROVIDE SPECIMEN FOR TESTING
1	12	93	Signature: Minnie McDonald Name: Minnie McDonald	Signature: Name: ABC Courier Service	SHIP SPECIMEN TO LAB
/	/		Signature: Name:	Signature: Name:	
/	/		Signature: Name:	Signature: Name:	

COMPLETING THE COLLECTION PROCESS

Upon completing Step 6, give donor his/her copy, Copy 5, (green page) of the Drug Testing Custody and Control Form.

Donor may leave the collection site at this point.

If a split specimen collection was performed, place both specimen bottles and Copies 1, 2, and 3 of the Drug Testing Custody and Control Form in the shipping container.

If a single collection was performed, place the specimen bottle and Copies 1 and 2 of the Drug Testing Custody and Control Form in the shipping container. Discard Copy 3.

Secure the shipping container. On the shipping container seal, record your initials and the date.

Send Copy 4 (pink page) directly to the Medical Review Officer. Do not send to laboratory.

Retain Copy 6 (yellow page) for your records.

Forward Copy 7 (blue page) to the employer. Do not send to laboratory.

BILLING CODE 4910-62-C

26. Appendix A to Subpart C of Part
is redesignated as Appendix B to Part
and revised to read as follows:

ppendix B to Part 40—The Breath
lcohol Testing Form

.LING CODE 4910-62-P

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____ ( ) _____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ Signature of Employee

Date ___ / ___ / ___ Month Day Year

STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following.

Test No.	Testing Device Name	Testing Device Serial Number	Time	AM PM	Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

_____ (PRINT) Breath Alcohol Technician's Name (First, M.I., Last)

_____ Signature of Breath Alcohol Technician

Date ___ / ___ / ___ Month Day Year

STEP 4: TO BE COMPLETED BY EMPLOYEE

*I certify that I have submitted to the breath alcohol test the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are **0.02 or greater.***

_____ Signature of Employee

Date ___ / ___ / ___ Month Day Year

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

OMB No. 2105-0529
Exp. Date: 2/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE) USE TAMPER-EVIDENT TAPE	AFFIX CONFIRMATION TEST RESULTS HERE USE TAMPER-EVIDENT TAPE

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average: 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

OMB No. 2105-0529
Exp. Date: 2/28/97

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C Employer Name, Address, & Telephone No. _____

_____

_____ ( ) _____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ Signature of Employee

Date ___ / ___ / ___ Month Day Year

STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following.

Test No.	Testing Device Name	Testing Device Serial Number	Time AM PM	Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

_____ (PRINT) Breath Alcohol Technician's Name (First, M.I., Last)

_____ Signature of Breath Alcohol Technician

Date ___ / ___ / ___ Month Day Year

STEP 4: TO BE COMPLETED BY EMPLOYEE

I certify that I have submitted to the breath alcohol test the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ Signature of Employee

Date ___ / ___ / ___ Month Day Year

COPY 2 - EMPLOYEE RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

Privacy Act Statement

(applicable in those cases where completed Breath Alcohol Testing Forms are retained in a Federal Privacy Act system of records)

Except for your Social Security Number (SSN), submission of the information on the front side of this form is mandatory. Incomplete submission of the information, failure to provide an adequate breath specimen for testing without a valid medical explanation, engaging in conduct that clearly obstructs the testing process, or failure to sign the certification statements on the front side of this form may result in delay or denial of your application for employment/appointment, your inability to resume performing safety-sensitive duties, removal from a safety-sensitive position, or other disciplinary action.

The authority for obtaining the breath specimen required by the U.S. Department of Transportation is the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V. The principal purpose for which the information sought is to be used is to ensure that you have submitted to breath alcohol testing and to ensure that you are promptly notified in the event of noncompliance with the U.S. Department of Transportation breath alcohol testing requirements.

Submission of your SSN is not required by law and is voluntary. If you object to the use of your SSN in this form, you will not be denied any right, benefit, or privilege provided by law; a substitute number or other identifier will be assigned.

The information provided in this form may be disclosed, as a routine use, to a Federal, State, or local agency for authorized investigative or enforcement purposes or to a court or an administrative tribunal when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average: 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 2 - EMPLOYEE RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

▸ STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____ ( ) _____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

▸ STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ Date ___ / ___ / ___
Signature of Employee — Month Day Year

▸ STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete <u>only</u> <u>if</u> the testing device is not designed to <u>print</u> the following.

Test No.	Testing Device Name	Testing Device Serial Number	Time AM PM	Result

Confirmation test: Confirmation test results <u>MUST</u> be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

_____ _____ Date ___ / ___ / ___
(PRINT) Breath Alcohol Technician's Name (First, M.I., Last) — Signature of Breath Alcohol Technician — Month Day Year

▸ STEP 4: TO BE COMPLETED BY EMPLOYEE

*I certify that I have submitted to the breath alcohol test the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are **0.02 or greater**.*

_____ Date ___ / ___ / ___
Signature of Employee — Month Day Year

COPY 3 - BREATH ALCOHOL TECHNICIAN RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE) USE TAMPER-EVIDENT TAPE	AFFIX CONFIRMATION TEST RESULTS HERE USE TAMPER-EVIDENT TAPE

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION BREATH ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The Breath Alcohol Technician (BAT) completes the information required in this step. After conducting the alcohol screening test, do the following (as appropriate):

If the breath testing device used in conducting the screening test is not capable of printing the screening test information located on the front of this form (test number, testing device name, testing device serial number, time of test and results), complete this information in the space provided on the front of this form.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, i.e., 0.00, 0.02, 0.04, etc.

OR, If the breath testing device used in conducting the screening test is capable of printing the screening test information located on the front of this form, affix the printed information in the space provided above. Be sure to use tamper-evident tape.

If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. Go to STEP 4.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

After conducting the alcohol confirmation test, affix the printed information in the space provided above. Be sure to use tamper-evident tape.

Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 Instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks section in STEP 3.

Forward **Copy 1** (white page) to the employer.
Give **Copy 2** (green page) to the employee.
Retain **Copy 3** (blue page) for BAT records.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average: 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 3 - BREATH ALCOHOL TECHNICIAN RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

[FR Doc. 94–20447 Filed 8–16–94; 3:09 pm]
BILLING CODE 4910–62–C

federal register

Friday
August 19, 1994

Part IX

The President

Proclamation 6714—To Amend the Generalized System of Preferences

Federal Register
Vol. 59, No. 160
Friday, August 19, 1994

Presidential Documents

Title 3—

The President

Proclamation 6714 of August 17, 1994

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Belarus and Uzbekistan as beneficiary developing countries for purposes of the Generalized System of Preferences ("GSP").

2. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States ("HTS") the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Belarus" and "Uzbekistan" in alphabetical order in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

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

William J. Clinton

[FR Doc. 94–20628
Filed 8–18–94; 11:22 am]
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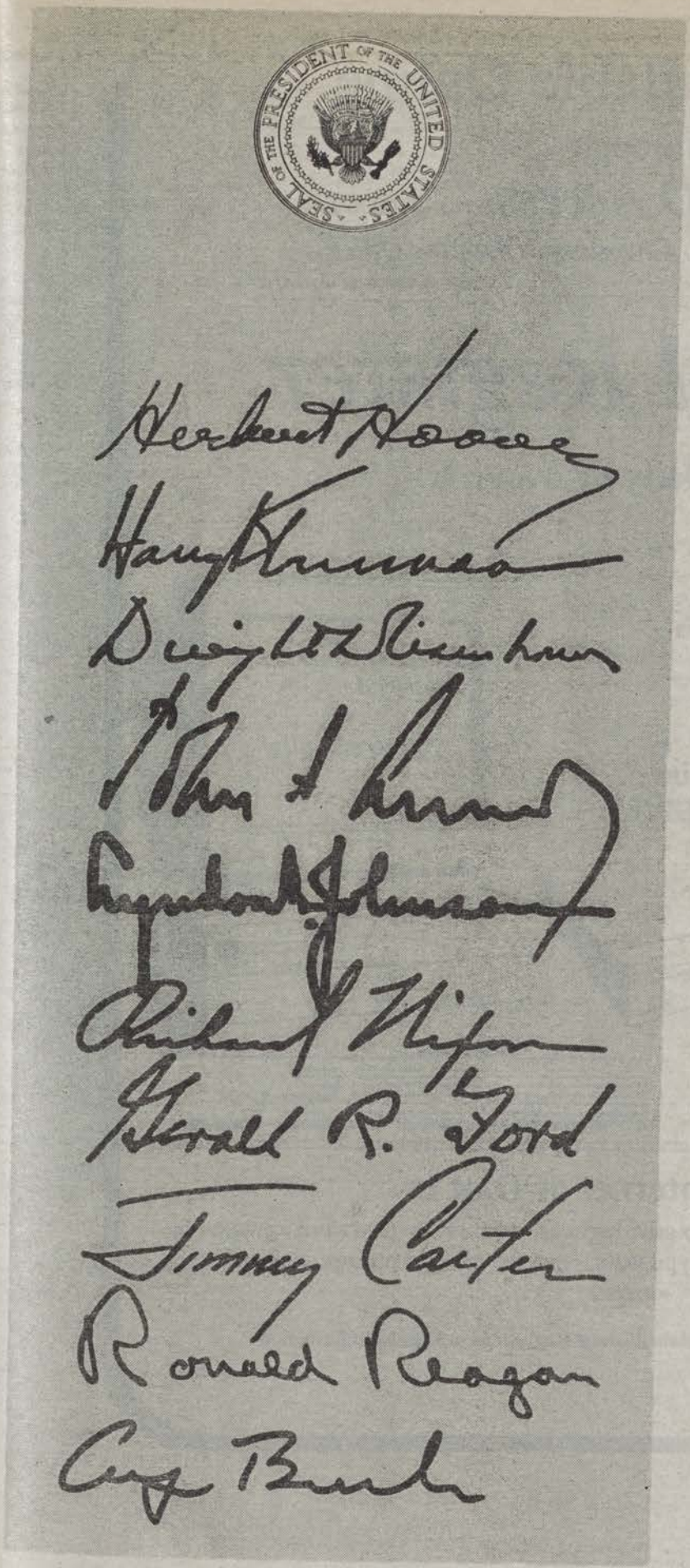

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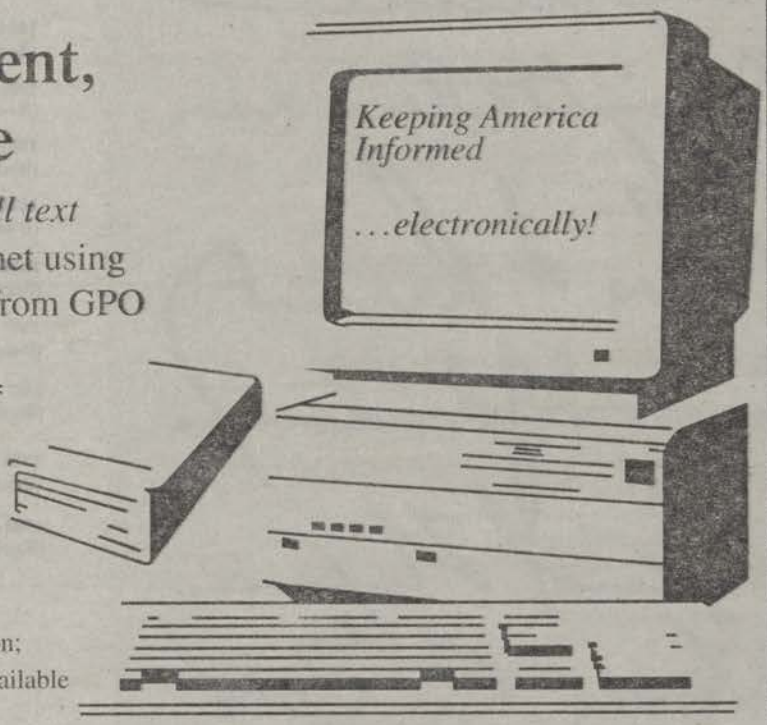

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