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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 842

RIN 3206–AF92

Federal Employees Retirement System—Coverage

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning exclusions from coverage under the Federal Employees Retirement System (FERS) for employees who have at least 5 years of service creditable under the Civil Service Retirement System (CSRS). These regulations clarify the existing regulations to specifically state the requirement that, if the employee has a break in service ending after 1986, the employee's past service must include some service covered by CSRS to be excluded from automatic FERS coverage The regulations are necessary to clarify the current regulations and to conform to OPM's guidance since implementation of FERS.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On July 28, 1994, OPM published (at 59 FR 38376) proposed regulations and requested comments concerning exclusions from coverage under the Federal Employees Retirement System (FERS) for employees who have at least 5 years of service creditable under the Civil Service Retirement System (CSRS). We received one comment on the proposed regulations.

The commenter disagreed with our interpretation of section 8402(b)(2) of title 5, United States Code. Section 8402(b) of title 5, United States Code, establishes the statutory exclusions from automatic coverage under FERS.

1. OPM's Interpretation of the Statute

Section 8402(b)(2) of title 5, United States Code, provides two sets of exclusions from automatic FERS coverage. These exclusions are ambiguous in that they can be read to overlap or to be mutually exclusive. OPM, as the agency charged with the administration of these provisions, adopted the interpretation that the exclusions were mutually exclusive. This decision was contemporaneous with the statute and made by the same administrators involved with enactment of the statute. The courts have determined that such agency interpretations are entitled to great deference.

The effect of OPM's determination that the exclusions in section 8402(b)(2) are mutually exclusive is that—

> Subparagraph (A) applies to all employees who reenter service on or after January 1, 1987 (the general effective date of the FERS Act of 1986) after a break in service; and
>
> Subparagraph (B) applies only to employees not covered by subparagraph (A), specifically employees who have served continuously since December 31 1986.

2. The Change in Regulatory Text Makes No Substantive Change

OPM has applied this approach to the exclusions since the inception of FERS On pages 16 and 17 of the September 1986 edition of the FERS pamphlet RI 90–1, OPM provided information about enrolling in FERS. In describing the options available to "employees in the interim plan," those with continuous service who had both CSRS and Social Security, it simply states:

> If you have five years of creditable civilian service by December 31, 1986, then you remain under CSRS and Social Security * * * You can elect to transfer to FERS

In describing the options available to "rehires," the pamphlet states the requirement of some prior covered service to avoid automatic FERS coverage, in addition to the 5-years-of-service requirement

Installment 1 of the CSRS & FERS Handbook for Personnel and Payroll Offices (formerly FPM Supplement 830–1) clearly states OPM's interpretation Section 10A1 1–2I.2 explains the "5–Year Test" for determining whether an employee being rehired, transferred, or converted is automatically covered by FERS. It states—

> If there is no break in service of more than 3 days ending after December 31, 1986, the 5-year test is met if the employee had 5 years of creditable civilian service as of December 31, 1986 * * * If the employee has had a break in service of more than 3 days ending after 1986, the 5-year test is met if the employee had any amount of past coverage under CSRS * * * and also had 5 years of creditable civilian service as of the break in service. (At 3.)

The examples include—

> (c) Rehires on or after January 1, 1987, who had 5 or more years of creditable civilian service on the date of separation from last Federal employment AND had some prior coverage under CSRS * * * are excluded from automatic FERS coverage. [Emphasis in original.] (*Id.*, cf. example (d) at p. 4.)

In proposing to change our regulatory language implementing paragraph (b)(2) of section 8402, we were merely clarifying the language to state our original, contemporaneous, and continuing interpretation of the controlling statute, by specifically stating the requirement that, if the employee has a break in service ending after 1986, the employee's past service must include some service covered by CSRS to be excluded from automatic FERS coverage.

3. Commenter's Arguments Conflict With Congress' Use of Language in This Area of the Law

The commenter argues that the proper distinction between subparagraphs (A) and (B) is that subparagraph (A) applies to reemployed annuitants. He argues that the language in subparagraph (A)(i), "having been subject to [CSRS]," refers to an annuitant who has been reemployed, not to a coverage requirement. Service "subject to (CSRS)" is a term of art for service covered by CSRS (i.e., subject to deductions) Congress has used "subject to this Act," and later "subject to subchapter III" language as requiring coverage since at least Public Law 83–730, enacted August 31, 1954. The Commenter's suggestion that this language suddenly has another meaning cannot reasonably be read in that manner Current CSRS law retains this convention in section 8333(b) of title 5 United States Code, uses the same "is subject to (CSRS)" to create the coverage requirement for CSRS annuities. The commenter's suggestion that this

language suddenly has another meaning is unreasonable considering the history of this phrase.

Furthermore, the commenter's suggestion that the language refers to reemployed CSRS annuitants is not even consistent with the manner in which such persons are described elsewhere in the FERS Act. Section 302(a)(12)(A) of the FERS Act uses the narrower language "is subject to section 8344 of title 5, United States Code" to describe a reemployed CSRS annuitant. (Pub. L. 99–336, 100 Stat. 514, 604.) Similarly, sections 8344 (CSRS) and 8468 (FERS) of title 5, United States Code, use the language "an annuitant * * * becomes reemployed" to refer to a reemployed annuitant.

The commenter also quoted a paragraph from the House Conference Report that he claims supports his view that the two subparagraphs cannot be mutually exclusive. That paragraph states:

> The conferees agreed that individuals with at least 5 years creditable service in CSRS, who return after more than a one year break in service, should retain entitlement to CSRS benefits unless they elect to be covered by FERS benefits. (H. Conf. Rept. No. 99–606, May 16, 1986, p. 43, reprinted in 1986 U.S. Code Cong. and Admin. News 1405, 1526.)

Since persons who have performed no covered CSRS service have no "entitlement to CSRS benefits" to be "retained," we do not see how this language supports the commenter's argument. The passage is not inconsistent with OPM's interpretation of section 8402(b). On the contrary, the House Conference Report contains language supporting OPM's interpretation. In the discussion of FERS coverage the report states:

> The conference agreement adopts the Senate provisions with modifications. Similar to the House committee bill, rehired employees with 5 years or more prior service *subject to CSRS retain coverage* under a revised CSRS. (Emphasis added.) (*Ibid.* Rept. at 126, reprinted at 1509.)

We again point out that the "subject to CSRS" language is a long-used term of art for the coverage requirement.

The commenter also quotes a passage from the Report of Senate Governmental Affairs Committee on the Senate version of the bill that became the FERS Act. The "subsection (a)(3)" mentioned in this passage refers to a transfer provision in the Senate bill that was not enacted, and does not refer to a "subsection (a)(3)" anywhere in chapter 84 of title 5, United States Code, or in Title III of the FERS Act. The passage states:

> Subsection (a)(3) provides that an individual electing to transfer to [FERS] who becomes an employee or Member after a break in service for a period including January 1, 1987, retains any rights to make deposits for service under CSRS, prior to that date. (S. Rept. No. 99–116, October 30, 1985, p. 70, reprinted in 1986 U.S. Code Cong. and Admin. News 1405, 1475.

Again, we do not see how this language is inconsistent with OPM's interpretation of section 8402(b). This passage discusses only the rights of certain employees who make the decision to transfer to FERS after a break in service. This passage does not address employees who are automatically covered by FERS or the requirements that employees must satisfy to avoid automatic FERS coverage.

Furthermore, the language of the passage itself is contrary to the claimant's position. To "retain" any rights to make deposits for service under CSRS, the individual seeking to make deposit must first have that right under CSRS. An individual with no covered CSRS service never had such a right to "retain." The employees to whom this passage refers have some prior service that was creditable but not covered AND some prior service that was covered. For example, an individual who elects FERS with 3 years of service under temporary appointments (FICA only coverage) and 3 years under a career conditional appointment (CSRS coverage) retains the right to pay the deposit for the period under the temporary appointments in order to receive benefits under CSRS for the entire 6 years of service before the FERS election.

We agree with the commenter that, if taken out of context and read by itself, subparagraph (B) of section 8402(b)(2) would not support OPM's interpretation. However, the subparagraph does not have to be read by itself and may be interpreted in conjunction with subparagraph (A) as OPM has done. We concede that our interpretation of the statute is not the only construction possible. However, the agency's function in administering the statute is to choose among the reasonable interpretations. The interpretation set out in these regulations is a reasonable one, made contemporaneously with the enactment of the statute by agency officials involved with the enactment of the statute.

Finally, we emphasize that these regulations make no changes in current instructions for determining retirement coverage, which are published in the "CSRS and FERS Handbook for Personnel and Payroll Offices" (formerly FPM Supplement 830–1), chapter 10.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Reporting and recordkeeping, Retirement.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director

Accordingly, OPM is amending 5 CFR part 842 as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1 The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842 104 and 842 106 also issued under 5 U S.C. 8461(n); § 842 105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842 106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U S.C. 8402(c)(1); §§ 842 604 and 842.611 also issued under 5 U.S.C. 8417, § 842 607 also issued under 5 U.S C. 8416 and 8417 § 842 614 also issued under 5 U S.C. 8419; §842 615 also issued under 5 U S.C. 8418; § 842 703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; §842 707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, § 842 708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U S.C. 1104

Subpart A—Coverage

2 Section 842 101 is revised to read as follows

§ 842.101 Purpose and scope.

(a) This subpart contains regulations concerning automatic coverage under the Federal Employees Retirement System (FERS). References to FERS coverage in this subpart are to automatic, as opposed to elective, FERS coverage

(b) Part 846 of this chapter contains regulations concerning elective FERS

coverage. FERS elections are available under limited circumstances to employees not subject to automatic FERS coverage.

3. Section 842.104 is revised to read as follows:

§ 842.104 Statutory exclusions.

(a) *Lack of social security coverage.* An individual not covered by social security (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954), including an individual covered by full CSRS (and thereby excluded from social security coverage), is excluded from FERS coverage.

(b) *Senior officials subject to social security coverage despite continuous service.* An individual who has served without a break in service of more than 365 days since December 31, 1983, in one or more of the following positions is excluded from FERS coverage.

(1) The Vice President;

(2) A Member of Congress;

(3) A non-SES appointee to a position listed in 5 U.S.C. 5312 through 5317;

(4) A Senior Executive Service or Senior Foreign Service noncareer appointee; or

(5) An individual appointed by the President (or his designee) or the Vice President under section 105(a)(1), 107(a)(1), or (b)(1) of title 3, United States Code, to a position for which the maximum rate of basic pay payable is at or above the rate for Level V of the Executive Schedule.

(c) *Employees rehired after December 31, 1986, following a break in service.* An employee who is rehired after December 31, 1986, who has had a break in service and who, at the time of the last separation from the service, had at least 5 years of civilian service creditable under CSRS rules, any part of which was covered by CSRS or the Foreign Service Retirement System, is excluded from FERS coverage.

(d) *Employees who have not had a break in service ending after December 31, 1986.* An employee who has not had a break in service of more than 3 days ending after December 31, 1986, and who, as of December 31, 1986, had at least 5 years of credible civilian service under CSRS rules (even if none of this service was covered by CSRS), is excluded from FERS coverage.

(e) *Break in service.* For the purposes of paragraph (c) and (d) of this section, "break in service" means a separation from CSRS-covered service lasting at least 4 days, or a transfer or separation of less than 4 days when the employee becomes subject to automatic coverage under social security (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954).

(f) *Coverage under a retirement system for NAF employees.* An employee who has elected coverage under a retirement system for NAF employees in accordance with § 842.106 is excluded from FERS coverage during that and all subsequent periods of service, including service as a reemployed annuitant.

[FR Doc. 94-30614 Filed 12-13-94, 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 72

RIN 3150-AE37

Notification of Events

AGENCY: Nuclear Regulatory Commission

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise licensee reporting requirements regarding the notification of events related to radiation safety at Independent Spent Fuel Storage Installations (ISFSIs) and a Monitored Retrievable Storage Installation (MRS). This action will ensure that significant occurrences at these licensed facilities are promptly reported to NRC so that the Commission can evaluate whether the licensee has taken appropriate actions to protect the public health and safety and whether prompt NRC action is necessary to address generic safety concerns.

EFFECTIVE DATE: January 13, 1995

FOR FURTHER INFORMATION CONTACT: Naiem S Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 Telephone (301) 415-6103.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1991, (56 FR 40757), the NRC amended its regulations in Title 10, Code of Federal Regulations (10 CFR), parts 20, 30, 40, and 70 to better describe those events that must be reported to the NRC because they pose a potential hazard to public health and safety or the environment and should be evaluated by NRC to determine whether further NRC action is necessary These new reporting requirements covered the following areas Inability to control licensed material, unplanned contamination events, failure of safety equipment, personal injury events, and fires and explosions.

Public comments received when the amendments were proposed suggested that part 72 also be amended to require notification of events at an ISFSI or MRS The NRC responded that it would consider the suggestion and initiate rulemaking to amend part 72, if appropriate. In considering the suggestion, the NRC took account of the fact that, except for criticality, part 72 itself contains no generally applicable reporting requirements for the types of events covered by the recent amendments to parts 30, 40, and 70. Furthermore, to date among the seven existing part 72 specific license ISFSIs, the reporting requirements have been imposed by license condition on a case-by-case basis and are not consistent. Therefore, the NRC decided that it is desirable to proceed with amending part 72.

On September 14, 1993 (58 FR 48004), the NRC published the notice of proposed rulemaking that would add new reporting requirements to part 72. The proposed reporting requirements in § 72.75 were similar to the reporting requirements in the amendments to parts 30, 40, and 70, but with some changes appropriate to ISFSIs and the MRS. These changes dealt with defects in storage systems, unplanned medical treatments involving radioactive contamination, and fires and explosions. The public comment period expired November 29, 1993.

Public Comments on the Proposed Rule

The NRC received letters from seven commenters: one letter from an organization that represents the nuclear power industry, one from a private citizen, two from States, and three from electric utilities. All of the commenters supported the goal of establishing uniform reporting requirements; however, most commenters identified specific provisions that they believed should be revised. Some commenters supported the proposed requirements because they are generally consistent with existing part 50 requirements. The following is a summary of the comments and NRC's responses.

The 4-hour threshold for immediate reporting

Some commenters stated that the 4-hour threshold for immediate reports was too long. They were concerned that events described in the proposed rule may require actions by local authorities to protect persons offsite. Therefore, the commenters believed that immediate reports should be made within minutes, not hours.

The NRC agrees that emergencies should be reported immediately. Even though already addressed in § 72.32, § 72.75 has been clarified to explicitly specify that all emergencies, as classified by the licensee's emergency plan or by license condition, must be reported to the NRC Operations Center after notification to State and local authorities. Additionally, this notification must be made within one hour of the emergency declaration by the licensee. The remaining reporting requirements in § 72.75 are for events which are significant, but not emergencies; therefore, reporting to the NRC within one hour is not necessary. The NRC believes that for these non-emergency type events a 4-hour reporting period is appropriate.

Immediate notification of off-site agencies

In one commenter's view, appropriate off-site agencies should be notified immediately, *i.e.*, within 15 minutes, of any classifiable accident, and that timely notification is essential to ensure that emergency response actions, when required, are not unduly or unnecessarily delayed.

Section 72.75 has been clarified to specify that emergency events be promptly reported to off-site agencies as specified in the licensee's emergency plan. The NRC agrees that, in the event of an emergency, NRC and State and local agencies should be notified in less time than 1 hour. In particular, if an event is significant enough to be an emergency, then part 72 emergency planning requirements would govern, including notification of the NRC Operations Center and off-site State and Federal agencies as soon as practical and, in any event, in less than 1 hour.

In addition to achieving more consistency in reporting events among ISFSI licensees, two objectives of this rulemaking remain the same as those already achieved by the earlier notification of events rulemaking for parts 30, 40, and 70, that is, to assure that all significant events are reported, and that the NRC and the industry have knowledge of and feedback from operating experience (56 FR 40757, August 16, 1991, general comment No. 3)

Thirty-day time limit for written reports

One commenter stated that the 30-day time limit for written followup reports was too long. The commenter stated that the public has a right to know of events as soon as possible and that written reports should be submitted within one week so they can be placed in the public document room.

The NRC notes that the telephone notifications made to the Operations Center are formalized and distributed to the public document room and the NRC's computer bulletin board within approximately one working day. However, for a written followup investigation, the 30-day time limit is standard. For these types of events, the licensee may need to take measurements, collect samples, decontaminate and clean up, assemble the facts, and write the report. Also, a 30-day period has been found to be adequate for similar requirements in parts 20, 30, 40, 50, and 70. Therefore, the 30-day time limit is a balance of the public's need to know as soon as possible and the licensee's need to have an adequate amount of time to complete the previously described tasks in order to provide a meaningful report.

Changing the words "a medical facility" to "an offsite medical facility"

One commenter recommended changing the words, "a medical facility" to "an offsite medical facility" in § 72.75(a)(5). With this change § 72.75(a)(5) would read: "An event that requires unplanned medical treatment at an offsite medical facility of an individual with radioactive contamination on the individual's clothing or body which could cause further contamination." The commenter suggested that this word change would make § 72.75(a)(5) consistent with § 50.72(b)(2)(v).

The NRC agrees with the commenter and the change has been made in the final rule. The word "offsite" was not used in the earlier reporting requirements that were added to parts 30, 40, and 70 because some of these licensees are hospitals. It is clear that a hospital would not be a part 72 specific license ISFSI.

Mechanism for notification of off-site authorities

One commenter asked whether there is a mechanism in place to ensure that off-site authorities will be notified in a timely manner

Yes. If the event is an emergency, the licensee emergency plans are such a mechanism. If the event is not an emergency, this rule provides a mechanism to ensure timely notification.

Revising § 72 216 to include § 72 74 events

One commenter suggested that if 10 CFR 72 216 is to be revised to require compliance with the new reporting requirements of § 72.75, it would be logical to also revise it to include 10 CFR 72.74 concerning criticality reporting requirements.

The NRC agrees with the comment and the final rule has been revised such that § 72.216 now requires reporting of those events described in § 72.74.

Reporting events under § 50.72 instead of § 72.75

One commenter suggested that general licensees located at a reactor site with a part 50 operating license should be required to report events in accordance with § 50.72, instead of the new § 72.75. According to the commenter, this change would promote uniformity in reporting requirements without creating an additional burden on general licensees.

The NRC disagrees. Such general licensees under part 72 are already required to comply with § 50.72, which covers predominantly reactor related events and conditions but not spent fuel and high-level waste (HLW). Thus, it is necessary for general licensees to comply with § 72.75, which only covers events and conditions related to spent fuel and HLW.

Uniformity of requirements of 10 CFR 72.75 and 10 CFR 50.72

One commenter expressed the concern that the requirements of § 72.75 and § 50.72 are not uniform. The commenter pointed out that the proposed rule in §§ 72.75(a)(1) and (a)(4) requires reporting within 4 hours, whereas similar requirements in §§ 50.72(b)(1)(i)(B), and (b)(1)(vi) require reporting of the same events within 1 hour

Reporting of similar events or conditions are covered in both § 50.72 and § 72.75, but the potential consequences are not the same. For example, events and conditions covered by § 50.72 (b)(1) relate to nuclear power plants whereas events and conditions covered by § 72 75 relate to spent fuel or HLW The consequences of certain events at nuclear power reactors have the potential to be somewhat more significant than the consequences of similar events involving spent fuel or HLW at ISFSIs. Therefore, the reporting time has been linked to the potential consequences of the event and uniformity is not necessary It should be noted, however, that the immediate notification requirements for emergency event reporting have not been changed This has been clarified in § 72.75.

Reporting safety equipment failures

Some commenters requested that the proposed reporting requirement in § 72.75(b)(2) for safety equipment failures be revised to be consistent with

the language in § 50.72(b)(2)(iii). The commenters stated that the proposed reporting requirement seemed significantly more restrictive than § 50.72.

The NRC disagrees. The requirements in § 50.72(b)(2)(iii) apply to events or conditions of the nuclear power plant and require reporting within four hours whereas § 72.75 (b)(2) applies to events or conditions of the spent fuel or HLW and requires reporting within 24 hours.

Having considered all comments received and other input, the NRC has determined that the following final rule should be promulgated.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion of 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0132.

The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U S. Nuclear Regulatory Commission, Washington, DC, 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0132), Office of Management and Budget, Washington, DC 20503

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final rule The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comments on the draft regulatory analysis, but no comments were received. No changes to the draft regulatory analysis were therefore considered to be necessary As a result, the draft regulatory analysis is adopted as the final regulatory analysis without change. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

Regulatory Flexibility Certification

The NRC has prepared an analysis of the impact of this final rule on small entities. The analysis indicates that the final rule is expected to have no significant economic impact on part 72 licensees, because the estimated cost to industry of reporting postulated events would be in the range of $0 - 2112 annually. Moreover, none of the current part 72 licensees are considered small entities. In any case, no report would be required of licensees unless there is an incident involving spent fuel or HLW that meets the criteria specified in these amendments. Hence, the impact on part 72 licensees should be minimal. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109, does not apply to this final rule because these amendments do not involve any provisions which would impose backfits as defined in § 50.109(a)(1). Also, the NRC has determined that backfitting requirements in § 72.62 do not apply to this proposed rule because the proposed event reporting requirements are not procedures required to operate an ISFSI or MRS. Therefore, a backfit analysis is not required.

Criminal penalties

For purposes of Section 223 of the Atomic Energy Act of 1954, as amended, relating to willful violations of — requirements notice is hereby given that these amendments are being adopted and promulgated pursuant to Sections 161b, 161i, or 161o of the Act

List of Subjects

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553, the Commission is proposing to adopt the following amendments to 10 CFR part 72

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

1. The authority citation for part 72 is revised to read as follows:

Authority Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U S.C. 5851); sec. 102, Pub L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157 10161, 10168).

Section 72 44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203 101 Stat. 1330–232, 1330–236 (42 U S.C. 10162(b), 10168(c), (d)). Section 72 46 also issued under sec. 189, 68 Stat. 955 (42 U S C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec 145(g), Pub. L. 100–203 101 Stat 1330–235 (42 U.S.C. 10165(g). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub L. 97–425, 96 Stat 2202, 2203, 2204, 2222, 2224 (42 U S.C. 10101, 10137(a), 10161(h)) Subparts K and L are also issued under sec 133, 98 Stat 2230 (42 U S.C. 10153) and sec 218(a), 96 Stat 2252 (42 U S.C. 10198)

2 A new § 72 75 under Subpart D—"Records, Reports, Inspections, and Enforcement"—is added to read as follows.

§ 72.75 Reporting requirements for specific events and conditions.

(a) Emergency notifications—Each licensee shall notify the NRC Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32 of this part The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency

(b) Non-emergency notifications Four-hour reports. Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of any of the following events or conditions involving spent fuel or HLW

(1) An event that prevents immediate actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits, or releases of radioactive materials that could exceed regulatory limits (e g

events such as fires, explosions, and toxic gas releases).

(2) A defect in any spent fuel storage structure, system, or component which is important to safety.

(3) A significant reduction in the effectiveness of any spent fuel storage confinement system during use.

(4) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(5) An event that requires unplanned medical treatment at an offsite medical facility of an individual with radioactive contamination on the individual's clothing or body which could cause further radioactive contamination.

(6) An unplanned fire or explosion damaging any spent fuel or HLW, or any device, container, or equipment containing spent fuel or HLW when the damage affects the integrity of the material or its container

(c) Non-emergency notifications: Twenty-four hour reports. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel or HLW:

(1) Any unplanned contamination event that requires access to the contaminated area by workers or the public to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area.

(2) An event in which safety equipment is disabled or fails to function as designed when.

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function

(d) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), or (c) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities, and chemical and physical forms of the spent fuel or HLW involved; and

(v) Any personnel radiation exposure data.

(2) Written report. Each licensee who makes an initial report required by paragraph (a) or (b) of this section shall submit a written followup report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of 10 CFR Part 20. These reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The quantities, and chemical and physical forms of the spent fuel or HLW involved;

(iv) Date and time of the event,

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

3. Section 72.216 under Subpart K—"Reports"—is amended by adding new paragraph (c) to read as follows:

§ 72.216 Reports.

* * * * *

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events or conditions specified by §§ 72.75(a)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this 30th day of November, 1994

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–30694 Filed 12–13–94; 8:45 am]

BILLING CODE 7590–01–P

[1] The commercial telephone number for the NRC Operations Center is (301) 816–5100.

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Final Rules for Investigations and Related Proceedings Concerning Unfair Practices in Import Trade; Correction

AGENCY: United States International Trade Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final rules which were published Monday, August 1, 1994 (59 FR 39020). The rules relate to practice and procedure under section 337 of the Tariff Act of 1930.

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: Paul A. Newhouse, Esq., Office of Administrative Law Judges, U.S. International Trade Commission, telephone 202–205–2699. Hearing-impaired individuals can obtain information on the final rules by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of these corrections became effective August 31, 1994, and are applicable to all investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) that are instituted after that date.

Need for Correction

As published, the final rules contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on August 1, 1994 of the final rules, which were the subject of FR Doc. 94–17643, is corrected as follows:

1 On page 39042, in the first column, in § 210.4(d)(3), the reference to "§ 210.25 (d) and (f)" is corrected to read "§ 210.25(d)–(f)"

2. On page 39044, in the third column, in § 210.12(a)(9)(i), the word "complainant" is corrected to read "complaint"

3. On page 39065, in the third column, in Appendix A to § 210 68, in

item 8, the term "real state" is corrected to read "real estate", and in instruction 2, the quotation mark preceding the word "National" is removed.

Issued: December 8, 1994.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–30725 Filed 12–13–94; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 91N–0388]

Medical Devices; Substantial Equivalence; 510(K) Summaries and 510(K) Statements; Class III Summaries; Confidentiality of Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to implement the provisions of the Safe Medical Devices Act of 1990 (the SMDA) that require all persons who submit a premarket notification (510(k)) to provide to FDA, as part of the submission, an adequate summary (510(k) summary) of any information respecting safety and effectiveness or a statement (510(k) statement) that such information will be made available upon request by any person. This rule also implements the requirement of the SMDA that 510(k) submitters claiming substantial equivalence to a class III preamendments device for which FDA has not yet called for premarket approval submit a class III summary and certify that they have conducted a search of safety and effectiveness data. In addition, this rule amends the device regulations governing the confidentiality of certain premarket notification submissions to conform to the SMDA. This rule also provides that persons who submit a premarket notification must certify that, to the best of their knowledge, all information is truthful and accurate and that no material fact has been omitted.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 28, 1992 (57 FR 18062), FDA issued an interim rule implementing the provisions of the SMDA that require persons who submit premarket notifications under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) to include an adequate summary of any information on safety and effectiveness (510(k) summary) or a statement (510(k) statement) that such information will be made available upon request by any person. The interim rule also implemented the requirement that 510(k) submitters claiming substantial equivalence to a class III preamendments device for which FDA has not yet called for premarket approval certify (class III certification) that they have conducted a search of safety and effectiveness data concerning the device and submit a summary of, and a citation to, all adverse safety and effectiveness information respecting the device (class III summary). In addition, the interim rule amended the device regulations governing the confidentiality of certain premarket notification submissions to conform to the SMDA. The interim rule also provided that persons who submit a premarket notification must certify that the data and information are truthful and accurate and that no material fact has been omitted. FDA stated that the interim rule would become effective on May 28, 1992.

Interested persons were given until June 29, 1992, to comment on the interim rule. In the **Federal Register** of June 1, 1992 (57 FR 23059), this comment period was extended until August 27, 1992, in response to a petition filed by a trade association. The effective date was stayed by FDA until the comments were reviewed and a new rule was published and made effective.

II. Comments

The agency received 19 comments from trade associations, manufacturers, a supplier, and a medical device consultant. A summary of the comments and the agency's response to them is provided below:

1. One comment from a manufacturer questioned why § 807 87(i)(2) (21 CFR 807.87(i)(2)) of the interim rule stated that information that already has been submitted to FDA under section 519 of the act (21 U S.C. 360i) is not the type of information that would be included in a class III summary Section 519(a) of the act (21 U S.C. 360i(a)) authorizes FDA to issue regulations requiring the manufacturers of devices to maintain and provide records to ensure that devices are not adulterated, misbranded, unsafe, or ineffective.

The SMDA (513(f)(3)) of the act (21 U.S.C. 360c(f)(3)) specifically excludes all adverse safety and effectiveness data that have been submitted to FDA under section 519 of the act from class III summaries (summaries submitted by manufacturers claiming substantial equivalence to a class III preamendments device for which FDA has not yet called for a PMA). Although the statute does not require manufacturers to submit such data more than once, the agency understands that a class III summary may include information that has previously been submitted under section 519 of the act.

2. Many comments argued that the certification requirement in § 807.87(j) of the interim rule should be deleted because FDA can utilize existing programs and statutes to ensure that erroneous information is not submitted to the agency One comment further argued that FDA cannot require the regulated community to certify the completeness of any 510(k) submission because that completeness is subject to a variety of interpretations.

As noted in the preamble to the interim rule, this certification requirement was added in response to a July 1990 report by the Office of the Inspector General (OIG) on internal controls covering the 510(k) review process. In that report, the OIG stated that, "because the generic drug approval scandal has raised concern about industry's behavior under the so-called 'honor system,' we believe that the 510(k) process needs a program to help ensure that what industry reports on paper is in fact accurate." The OIG recommended requiring industry to certify the accuracy of data submitted in 510(k) submission documents in order to enhance the integrity of the 510(k) premarket notification process. (See page 22 of OIG report). The agency believes that such a requirement provides additional assurance that the data submitted are complete and accurate. However, in response to the comment that concerned the inability of any individual to know if information is complete, FDA has modified the language in § 807.87(j) to include the phrase "to the best of his or her knowledge." This certification should be made by an industry representative, preferably the official correspondent of the firm.

3 Several comments complained that FDA improperly expanded the scope of the information required by the SMDA for summaries "of any information

respecting safety and effectiveness" by requiring such summaries to contain "data and information supporting a finding of substantial equivalence, including all adverse safety and effectiveness information." A few comments noted that FDA's decision to treat all information submitted in support of a substantial equivalence determination as "safety and effectiveness" information seems contrary to the notion that "substantial equivalence" determinations are, on their face, determinations of 'equivalence," and not of safety and effectiveness. One comment cited an FDA publication on 510(k) requirements, which stated, "The purpose of data, such as clinical data, for a premarket notification submission is to demonstrate that the device is equivalent in performance to the preamendments device. FDA does not intend that the data determine the device's safety and effectiveness." See "Premarket Notification: 510(k) Regulatory Requirements for Medical Devices," HHS Publication FDA 90–4158, August 1990, p. 2. Another comment stated that information concerning device design, intended use, or technological characteristics is useful information which may support a determination of substantial equivalence, but may not support a determination of safety and effectiveness.

FDA believes that Congress clearly intended the concept of "substantial equivalence" to include some inquiry into the safety and effectiveness of a new device, and that such inquiries into safety and effectiveness are often inseparable from other bases of determining substantial equivalence. The Report by the Committee on Interstate and Foreign Commerce on the Medical Device Amendments of 1976 (House Report) indicates that "substantial equivalence" is to be assessed not only in relation to physical characteristics and intended use, but sometimes also in terms of safety and effectiveness. The committee believed that the term "substantially equivalent" "should be construed narrowly where necessary to assure the safety and effectiveness of a device but not so narrowly where differences between a new device and a marketed device do not relate to safety and effectiveness." (H. Rept. No. 94–853, p. 36.)

The 1976 amendments, therefore, provided FDA with statutory authority to consider the safety and effectiveness of a device when determining whether such a device is substantially equivalent to a predicate device. The legislative history of the 1990 amendments states Congress' express intent to codify FDA's interpretation of the term "substantial equivalence," including the agency's determination that substantial equivalence requires a finding of comparable safety and effectiveness (S. Rept. 513, 101st Cong., 2d sess. 41 (1990)). Accordingly, § 807.3 (21 CFR 807.3), which defines a 510(k) summary to be "a summary * * * of the safety and effectiveness information contained in a premarket notification submission upon which a determination of substantial equivalence can be based" merely codifies the agency's long-standing interpretation, approved by Congress, that safety and effectiveness can be an integral part of a substantial equivalence determination. The agency has concluded, therefore, that the requirement that summaries of safety and effectiveness data include information supporting a finding of substantial equivalence is consistent with legislative intent and agency practice.

4. One comment stated that FDA should revise the language on page 18062 of the interim rule which reads, "FDA's decision regarding the existence of substantial equivalence will be based on all the information contained in the 510(k), not only the information contained in the summary," to read as follows: "FDA's decision regarding the existence of substantial equivalence will be based on all the information contained in a 510(k)." This comment believed that the 510(k) summary is intended to be a synopsis of safety and effectiveness information for requestors, and is not intended for the use of FDA reviewers when arriving at determinations of substantial equivalence. Therefore, this comment suggested that the phrase "510(k) safety and effectiveness summary" be inserted in lieu of the term "510(k) summary" throughout the rule.

FDA agrees in part with this comment. As stated in the interim rule, FDA's decision regarding the existence of substantial equivalence will be based on all the information contained in the 510(k), not only the information contained in the summary. However, the agency does not agree that a change in terminology would significantly increase the clarity of the rule and does not believe that the term "510(k) summary" needs to be replaced with "510(k) safety and effectiveness summary" throughout the rule.

5. One comment stated that the portion of the 510(k) summary required in § 807.92(a)(5) (21 CFR 807.92(a)(5)), "statement of intended use," should include definitions of the differences between the submitter's new device and the legally marketed device, if the indication statements are not the same. This comment further stated that the brief discussion of nonclinical tests required as part of the 510(k) summary under § 807.92(b)(1) should include references. The comment further stated that the requirement should state clearly that conclusions drawn from test results should compare the device with legally marketed devices (§ 807.92(a)(3)).

The agency agrees in part with this comment. FDA believes that the interim rule required sufficient detail about the intended use of the device and its predicate. However, the agency has revised § 807.92(a)(5) on intended use to clarify that substantial equivalence claims can only be made to predicates that are legally marketed. With respect to the comment that conclusions from test results should compare the device with legally marketed devices, § 807.92(b)(3) does require "conclusions drawn from the nonclinical and clinical tests that demonstrate that the device is as safe, as effective, and performs as well as or better than the legally marketed device * * *." Therefore, no revision of this provision is warranted.

6. One comment recommended that 510(k) summaries need include only information required by § 807.92(b)(3), which concerns conclusions drawn from nonclinical and clinical tests that demonstrate comparable safety, effectiveness, and performance of a new device to a legally marketed device, as intended by Congress. Another comment also recommended reducing the amount of information required in a 510(k) summary, noting that information of a descriptive nature is sufficient in most cases to allow a determination of substantial equivalence. This comment argued that requiring 510(k) summaries to include clinical and preclinical data in cases where such data are not necessary, would require needless and costly data preparation and FDA review.

The agency has always required 510(k) submissions to include descriptive data that are necessary to understand the indication, physical composition, method of operation, specifications, or performance claims of the device. Also, the agency has always required any descriptive data about the legally marketed device that are necessary to understand the characteristics of the device to which the new device is being compared. A legally marketed device to which a new device may be compared is a predicate device (device legally marketed prior to May 28, 1976, or a device which has been classified from class III to class II or class I), or a device which has been

found to be substantially equivalent through the 510(k) premarket notification process. In order to clarify the definition of a legally marketed device to which a new device may be compared for a determination regarding substantial equivalence, the agency is amending § 807.92(a)(3) to include this definition of a legally marketed device.

The new requirement for 510(k) summaries does not change or add to the type of information that must be included in a 510(k) submission. However, FDA has modified the language of § 807.92(a)(4) to clarify that descriptive information required for a 510(k) summary is expected to be a condensed and summarized version of information in a 510(k) submission, similar to labeling or promotional descriptions.

To date, the agency has required or used clinical investigation data in less than 10 percent of its premarket notification submissions. The agency generally requires clinical data when the description of a new device indicates an important difference in comparison to marketed devices within its type, i.e., new material or method of operation of the new device. The agency may also require performance data when descriptive characteristics of the new device are not sufficiently precise to ensure that the new device, when manufactured according to its description, will be comparable to the legally marketed device.

The legislative history of the SMDA explicitly supports FDA's practice of requesting additional data in this regard in order to determine substantial equivalence.

The determination of comparable safety and effectiveness is at times easy, where the newer device and its predicate use the same technologies. More difficult judgments occur when the technologies of the devices differ. In this latter situation, FDA will not make a substantial equivalence determination without data, including clinical data, that demonstrates comparable safety and effectiveness (S. Rept. 513, 101st Cong., 2d sess. 28 (1990)).

7. One comment suggested that the agency release the entire 510(k), excluding trade secret and specific patient information, in lieu of requiring safety and effectiveness summaries. In the alternative, this comment suggested making the information required by § 807.92(b) part of the 510(k) cover letter supplied by the 510(k) submitter, and then making the entire cover letter releasable because that letter would ordinarily include the information requested in § 807.92(a).

The agency disagrees. The release of either the entire 510(k), excluding trade secret information and patient identifiers, or release of the 510(k) cover letter, in lieu of the 510(k) submitter's 510(k) summary would be inconsistent with the SMDA. Section 513(i) of the SMDA expressly requires 510(k) submitters to submit summaries of information that are intended for public disclosure respecting safety and effectiveness or to state that such information will be made available upon request by any person (21 U.S.C. 360c(i)(3)). There is no basis in the legislation to require FDA to create summaries or substitutes for summaries. However, if 510(k) submitters choose to have the entire 510(k), excluding patient identifiers and trade secret and confidential commercial information, released in lieu of a 510(k) summary, they may elect to submit a 510(k) statement and then release that information themselves in response to requests from the public.

A. Trade Secret/Confidential Information

8. A few comments stated that FDA is precluded by the Freedom of Information Act (the FOIA), 5 U.S.C. 552, and the act from divulging trade secret information. Many comments believed that virtually all of the technological information required by the interim rule to be made public can qualify as trade secret information, even under the narrow definition of "trade secret" adopted by the D.C. Court of Appeals in *Public Citizen Health Research Group* v. *Food and Drug Administration*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). Specifically, these comments argued that the "signifioant physical and performance characteristics of the device such as device design, materials used, and physical properties," constitute a commercially valuable plan, formula, or process. Similarly, the chemical composition of various reagents and controls, to the extent that nonactive ingredients are involved, would also implicate the types of information that are normally closely guarded as trade secrets by a 510(k) submitter.

The agency does not intend that submitters include trade secret or confidential commercial information in the 510(k) summaries, which Congress expressly intended for public disclosure. In addition, "the using by any person to his own advantage, or revealing, other than to * * * the Department, or to the courts * * * any information acquired under authority of section * * * 510 * * * concerning any method or process which as a trade secret is entitled to protection" is prohibited under the act. (See section 301(j) of the act (21 U.S.C. 331(j))). The requirements set forth in § 807.92(a)(4) and (a)(6) have been modified to reflect the agency's intention that trade secret and confidential commercial information be protected. For example, the agency now states in § 807.92(a)(4) that information concerning a device's description may be information that a firm would disclose in its device labeling or promotional material. The term "statement" in § 807.92(a)(6) has been replaced with "summary" to reflect the agency's expectation that information provided concerning technological characteristics will be provided in summary fashion, in a form that is clear, concise, and adequate, but not so detailed as to disclose trade secret information. As stated in the interim rule, if a premarket notification submission contains only descriptive information to support substantial equivalence, the 510(k) summary for that submission would be required to contain only general information about the device and a summary of the descriptive information that demonstrates the new device is as safe and effective as the device to which the sponsor is requesting substantial equivalence.

If a 510(k) submitter, however, fails to comply with the provisions concerning 510(k) summaries or 510(k) statements, the agency may provide the public with a purged copy of the 510(k) submission prepared by agency staff. Under these circumstances, FDA would not follow predisclosure notification procedures established for responses to FOIA requests for 510(k) records.

9. One comment stated that because the interim rule transcends the provisions of the FOIA, there must be an independent legal basis authorizing disclosure of trade secret information prohibited from release by the Trade Secrets Act (the TSA), 18 U.S.C. 1905. Citing *Chrysler Corp.* v. *Brown*, 441 U.S. 281 (1979), this comment argued that while "properly promulgated, substantive agency regulations have the 'force and effect of law'," an interpretative regulation does not have the force and effect of law necessary to obviate the restrictions in the TSA. Id. at p. 295 and 302. Thus, for agency action to qualify as "authorized by law," under TSA, "* * * it must have certain substantive characteristics and be the product of certain procedural requisites." Id. at p. 301. This comment noted that, in the preamble to the interim rule, FDA concluded that the regulation is not a substantive rule. Therefore, this comment argued, the regulation cannot qualify as a regulation authorized by law under the TSA.

Furthermore, the comment continued, even if the interim rule had been labeled a substantive rule, it would still not have the "force and effect" of law because it was signed by the Acting Deputy Commissioner for Policy who lacks authority to unilaterally issue rules under either the TSA or the FOIA.

The agency disagrees. FDA's statutory authority for requiring disclosure of particular information in a 510(k) summary is section 513 of the act, in which Congress expressly required release to any person of such summaries. Congress also specifically authorized the Secretary of the Department of Health and Human Services (the Secretary) to establish the content of those summaries. The agency, therefore, believes that a regulation promulgated to implement that section may provide proper authorization for disclosure.

However, whether or not the analysis set forth in the comment submitted to the agency is correct, the objections raised by that comment are now irrelevant. As explained above, FDA does not expect 510(k) summaries to include trade secret or confidential commercial information. In addition, the agency is modifying its statement, in the interim rule, that a dispute over the adequacy of information provided by a 510(k) statement submitter should require the release to the requestor of confidential commercial information that is also considered safety and effectiveness information. The agency has concluded that a dispute over the adequacy of information provided in support of a 510(k) statement should not require automatic disclosure by the submitter of information that is properly protected from public release. However, if the agency determines that a submitter is attempting to undermine the 510(k) statement process by providing information to requestors that is untimely or inadequate, such actions will be deemed a prohibited act under section 301(q)(2) and (p) of the act, and the agency will use a variety of means, including its enforcement tools, to end violations. For example, in response to valid complaints from requestors, FDA may choose to make purged copies of the 510(k) publicly available. (See also section III. of this document).

10. One comment stated that FDA's apparent abandonment of any effort toward confidentiality raises serious concerns about proprietary interests, intellectual property protection, liability issues, and market timing. Indeed, another comment argued that the disclosure of trade secret or confidential information results in a taking without just compensation.

As noted in paragraphs 8 and 9 of this document, FDA recognizes its obligation to protect information that is exempt or prohibited from public disclosure, and the agency does not expect 510(k) summaries to include such information.

11. A few comments stated that the interim rule will compel small manufacturers to seek costly patent protection and discourage innovation. One comment noted that many small entrepreneurs believe that the expense of seeking patent protection is not warranted if the characteristics of an otherwise patentable invention cannot be easily ascertained through reverse engineering. However, this comment continued, the effect of the interim rule would compel these small, start-up companies to seek expensive and unnecessary patent protection to protect trade secrets.

This final rule clarifies FDA's position that trade secret and confidential commercial information need not be included in a 510(k) statement or 510(k) summary. The agency takes this opportunity, however, to remind manufacturers and submitters of 510(k)'s that details about manufacture, composition, specification, performance, and testing that are included in labeling or promotional materials cannot be considered confidential under any circumstances.

B. 510(k) Summaries and Predisclosure Notification

12. One comment disputed the notion that information contained in a 510(k) submission is exempt from predisclosure requirements set forth in Executive Order 12600. This comment believed that this exemption should apply only to the information contained in a 510(k) summary, rather than to the information contained in the actual 510(k) submission. This comment maintained that a submitter should be afforded the opportunity to submit a 510(k) summary prior to disclosure of the information contained in a 510(k) submission.

FDA agrees. The premarket notification submission ordinarily is subject to predisclosure notification under Executive Order 12600. However, 510(k) summaries are prepared by submitters who know that these summaries are intended for public disclosure. In light of the statute and the agency's implementing regulation, submitters can have no reasonable expectation that such documents will be withheld. Accordingly, it would be unnecessary and inappropriate to subject 510(k) summaries to predisclosure notification. It is the 510(k) submitter's obligation to prepare either a 510(k) summary of any information respecting safety and effectiveness or provide a 510(k) statement that the 510(k) submitter will make such information available upon request.

With respect to the decision about whether to submit a 510(k) summary or 510(k) statement, FDA is correcting the statement in the preamble to the interim rule that this decision by the 510(k) submitter may not be changed once the 510(k) submission has been received by FDA. Instead, FDA now clarifies that a 510(k) submitter who elects to submit a 510(k) summary when the premarket notification submission is filed, may, before a substantial equivalence determination is reached, submit either a revised 510(k) summary or a 510(k) statement in lieu of the 510(k) summary. Likewise, a 510(k) submitter who elects to submit a 510(k) statement when the premarket notification submission is filed, may, before the substantial equivalence determination is reached, submit a 510(k) summary in lieu of the 510(k) statement.

C. 510(k) Statements

13. Several comments said that § 807.93 (21 CFR 807.93) places a manufacturer who submits a 510(k) statement at risk to provide all information, including trade secret or confidential commercial information that relates to safety and effectiveness. Indeed, FDA specifically concluded that manufacturers could not withhold such information (see 57 FR 18062 at 18064).

The interim rule specifically requested comments on this issue and, as noted above, the agency has changed its earlier interpretation.

14. A few comments noted that there is no rational basis for FDA to treat 510(k) statements differently than 510(k) summaries for confidentiality purposes. These comments asserted that Congress provided two distinct options for 510(k) submitters in the SMDA, the 510(k) summary or the 510(k) statement. However, if FDA continues with its current interpretation, the 510(k) statement undoubtedly would fall into disuse because 510(k) submitters would choose not to release their trade secret or confidential commercial information. Another comment stated that FDA should clearly state that the selection of a 510(k) statement by the submitting firm should be equally acceptable to the agency and should not adversely affect the review process of the 510(k).

FDA agrees with these comments. The SMDA was not intended to deter the submission of a 510(k) statement. Indeed, it provided 510(k) submitters with two alternatives. The disparate

treatment of the 510(k) statement and 510(k) summary for confidentiality purposes in the interim rule was incorrect. However, while FDA can implement disclosure of 510(k) summaries that have been filed with the agency, FDA does not have similar control over disclosure of information promised by 510(k) statements. As stated above, noncompliance with the commitment made in a 510(k) statement will be deemed prohibited acts under section 301 (q)(2) and (p) of the act and FDA will use its enforcement powers to obtain compliance.

15. One comment stated that the certification language in § 807.93 contradicts FDA's prior advice concerning 510(k) statements. The comment noted FDA's previous statement that 510(k) statements should be submitted instead of 510(k) summaries until FDA determined the content of 510(k) summaries, and FDA's previous statement that trade secret and confidential commercial information contained in a 510(k) that was the subject of a 510(k) statement need not be disclosed to the public. Another comment stated that fairness required the agency to clarify that the 510(k) submitters who relied on existing laws and regulations, and on previous FDA advice concerning confidentiality prior to the effective date of any interim rule changing such protections, are entitled to withhold trade secret and confidential commercial information.

FDA believes the concerns raised by this comment have been addressed above. As noted in response to previous comments, the agency does not intend to require 510(k) submitters to make public disclosures of true trade secret or confidential commercial information.

16. Several comments proposed changes to the wording for certification of 510(k) statements under § 807.93. One comment suggested: "I certify * * * will make available all information included in this premarket notification on safety and effectiveness, except trade secret and/or confidential information, that supports a finding of substantial equivalence * * *."

Other comments suggested revising § 807.93 to read as follows:

> I certify that (contact person for the premarket notification) will make available all information included in this premarket notification on safety and effectiveness as identified in § 807.92 of this rule that supports a finding of substantial equivalence within thirty (30) days of request by any person. The information I agree to make available does not include confidential patient identifiers.

FDA has incorporated elements of all these comments into the final rule. The agency has modified the certification requirement so that it is consistent with FDA's regulations prohibiting the disclosure of trade secret and confidential commercial information. The statement also has been changed to clarify that the commitment to release information only becomes effective after a device has been determined to be substantially equivalent. The agency has also amended the certification language in § 807.93 to reflect FDA's expectation that the official correspondent in the firm will prepare the certification on behalf of the firm.

The certification now states:

> I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information as defined in 21 CFR 20.61.

17. The agency received comments that indicated uncertainty about the scope of the obligation of a 510(k) statement submitter to respond to requests for safety and effectiveness information that are made after the ownership of the 510(k) has changed, the device is no longer marketed, or the firm is no longer in business.

The legislative history of the SMDA is silent on this issue. The agency has concluded that the firm submitting the 510(k) statement has a continuing obligation to comply with the 510(k) statement commitment, unless the firm relieves itself of this obligation by requiring the new 510(k) holder to submit a 510(k) statement in accordance with § 807.93 to the agency in the situation where there has been a transfer of ownership of a 510(k). In those cases, the original 510(k) holder should inform any requesters of the transfer of obligation that accompanied the transfer of ownership. If a firm ceases to market the device, but continues to do business, it must continue to comply with requests for information. However, if the firm goes out of business and there has been no transfer of ownership, the agency will, upon sufficient written notification, relieve the firm of its obligation to honor requests for safety and effectiveness information from the premarket notification submission. Under these circumstances, FDA will release the entire premarket notification submission excluding patient identifiers and any information that remains trade secret or confidential commercial information.

18. Another comment suggested that the regulation identify the kinds of documents that the public may have access to when requesting safety and effectiveness information from a 510(k) statement submitter. This comment noted that this could be accomplished by codifying the statement in the preamble, "FDA believes that the information a submitter is required to furnish should be taken only from the information contained in the premarket notification submission."

FDA believes that the concern raised by this comment has been addressed by the change in the language of § 807.93. That regulation clearly restricts the obligation of a 510(k) submitter to provide only information that is contained in the premarket notification. The regulation requires 510(k) holders who submit statements to provide requestors with a duplicate of their premarket notification submission, including any adverse information, but excluding patient identifiers and trade secret or confidential information. (See 21 CFR 807.93(c)). FDA believes that the establishment of this procedure for 510(k) statement submitters is in furtherance of the act. The regulation ensures that disclosures will be uniform to all requesters, that preparation of the information for disclosure need be done only one time by the submitter, and that confidential commercial and trade secret information remains protected. FDA notes that 510(k) submissions for any device found to be substantially equivalent have been available to the public under the FOIA since 1976.

19. One comment stated that FDA should permit a 510(k) statement to appear without any certification language, using a format such as the following: "Information in this 510(k) respecting safety and effectiveness will be made available upon request by any person." Another comment noted that section 513(i) of the statute does not require this statement to be made in the form of a "certification."

Although the statute does not expressly require "certification," FDA does not agree that certification language should be eliminated from the 510(k) statement. The agency believes that certification provides additional assurance that submitters will comply with their statutory obligations.

D. Timeframes

20. A couple of comments argued that there is no basis for the agency's choice

of a 30-day time limit for 510(k) statement submitters to respond to requests for safety and effectiveness information. One comment requested that FDA revise this timeframe to 90 days. Other comments noted that there is no indication that the agency has considered the burden that such a timeframe imposes upon a submitter, or whether the burden could be offset by charging requesters for the review time, assembly time, duplication, and mailing of the information.

FDA believes that the equal choice provided by the statute for 510(k) submitters to submit either 510(k) summaries or 510(k) statements indicates the intent of Congress that information should be available to requesters at the same time after a finding of substantial equivalence, without regard to the 510(k) submitter's choice of 510(k) summary or 510(k) statement.

The agency has determined that imposing a 30-day timeframe on 510(k) statement submitters is not unduly burdensome. The agency expects that 510(k) submitters who elect to file 510(k) statements will begin purging the 510(k) submission at the time they file their premarket notification submission.

The agency recognizes that some firms that currently have a 510(k) under review may not have purged copies of their 510(k) submissions ready for disclosure. Section 519(a)(i) of the act states that FDA shall not impose requirements unduly burdensome to a device manufacturer, taking into account the cost of complying with such requirements and the need for protection of the public health and the implementation of the act. The agency is establishing an effective date of 90 days for this final rule. The agency believes that this will give 510(k) statement submitters whose 510(k)'s are under review, sufficient time to prepare this information. After the 90 days have elapsed, the agency will expect companies to comply with requests for information within 30 days of receiving such requests.

The agency believes that 510(k) submitters may not charge requestors for compiling and disseminating the data because such charges would be inconsistent with congressional intent. Charges to requestors could discourage disclosure of information Congress has determined should be made available to the public. In addition, it would be difficult for the agency to determine or monitor reasonable fees for disclosure by 510(k) submitters. If a 510(k) submitter decides that the preparation and dissemination of this information is too costly, the firm may elect to submit a 510(k) summary in lieu of a 510(k) statement. A 510(k) summary can be submitted to the agency in lieu of a 510(k) statement at any time before the substantial equivalence determination is made. In that case, costs associated with release of information to requestors will be standardized and implemented by FDA.

21. Another comment suggested that the timeframe for providing requestors with safety and effectiveness data in support of a substantial equivalence determination should be 30 business days, rather than 30 calendar days, and that all requests should be addressed in writing to the official correspondent of the company. This comment also suggested that the agency include language in the regulation that would prohibit disclosure of this information to a company's competitors without a substantiating justification. The comment also stated that the rationale for the request should be known to the company, and that all costs associated with the request should be borne by the requestor.

The agency has determined that 30 calendar days, rather than 30 business days, is an appropriate timeframe because it is FDA's expectation that such information will be prepared at or near the time of the premarket notification submission. (See FDA's response to comment 26 of this document). FDA also disagrees with the suggestion that the agency's regulation should limit access to the data. There is no provision in the statute that requires requestors to provide a rationale for making their request for safety and effectiveness information, or precludes them from sharing this information with any other person, including competitors. Indeed, under FDA's current regulations, the contents of a 510(k) submission are available for public disclosure after FDA makes a determination of substantial equivalence, so long as patient identifiers, trade secret, and confidential commercial information are deleted. Such disclosures under the FOIA are made without regard to the purpose or identity of the requestor.

The new regulation, therefore, is entirely consistent with current agency disclosure practices and should be familiar to many companies who have previously prepared 510(k) submissions for public disclosure. The agency believes that these final regulations and FDA's other public information regulations protect trade secret and confidential commercial information from public disclosure by providing 510(k) submitters the opportunity to delete proprietary information from their records. Accordingly, competitors will not gain an unfair competitive advantage when 510(k) statement submitters release the information they have pledged to disclose.

FDA does agree that all requests for information should be made to the official correspondent of the company or the person whose name appears on the list of premarket notification submissions found substantially equivalent. This list is available from the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. The agency believes that directing the request to one person within the firm will expedite the dissemination of this information. The agency has modified § 807.93(b) accordingly. The issue of payment by requestors of information to 510(k) submitters who have made 510(k) statements has been addressed previously in paragraph 21 of this document.

E. Class III Summaries and Certifications

22. Many comments argued that the statute only requires a "class III summary" to include information about the predicate device referenced in the 510(k), and not about the generic type of device. Another comment noted that a search for and summary of adverse safety and effectiveness data concerning a generic device type will yield substantial information that is not relevant to the 510(k) device or to its predicate device(s), because design and functional variations can make comparisons within an entire device type meaningless. These comments believed that FDA should limit the search and summary requirements to the device that is the subject of the 510(k) and its predicate device(s), as Congress intended.

FDA disagrees with this interpretation of the statute. Section 513(f)(3)(C) states that "the manufacturer shall certify * * * that the manufacturer has conducted a reasonable search of all information known or otherwise available to the manufacturer respecting such other device and has included * * * a summary of and a citation to all adverse safety and effectiveness data respecting such other device * * *." FDA's requirement to include information concerning the "type of device" is consistent with the language in the statute which requires that "all" adverse safety and effectiveness data be submitted. Furthermore, determinations regarding substantial equivalence frequently require FDA to compare the safety and effectiveness information for

a new 510(k) submission with the safety and effectiveness information concerning another device that has been found substantially equivalent through the 510(k) premarket notification process. (See 21 U.S.C. 360(i)(1)(A)). If the agency limited the scope of the class III summary only to information concerning the predicate chosen by the submitter, firms might fail to become aware of relevant safety and effectiveness problems associated with the type of the device they wish to market, including devices that have been found substantially equivalent. In addition, the agency might not obtain other information relevant to determining substantial equivalence.

23. Many comments stated that § 807.94 (21 CFR 807.94) requires the manufacturer to certify not only that he has conducted a reasonable search for adverse safety and effectiveness information, but also that he has absolutely included all such information in the summary. These comments pointed out that a manufacturer could never know with certainty that the information is complete or accurate, and therefore would become subject to new and personal criminal liability based on factors beyond his knowledge or control.

In response to these concerns, the agency has modified § 807.94 to clarify that the class III certification is being made by the individual on behalf of the firm who submitted the 510(k) and that the class III summary is complete and accurate "to the best of (the certifier's) knowledge."

F. 21 CFR 807.95—Confidentiality of Information

24. Many comments stated that FDA should revise the confidentiality section of the regulation to allow manufacturers to preserve the confidentiality of their 510(k) submission until the company is ready to begin marketing the device. These comments contended that this could be accomplished by granting manufacturers a provisional determination of substantial equivalence, leaving the final determination until the manufacturer is ready to market the device. One comment noted that, previously, a submitter provided certification and was able to maintain the confidentiality of its intention to market a device until such time as the device was actually ready to be commercialized. This comment further stated that the public disclosure of information about new devices as mandated by Congress is of potential importance only when a device is in a position to be marketed—a date which may be later than the 30 days after a determination of substantial equivalence has been made.

Another comment noted that it is unlikely that a device manufacturer would make an early submission for a premarket notification if it knows that competitors might gain access to confidential product and marketing information. As a result, the premarket notification process would be lengthened because submitters would wait to make such submissions in order to prevent others from gaining a competitive edge. This comment asserted that even though the SMDA requires FDA to make certain information available about a 510(k) notification within 30 days of a substantial equivalence determination, this does not mean that confidentiality under § 807.95(c) cannot be maintained.

FDA acknowledges that, in the past, manufacturers could request that a 510(k) clearance remain confidential until the device was actually marketed. However, the agency can no longer provide such extended confidentiality because of the statutory requirement that 510(k) summaries be available to the public within 30 days of the issuance of a determination that such device is substantially equivalent to another device. Even if the alternative suggested were more practical, the agency believes it lacks authority to extend this timeframe to the date a 510(k) submitter expects to begin marketing.

G. Procedures

25. One comment suggested that FDA consider formalizing administrative procedures by which companies submit premarket notifications, by which FDA reviews original premarket notifications and subsequent amendments thereto, and by which substantial equivalence orders are issued. Another comment contended that the issuance of formal administrative procedures would significantly "balance the playing field" for FDA management, for FDA reviewers, and for industry.

Administrative procedures are in place for submission, management, and review of premarket notifications. (See part 807 (21 CFR part 807) subpart E). FDA agrees that educational efforts concerning these procedures should be continued. The agency has issued numerous regulatory, guidance, and policy documents concerning premarket notifications and will continue to issue similar documents. These documents are available through the Center for Devices and Radiological Health's Division of Small Manufacturers Assistance. In addition, it is the agency's expectation that this final rule will further clarify the requirements for premarket notification 510(k) summaries and 510(k) statements.

26. One comment requested FDA to provide an amendment process for 510(k) summaries that would permit the submitter of a 510(k) summary to amend it at any point in the review of the 510(k) prior to FDA's determination of substantial equivalence.

FDA will accept amendments to 510(k) summaries until such time as FDA makes a determination of substantial equivalence and has amended § 807 92(a) to state this policy Additionally, firms that elect to submit 510(k) statements at the time they file the premarket notification may change their minds and submit a 510(k) summary before the substantial equivalence determination is made. (See also response to paragraph 13 of this document).

H. Miscellaneous

27 One comment from a manufacturer noted that, in the preamble to the interim rule, a change in material would be considered a significant difference for purposes of determining substantial equivalence (see 57 FR 18062 at 18063). The comment stated that not all changes in materials are "significant." The comment further stated that the interim rule provided no guidance or formal procedures that would be applied to demonstrate equivalence or determine what constitutes a significant change The comment contended that existing § 807.87(g) appropriately addresses the issue of significant change.

FDA agrees that there are existing regulations that address the definition of "significant change." The agency believes that the criteria for a "significant change" are set forth in § 807.81(a)(3) (21 CFR 807.81(a)(3)). In addition, examples of what constitutes a significant change, as well as a detailed discussion of FDA's decisionmaking process for 510(k) applications, is contained in "FDA's Guidance on the Premarket Notification Review Program" and FDA's recent draft guidance, "Deciding when to submit a 510(k) for a change to an existing device." These publications are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800-638-2041 or 301-443-6597

The regulation that is the subject of this rulemaking is not intended to supplant current regulations and guidelines concerning significant

change. The new regulation builds on existing regulations and guidance in order to implement the section of the SMDA that directs the Secretary to establish the requirements for 510(k) summaries under section 513(i)(3)(B) of the act.

I. Effective Date

28. One comment stated that 60 days after date of publication is a reasonable effective date for the interim rule. Other comments argued that more time would be needed, particularly for companies who utilize the 510(k) statement and need to be in a position to comply with the 30-day timeframe for responding to requestors.

The agency is establishing a 90-day effective date after date of publication for all provisions in this rule, for the reasons discussed in paragraph 20 of this document.

III. Enforcement

FDA emphasizes that it is the 510(k) submitter's responsibility to prepare adequate 510(k) summaries, or to respond appropriately to requests for information from the public when the submitter has chosen to submit a 510(k) statement. If FDA determines that a submitter of a 510(k) summary or 510(k) statement has failed to comply properly with these regulations, FDA may provide the public with a purged copy of the 510(k) submission prepared by agency staff. Under these circumstances, FDA would not follow predisclosure notification procedures established for responses to FOIA requests for 510(k) submissions. Failure to comply with the requirements established by section 513(i) of the SMDA is a prohibited act under section 301(q)(2) and (p) of the act, and the agency will use its enforcement powers to deter noncompliance. Violations under section 301 of the act may be subject to seizure or injunction pursuant to sections 302(a) and 304(a) of the act (21 U.S.C. 332(a) and 334(a) respectively). In addition, a 510(k) submitter responsible for violating section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act (21 U.S.C. 333(a)).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the interim rule and the substance of that analysis has not changed. Executive Order 12291 has been superseded by Executive Order 12866.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The provisions of the final rule, including the codification of the content requirements for 510(k) summaries, 510(k) statements, class III summaries, and class III certifications should assist submitters in organizing their submissions by giving submitters a framework for organizing the discussion of substantial equivalence. The regulation may be used as a checklist by submitters whenever they submit a 510(k) summary, a 510(k) statement, a class III summary, or a class III certification. This should result in better submissions and more efficient review. The costs of the rule will be spread among several thousand marketers in any year. For these reasons, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1980

Sections 807.87(h) and 807.87(i) of this final rule contain reporting requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0281 and are in conformance with the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35). The annual burden for reporting is as follows:

ANNUAL BURDEN FOR REPORTING

CFR section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Summaries 807.87(h)	1,645	1	1,645	23	37,835
Statements 807.87(h)	3,055	1	3,055	.65	1,986
Citations 807.87(i)	500	1	500	42	21,000
Total					60,821

List of Subjects in 21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the interim rule amending 21 CFR part 807, which published in the **Federal Register** of April 28, 1992 (57 FR 18062), and stayed at 57 FR 23059, is adopted effective March 14, 1995 as a final rule with the following changes:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

1. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

2. Section 807.3 is amended by revising the first sentence of paragraph (n) and paragraphs (o) and (q) to read as follows:

§ 807.3 Definitions.

* * * * *

(n) *510(k) summary* (summary of any information respecting safety and effectiveness) means a summary, submitted under section 513(i) of the act, of the safety and effectiveness information contained in a premarket notification submission upon which a determination of substantial equivalence can be based * * *.

(o) *510(k) statement* means a statement, made under section 513(i) of the act, asserting that all information in a premarket notification submission regarding safety and effectiveness will be made available within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information to be made available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret or confidential commercial information, as defined in § 20.61 of this chapter.

* * * * *

(q) *Class III summary* means a summary of the types of safety and effectiveness problems associated with the type of device being compared and a citation to the information upon which the summary is based. The summary must be comprehensive and describe the problems to which the type of device is susceptible and the causes of such problems.

3. Section 807.87 is amended by revising the first sentence of paragraph (i)(2) and paragraph (j), and by adding a parenthetical statement at the end of the section to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(i) * * *

(2) For which no final regulation requiring premarket approval has been issued under section 515(b) of the act, a summary of the types of safety and effectiveness problems associated with the type of devices being compared and a citation to the information upon which the summary is based (class III summary). * * *

(j) A statement that the submitter believes, to the best of his or her knowledge, that all data and information submitted in the premarket notification are truthful and accurate and that no material fact has been omitted.

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0281)

4. Section 807.92 is amended by revising the introductory text of paragraph (a), paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (b), and by adding new paragraph (d) to read as follows:

§ 807.92 Content and format of a 510(k) summary.

(a) A 510(k) summary shall be in sufficient detail to provide an understanding of the basis for a determination of substantial equivalence. FDA will accept summaries as well as amendments thereto until such time as FDA issues a determination of substantial equivalence. All 510(k) summaries shall contain the following information:

* * * * *

(3) An identification of the legally marketed device to which the submitter claims equivalence. A legally marketed device to which a new device may be compared for a determination regarding substantial equivalence is a device that was legally marketed prior to May 28, 1976, or a device which has been reclassified from class III to class II or I (the predicate), or a device which has been found to be substantially equivalent through the 510(k) premarket notification process;

(4) A description of the device that is the subject of the premarket notification submission, such as might be found in the labeling or promotional material for the device, including an explanation of how the device functions, the scientific concepts that form the basis for the device, and the significant physical and performance characteristics of the device, such as device design, material used, and physical properties;

(5) A statement of the intended use of the device that is the subject of the premarket notification submission, including a general description of the diseases or conditions that the device will diagnose, treat, prevent, cure, or mitigate, including a description, where appropriate, of the patient population for which the device is intended. If the indication statements are different from those of the legally marketed device identified in paragraph (a)(3) of this section, the 510(k) summary shall contain an explanation as to why the differences are not critical to the intended therapeutic, diagnostic, prosthetic, or surgical use of the device and why the differences do not affect the safety and effectiveness of the device when used as labeled; and

(6) If the device has the same technological characteristics (i.e., design, material, chemical composition energy source) as the predicate device identified in paragraph (a)(3) of this section, a summary of the technological characteristics of the new device in comparison to those of the predicate device. If the device has different technological characteristics from the predicate device, a summary of how the technological characteristics of the device compare to a legally marketed device identified in paragraph (a)(3) of this section.

(b) 510(k) summaries for those premarket submissions in which a determination of substantial equivalence is also based on an assessment of performance data shall contain the following information

(1) A brief discussion of the nonclinical tests submitted, referenced or relied on in the premarket notification submission for a determination of substantial equivalence;

(2) A brief discussion of the clinical tests submitted, referenced, or relied on in the premarket notification submission for a determination of substantial equivalence. This discussion shall include, where applicable, a description of the subjects upon whom the device was tested, a discussion of the safety or effectiveness data obtained from the testing, with specific reference to adverse effects and complications, and any other information from the clinical testing relevant to a determination of substantial equivalence; and

(3) The conclusions drawn from the nonclinical and clinical tests that demonstrate that the device is as safe as effective, and performs as well as or better than the legally marketed device identified in paragraph (a)(3) of this section.

* * * * *

(d) Any other information reasonably deemed necessary by the agency

5. Section 807.93 is revised to read as follows:

§ 807.93 Content and format of a 510(k) statement.

(a)(1) A 510(k) statement submitted as part of a premarket notification shall state as follows:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification

preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information, as defined in 21 CFR 20.61.

(2) The statement in paragraph (a)(1) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "510(k) statement."

(b) All requests for information included in paragraph (a) of this section shall be made in writing to the certifier, whose name will be published by FDA on the list of premarket notification submissions for which substantial equivalence determinations have been made.

(c) The information provided to requestors will be a duplicate of the premarket notification submission, including any adverse information, but excluding all patient identifiers, and trade secret and confidential commercial information as defined in § 20.61 of this chapter.

6. Section 807.94 is revised to read as follows:

§ 807.94 Format of a class III certification.

(a) A class III certification submitted as part of a premarket notification shall state as follows:

I certify, in my capacity as (position held in company), of (company name), that I have conducted a reasonable search of all information known or otherwise available about the types and causes of safety or effectiveness problems that have been reported for the (type of device). I further certify that I am aware of the types of problems to which the (type of device) is susceptible and that, to the best of my knowledge, the following summary of the types and causes of safety or effectiveness problems about the (type of device) is complete and accurate.

(b) The statement in paragraph (a) of this section should be signed by the certifier, clearly identified as "class III certification," and included at the beginning of the section of the premarket notification submission that sets forth the class III summary.

7. Section 807.95 is amended by revising paragraph (d) to read as follows:

§ 807.95 Confidentiality of information.

* * * * *

(d) FDA will make a 510(k) summary of the safety and effectiveness data available to the public within 30 days of the issuance of a determination that the device is substantially equivalent to another device. Accordingly, even when a 510(k) submitter has complied with the conditions set forth in paragraphs (b) and (c) of this section, confidentiality for a premarket notification submission cannot be granted beyond 30 days after FDA issues a determination of equivalency.

* * * * *

Dated: November 30, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–30422 Filed 12–13–94; 8:45 am]

BILLING CODE 4160–01–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 110]

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule with request for comment.

SUMMARY: The Agency hereby publishes interim final rules governing its oversight and administration of au pair programs. Au pair programs permit foreign nationals to enter the United States for a period of one year for the purpose of residing with an American host family while participating directly in the home life of the family and providing limited child care services. The foreign national also attends a United States accredited post-secondary educational institution. These rules are promulgated pursuant to Public Law 103–415 which authorizes the continued operation, until September 30, 1995, of au pair programs currently designated by the Agency.

DATES: These rules are effective February 15, 1995. With the exceptions of § 514.31(j) (1) and (4), and § 514.31(k) these rules apply to all au pair placements and operations as of February 15, 1995. The provisions set forth at § 514.31(j) (1) and (4) and § 514.31(k) shall apply only to au pair participants placed after February 15, 1995. Written comments regarding this rule will be accepted until January 13, 1995.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: United States Information Agency, Office of the General Counsel, Rulemaking 110, 301, 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street SW., Washington, DC 20547; Telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: In January and April of 1986, USIA designated, on a temporary basis, two organizations to carry out au pair programs. These programs were to operate as pilot programs and were governed by rather non-specific program guidelines developed contemporaneously with the temporary designation. At the expiration of this two-year "trial" period, an Agency determination was made not to permanently designate these pilot programs. The decision not to grant permanent designation was based upon a determination that the programs were outside the Agency's statutory authority to oversee educational and cultural exchange activities.

As a result of the Agency's decision not to permanently designate, representatives of these programs approached the Congress and secured special legislation that obligated USIA to continue to implement their au pair programs. This legislative directive was set forth in Public Law 100–461 which also directed the General Accounting Office (GAO) to examine the use of the J-visa in all exchange programs and to report their findings. In light of this legislation and Congressional views, the Agency designated six additional organizations, or "sponsors," to also conduct au pair programs.

The GAO report, issued in February 1990 and entitled, "Inappropriate Uses of the J–Visa," determined that au pair programs, as configured, were not consistent with the Agency's underlying organic authorities as set forth in the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act). In response to this report, the Agency again advised the now eight au pair sponsors, that their au pair programs did not fall within the statutory parameters of the Fulbright-Hays Act. In light of the GAO Report findings, the Agency also sought legislation to transfer the au pair programs to another U.S. Government agency. Agency efforts to transfer au pair programs to another agency were not entirely successful. Pursuant to Public Law 101–454, the Congress directed that USIA continue to implement the eight designated au pair programs, under the same terms and conditions, until the programs, could be

transferred to a more appropriate federal agency. As a result of this legislation, the Agency continued to find itself responsible for the implementation of the au pair programs but without statutory or regulatory authority to oversee them adequately.

No further Congressional action regarding au pair programs was undertaken until October 7, 1994, when Congress passed the Technical Amendments to the State Basic Authorities Act (Public Law 103–415). This legislation authorized the Agency, for the first time, to promulgate regulations specifically governing the au pair programs. The legislation also stipulated that USIA would be required to administer the programs only until September 30, 1995. While speaking on the House floor before passage of this bill, Chairman of the House Foreign Affairs Committee, Lee Hamilton, explained:

> * * * the bill waives Section 555 of Public Law 101–461 and other provisions of law to allow the Director of the U.S. Information Agency to administer au pair programs through fiscal year 1995. The bill requires these programs to be administered in a manner consistent with the Mutual Educational and Exchange Act and requires USIA to promulgate regulations for the conduct of au pair programs.
>
> There are serious questions to be raised about how, whether, and by which Federal agency this program should be conducted. The one-year authority contained in this legislation is designed to ensure that USIA issue appropriate regulations for the screening of organizations and individuals participating in the program. The Committee intends to examine carefully this program, and the permanent authority under which it should operate, during consideration of the regular fiscal year 1996 authorization for USIA.

Congressional Record, September 19, 1994, H 9172.

With this clear directive, the Agency has undertaken the task of crafting regulations to govern the au pair programs that are both consistent with the provisions of the Fulbright-Hays Act and which also provide safeguards for au pair participants and the American host families with whom they are placed. Given the wide popularity of these programs—and the criticisms of the programs—the Agency concluded that the views of the au pair organizations, interested members of the public and the views of those congressional offices possessing jurisdiction of educational and cultural exchange programs must be considered. As a result, these regulations have not been drafted in a vacuum but rather incorporate the views of as many interested persons as practicable. Accordingly, given this wide participation and the statutory deadline imposed by the Congress, the Agency is of the opinion that interim final regulations are appropriate.

Selection and Screening

The first area to which the Agency turned its attention was that of screening and placement. Given eight years of program operation, the Agency was familiar with the manner in which au pair participants are recruited and screened and is of the opinion that enhancements to these procedures are needed. Regulations set forth at § 514.31 (d) require that au pair participants be between the ages of 18 and 26, be secondary school graduates, and be proficient with the English language. Au pair participants are required to be interviewed in person for the purpose of ascertaining their English language proficiency. The Agency is also requiring that au pair participants successfully pass a reference and background investigation, including a criminal records check. The Agency anticipates that sponsors will, during this process, screen out all persons having previously participated in an au pair program in the United States.

The Agency recognizes that, in the past, overseas agents working on behalf of the au pair organizations have been responsible for the recruitment and screening of au pair participants. This relationship has proven problematic as evidenced by complaints that au pair participants have been inadequately screened. Henceforth, the Agency will hold au pair organizations strictly accountable for any failure by their designated agent to meet the selection and screening requirements set forth in this regulation.

Au pair sponsors will also be responsible for the screening of potential host families pursuant to regulations set forth at § 514.31(h) Specifically, all family members resident in the home must be personally interviewed and all family members must also be U.S. citizens or legal permanent residents. Au pair organizations must also ensure that all family members resident in the home have successfully passed a background investigation and that the family has adequate financial resources to successfully meet hosting obligations.

Placement, Training and Orientation

Particular attention to the placement of an au pair participant with an American host family has resulted in new and specific requirements which are set forth in § 514.31(e). Because the au pair will provide child care services for the host family, the Agency has concluded that an au pair's responsibility for infant children merits special attention and should be limited. Accordingly, sponsors are prohibited from placing an au pair with a host family having a child less than three months old unless a parent or other responsible adult is present in the home and is responsible for the child. Given the special care needs of infant children sponsors will also be required not to place au pairs with families having children under two years of age unless the au pair is at least twenty-one years old and has at least six months of documented infant child care experience. The Agency does not intend to set a minimum standard regarding documented infant child care experience. However, evidence of employment by nurseries, day care centers, or other similar infant child care providers is deemed appropriate

In order to ensure the best possible adjustment period for the au pair and the host family, the Agency has determined that a placement transition period is appropriate. To this end, sponsors will not be allowed to place an au pair with a host family unless one or both parents have agreed to remain in the home for the first week following the au pair's placement with the family The Agency is advised that many families, if not most, have followed this practice in the past and the Agency believes it to not be overly disruptive given the benefits to be gained. Specifically, this week-long transition will allow the au pair to become familiar with the family home, practices and its members without the distractions inherent in total responsibility for the care of the children. Also, to further minimize possible friction between the host family and the au pair participant, sponsors will be required to secure, prior to placement, a concise, signed, written agreement between the host family and the au pair detailing the hours and days of child care services that the au pair will be required to perform.

As a further programmatic enhancement, the Agency is introducing a requirement, set forth at § 514.31(g), governing child safety and child development instruction Specifically, sponsors will be required to provide au pair participants with sixteen hours of child safety instruction At the suggestion of sponsors, the Agency will allow this safety instruction to be provided in the au pair's home country It is anticipated that a standardized safety course will be developed and adopted by all eight sponsors with the

assistance of a nationally recognized organization expert in health and safety instruction. Sponsors will also provide au pair participants with not less than twenty-four hours of child development instruction. Both the child safety and child development instruction requirements will be completed prior to the au pair's placement with the host family.

The Agency has long required that sponsors conducting educational and cultural exchange programs provide orientation to program participants. Requirements specifically governing au pair activities are set forth at § 514.31 (f) and (i). These requirements are in addition to orientation requirements that apply to all educational and cultural exchange programs as set forth in § 514.10. Au pair sponsors will be required to provide au pair participants with a detailed profile of the family and community in which he or she will be placed as well as the educational institutions available in the community. This information will allow the au pair participant to prepare in advance for the transition into the host family and community and lessen the uncertainty that necessarily arises from travel to a foreign country and living with a previously unknown family.

To further assist in this transition, sponsors shall advise host families of strategies regarding cross-cultural interaction and shall also provide quarterly workshops on such issues. Both the au pair and the host family must be provided with copies of Agency-promulgated regulations governing au pair programs. Finally, au pair sponsors will ensure that local counselors acting on their behalf contact the host family and au pair within forty-eight hours of the au pair's arrival at the host family's home and shall meet with the host family and au pair in person within two weeks of arrival.

Stipend and Hours

The au pair concept evolved in Europe with young women participating in the family life of a host family while serving as a "mother's helper." This European model is based upon the au pair providing thirty hours of service to the host family and the payment of a token weekly stipend or "pocket money." However, in adapting the au pair concept to the United States, au pair sponsors developed a program based upon the au pair providing up to forty-five hours of child care services for the host family and receiving one hundred dollars a week for such services. As a result, substantial controversy surrounds the number of hours that au pair participants provide child care services and the compensation they receive.

The Agency has found the question of hours and compensation to be extremely vexing. Sponsors and host families uniformly plead that the au pair concept is not viable in the United States unless the au pair participant may provide up to the forty-five hours of child care services originally allowed in the pilot programs. Although not entirely convinced that au pair programs would not be viable with reduced hours, the Agency elects to continue, during this Congressionally-mandated period, these programs based upon forty-five hours.

Based upon evidence that this forty-five-hour maximum has been ignored by some host families, the Agency proposes to ensure compliance with this requirement by making sponsors strictly accountable for its enforcement. Accordingly, pursuant to § 514.31(o), the Agency may commence immediate program revocation proceedings against a sponsor who fails to enforce and monitor a host family's compliance with this requirement.

The Agency has set forth at § 514.31(j) specific provisions regarding hours of work. In addition to the forty-five hours a week maximum, au pairs may not provide more than nine hours of child care services on any given day. Au pairs must receive a minimum of one-and-a-half days off per week in addition to one complete weekend off each month. With this approach, au pairs providing forty-five hours of child care services per week will have every weekend off while those providing less than forty-five hours will be covered by the one-and-a-half days per week provision. In addition, au pair participants shall receive two weeks of paid vacation.

The Agency has examined the question of au pair compensation and has sought guidance from regulations governing payment of minimum wage promulgated by the Department of Labor. An au pair living with a host family presents an analogous relationship to that contemplated at 29 CFR 552.100. The Agency defers, to more appropriate authorities, the determination of whether an employer/employee relationship is established between the au pair and the host family. However, au pair participants provide child care services to their host families and may properly expect compensation for such services.

At 29 CFR 552.100 the Department of Labor authorizes a credit in the amount of $36 against the federal hourly minimum wage for food and board provided to employees living on an employer's premises. The Agency adopts the $36 credit approach authorized by the Department of Labor in order to ensure that all au pair participants receive uniform compensation.

The Agency notes that this Department of Labor regulation was last amended in 1979. Accordingly, the Agency believes that the cost of room and board is probably in excess of the allowed $36 credit. However, the Agency is without expertise and authority in matters regarding the calculation of minimum wage and credits for room and board permitted in such instances. Comments regarding the actual cost to host families will be viewed by the Agency as highly instructive and the Agency anticipates that such comments will be used by the Department of Labor as evidence that the credit against minimum wage for room and board received by au pairs should be in excess of $36. Accordingly, the Agency is obligated to require that au pairs receive a weekly stipend of $155 until such time that the Department of Labor indicates that a higher amount may be used as a credit in the formulation of minimum wage.

Educational Component

The Agency is requiring that au pair participants pursue not less than six hours of academic credit during their year of program participation. This requirement is imposed to ensure that au pair programs possess, to some degree, the educational and cultural hallmarks of Exchange Visitor Program activities authorized by the Mutual Educational and Cultural Exchange Act of 1961. The Agency is of the opinion that this requirement will, in fact, provide educational opportunities to participants that may not be available to them in their home country.

This requirement, as set forth at § 514.31(k) shall be met by enrollment in an accredited post-secondary institution. The Agency proposes to interpret "post-secondary institution" broadly and anticipates that participants will enroll at community colleges as well as proprietary schools located in the community in which the au pair participant is placed. In similar fashion, "six semester hours" also includes the academic equivalent at institutions operating on the trimester or quarterly academic calendar.

Host families will be expected to facilitate the au pair's enrollment and attendance at the chosen academic institution. The host family is also required to pay the cost of this educational component or requirement on behalf of the au pair in an amount not to exceed $500. In those instances where the educational stipend is

insufficient to cover the full cost of attendance at the educational institution, the au pair will be responsible for the additional cost.

Monitoring and Reporting Requirements

With an eye towards program efficiency and effectiveness, and cognizant of limited Agency resources, the Agency is imposing four specific monitoring requirements designed to ensure satisfactory compliance with these regulatory provisions. Pursuant to § 514.31(m), au pair sponsors are responsible for ensuring monthly personal contact with each au pair and host family participating in their program. In part, this contact will ensure that the au pair is not working in excess of forty-five hours per week and is enrolled and making satisfactory progress in his or her academic pursuits. This monthly contact will also allow for the resolution of conflicts between the host family and the au pair before the conflicts become insurmountable and necessitate the au pair's possible removal from the home or the host family's possible removal from the program. As an additional safeguard, regional representatives acting on behalf of the au pair sponsors will be required to make quarterly contact with each host family and au pair.

Both the local and regional representatives will be required to report to the au pair sponsor any unusual or serious situations or incidents involving either the au pair or host family. In similar fashion, au pair sponsors will be required to promptly report to the Agency, any incidents involving or alleging a crime of moral turpitude or violence. Moral turpitude is interpreted by the Agency as specifically including, but not limited to, allegations of theft, sexual misconduct, and child abuse. Sponsors will also be required to report to the Agency incidents which could bring the Exchange Visitor Program or the Agency into notoriety or disrepute.

In order to assist the Agency in its oversight of these programs, the Agency is imposing six specific reporting requirements set forth at § 514.31(n). Included, is a requirement that sponsors submit, on an annual basis, a copy of all advertising and promotional materials used in the recruitment of host families or au pair participants. The Agency imposes this requirement in order to monitor effectively representations made regarding program participation.

Au pair sponsors will be expected to conduct an annual survey of all host families and au pair participants and provide a summation of program satisfaction. Also required will be a summation of all complaints lodged with the sponsor regarding participation in the program and the resolution made by the sponsor for such complaints. The Agency anticipates that this information will provide guidance regarding the possible need for additional regulation or program modification.

Comment

The Agency invites comments regarding this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. 553(a)(1)(1989) specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

The Agency will accept comments for 30 days following publication of this interim final rule. A final rule will be adopted upon Agency review of all comments received.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been presented to the Office of Management and Budget for clearance pursuant to the provisions of the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: December 9, 1994

Les Jin,

General Counsel

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p. 168, USIA Delegation Order No. 85–5 (50 FR 27393)

2. Part 514 is amended by adding a new § 514.31 to read as follows:

§ 514.31 Au pairs.

(a) Introduction. These regulations govern Agency-designated exchange visitor programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in the home life of the host family while providing limited child care services and attending a U.S. post-secondary educational institution of higher education.

(b) Program designation. The Agency may, in its sole discretion, designate bona fide programs satisfying the objectives set forth in (a) above. Such designation shall be for a period of two years and may be revoked by the Agency for good cause.

(c) Program eligibility. Sponsors designated by the Agency to conduct au pair exchange programs shall:

(1) Limit the participation of foreign nationals in such programs to not more than one year;

(2) Limit the number of hours an au pair participant is obligated to provide child care services to not more than 45 hours per week,

(3) Require that the au pair participant enrolls in a U.S. institution of higher education for not less than six semester hours of academic credit or its equivalent,

(4) Require that all officers, employees, agents, and volunteers acting on their behalf are adequately trained and supervised,

(5) Require that au pair participant is placed with a host family within one hour's driving time of the home of the local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from the au pair's participation in their exchange program;

(6) Require that each local organizational representative maintain a schedule of personal monthly contact (or more frequently as required) with each au pair and host family for which he or she is responsible;

(7) Require that local organizational representatives not devoting their full time and attention to their program obligations are responsible for no more than fifteen au pairs and host families, and

(8) Require that each local organizational representative is provided adequate support services by a regional organizational representative.

(d) Au pair selection. In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that all participants in a designated au pair exchange program.

(1) Are between the ages of 18 and 26

(2) Are a secondary school graduate, or equivalent,

(3) Are proficient in spoken English;

(4) Are capable of fully participating in the program as evidenced by the satisfactory completion of a physical;

(5) Have been personally interviewed, in English, by an organizational representative; and

(6) Have successfully passed a background investigation that includes verification of school, three, non-family related personal and employment references, a psychological profile and a criminal record check.

(e) Au pair placement. Sponsors shall secure, prior to the au pair's departure from the home country, a host family placement for each participant. Sponsors shall not:

(1) Place an au pair with a family unless the family has specifically agreed that one or both parents will remain in the home during the first week following the au pair's arrival;

(2) Place an au pair with a family having a child aged less than three months unless a parent or other responsible adult is present in the home;

(3) Place an au pair with a host family having children under the age of two, unless the au pair is at least twenty-one years of age and has at least six months of documented infant child care experience.

(4) Place the au pair with a family unless a concise agreement between the au pair and host family regarding the hours and days of child care services has been signed by both; and

(5) Place the au pair with a family who can not provide the au pair with a suitable private bedroom.

(f) Au pair orientation. In addition to the orientation requirements set forth herein at § 514.10, all sponsors shall provide au pairs, prior to their departure from the home country, with the following information.

(1) A copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair's participation in the exchange program;

(2) A detailed profile of the family and community in which the au pair will be placed;

(3) A detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions; and

(4) A detailed summary of travel arrangements.

(g) Au pair training. Sponsors shall provide the au pair participant with child development and child safety instruction, as follows:

(1) Prior to departure from the home country, the au pair participant shall receive not less than sixteen hours of child safety instruction; and

(2) Prior to placement with the American host family, the au pair participant shall receive not less than twenty-four hours of child development instruction.

(h) Host family selection. Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) Require that all family members are U.S. citizens or legal permanent residents;

(2) Require that all family members are fluent in spoken English;

(3) Require that all family members resident in the home have been personally interviewed by an organizational representative;

(4) Require that all family members have successfully passed a background investigation including employment and personal references;

(5) Require that the host family has adequate financial resources to undertake hosting obligations; and

(6) Provide a written detailed summary of the exchange program and the parameters of their and the au pair's duties, participation, and obligations.

(i) Host family orientation. In addition to the requirements set forth at § 514.10, sponsors shall:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program;

(2) Provide all selected host families with a copy of Agency-promulgated Exchange Visitor Program regulations;

(3) Advise all selected host families of strategies governing cross-cultural interaction and conduct quarterly workshops or seminars on child care or cross-cultural issues. Host family attendance at such workshops or seminars is a condition of program participation and failure to attend will be grounds for possible termination of their program participation, and

(4) Require that the organization's local counselor responsible for the au pair placement contacts the host family and au pair within forty-eight hours of the au pair's arrival and meets, in person, with the host family and au pair within two weeks of the au pair's arrival at the host family's home.

(j) Stipend and hours. Sponsors shall require that au pair participants:

(1) Are compensated at a rate of not less than $155.00 per week,

(2) Do not provide more than 9 hours of child care on any given day;

(3) Receive a minimum of one and a half days off per week in addition to one complete weekend off each month; and

(4) Receive two weeks of paid vacation.

(k) Educational component. Sponsors shall require that during the period of program participation, all au pair participants are enrolled in an accredited post-secondary institution for not less than six hours of academic credit (or its equivalent). As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of the au pair and to pay the cost of such academic course work in an amount not to exceed $500.

(l) Performance bond. Sponsors shall collect and hold in a segregated bank account a performance bond in the amount of $500 from each au pair participating in their exchange program. The bond shall be returned to the au pair participant no more than thirty days following his or her return to their home country. In the event that the au pair participant fails to return to their home country upon successful program completion or termination, the performance bond shall be forfeited and the sponsor shall donate the bond to an internationally recognized charitable organization dedicated to the advancement of child welfare.

(m) Monitoring. Sponsors shall fully monitor all au pair exchanges, and at a minimum shall:

(1) Require monthly personal contact by the local counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(2) Require quarterly contact by the regional counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(3) Require that all local and regional counselors are apprised of their obligation to report unusual or serious situations or incidents involving either the au pair or host family; and

(4) Promptly report to the Agency any incidents involving or alleging a crime of moral turpitude or violence.

(n) Reporting requirements. Along with the annual report required by regulations set forth at § 514.17, sponsors shall file with the Agency the following information:

(1) A summation of the results of an annual survey of all host family and au pair participants regarding satisfaction with the program, its strengths and weaknesses;

(2) A summation of all complaints regarding host family or au pair participation in the program, specifying the nature of the complaint, its resolution, and whether any unresolved complaints are outstanding;

(3) A summation of all situations which resulted in the placement of an

au pair participant with more than one host family;

(4) A report by a certified public accountant attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(5) A report detailing the name of the au pair, his or her host family placement, location, and the names of the local and regional organizational representatives; and

(6) A complete set of all promotional materials, brochures, or pamphlets distributed to either host family or au pair participants.

(o) Sanctions. In addition to the sanctions provisions set forth at § 514.50, the Agency may undertake immediate program revocation procedures upon documented evidence that a sponsor has failed to:

(1) Comply with the au pair placement requirements set forth in paragraph (e) above;

(2) Satisfy the selection requirements for each individual au pair as set forth in paragraph (d) above; and

(3) Enforce and monitor host family's compliance with the stipend and hours requirements set forth in paragraph (j) above.

[FR Doc. 94–30743 Filed 12–13–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8573]

RIN 1545–AQ06

Information Returns Required of United States Persons With Respect To Certain Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to information returns required of United States persons with respect to annual accounting periods of certain foreign corporations. These regulations clarify certain requirements of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Carl Cooper, 202–622–3840, not a toll free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1317. Estimates of the reporting burden in these final regulations will be reflected in the burden of Form 5471.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503

Background

On July 7, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 29851) proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 6035, 6038, and 6046 of the Internal Revenue Code of 1986 (Code). These amendments were proposed to clarify the requirements of §§ 1.6035–1, 1.6038–2, and 1.6046–1 of the Income Tax Regulations relating to Form 5471 Written comments responding to the notice were received. No public hearing was requested and, therefore, no public hearing was held. Some commentators suggested that the amendment to § 1.6038–2(h) would impose a greater burden with respect to ongoing compliance and conversion of data gathering routines than present requirements; however, the majority of the responses to this amendment have been favorable. After consideration of these comments, the Service has determined that the overall burden is alleviated. Thus, having considered all comments regarding the proposed amendments, those amendments are adopted (with certain effective date changes) by this Treasury decision

The changes to paragraph (h) (and corresponding changes in § 1.6046–1(g)) are effective for taxable years ending after December 31, 1994, but only for returns filed after December 31, 1995

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business

Drafting Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), IRS However, personnel from other offices of the IRS and Treasury Department participated in their development

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows.

PART 1—INCOME TAXES

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

Authority: 26 U S C 7805 * * *

§ 1.6035 [Amended]

Par. 2. Section 1.6035–1, paragraph (a)(1) is amended by adding a sentence at the end to read as follows.

§ 1.6035–1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) * * *

(1) * * * In the case of a foreign personal holding company which is a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period

* * * * *

§ 1.6038 [Amended]

Par. 3. Section 1 6038–2 is amended as follows

1 Paragraph (d)(5) is added following paragraph (d)(4) and immediately before the concluding text

2. Paragraph (e) is amended by removing the third sentence and adding two new sentences in its place.

3. Paragraph (f)(10)(iii) is amended by removing the word "and" immediately following the semicolon and paragraph (f)(10)(iv) is amended by removing the colon and adding a semicolon in its place.

4. Paragraph (f)(10)(v) is added.

5. Paragraph (g) is amended as follows:

a. The introductory text of paragraph (g) is amended by replacing the colon with a period and adding a second sentence at the end.

b. The concluding text of paragraph (g) is amended by removing the words "form and".

6. Paragraph (h) is revised.

7. The additions and revisions read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(d) * * *

(5) For taxable years ending after December 31, 1987, with respect to a corporation organized under the laws of American Samoa, the term does not include an individual who is a bona fide resident of American Samoa, provided—

(i) 80 percent or more of the gross income of the corporation for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within American Samoa or was effectively connected with the conduct of a trade or business in American Samoa; and

(ii) 50 percent or more of the gross income of such corporation for such period (or part) was derived from the conduct of an active trade or business within American Samoa.

* * * * *

(e) * * * In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period. The term *annual accounting period* may refer to a period of less than one year, where, for example, the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than one year as described in section 902 (c)(5). * * *

(f) * * *

(10) * * *

(v) For Forms 5471 filed for taxable years ending after December 15, 1990, such earnings and profits information as the form shall prescribe, including post-1986 undistributed earnings described in section 902(c)(1), pre-1987 amounts, total earnings and profits, and previously taxed earnings and profits described in section 959(c); and

* * * * *

(g) *Financial statements.* * * * Forms 5471 filed after September 30, 1991, shall contain this information in such form or manner as the form shall prescribe with respect to each foreign corporation:

* * * * *

(h) *Method of reporting.* Except as provided in this paragraph (h), all amounts furnished under paragraphs (f) and (g) of this section shall be expressed in United States dollars with a statement of the exchange rates used. The following rules shall apply for taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995. All amounts furnished under paragraph (g) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (g)(1) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Earnings and profits amounts furnished under paragraphs (f)(10) (i), (iii), (iv), and (v) of this section shall be expressed in the foreign corporation's functional currency except to the extent the form requires specific items to be translated into United States dollars. Tax amounts furnished under paragraph (f)(10)(ii) of this section shall be furnished in the foreign currency in which the taxes are payable and in United States dollars translated in accordance with section 986(a). All amounts furnished under paragraph (f)(11) of this section shall be expressed in U.S. dollars translated from functional currency at the weighted average exchange rate for the year as defined in § 1.989(b)–1 The foreign corporation's functional currency is determined under section 985. All statements submitted on or with the return required under this section shall be rendered in the English language.

* * * * *

§ 1.6046–1 [Amended]

Par. 4. Section 1.6046–1 is amended as follows:

1 Paragraph (b)(10) introductory text is amended by removing the language "A copy of the following statements" and adding "The following information" in its place; and by removing the language "form and".

2. Paragraph (f)(5) is added.

3. Paragraph (g) is amended by adding three sentences at the end.

4. The additions and revisions read as follows:

§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

* * * * *

(f) * * *

(5) *Accounting period and taxable year.* In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(g) * * * For taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995, all amounts furnished under paragraph (c) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (c)(3)(i) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Information described in paragraphs (b)(10) and (c)(3) of this section shall be submitted in such form or manner as the form shall prescribe.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. Section 602.101, paragraph (c) is amended by removing the existing entries for 1.6038–2 and 1.6046–1 from the table and adding the following entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.6038–2	1545–0704 1545–0805 1545–1317
* * * *	*
1.6046–1	1545–0704 1545–0794 1545–1317

Margaret Milner Richardson,
Commissioner of Internal Revenue

Approved. November 10, 1994

Leslie Samuels,
Assistant Secretary of the Treasury

[FR Doc. 94–30586 Filed 12–13–94, 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5116–5]

RIN 2060–AD93

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The final rule provided in this document is a national emission standard(s) for hazardous air pollutants (NESHAP) for bulk gasoline terminals and pipeline breakout stations pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). On February 8, 1994, EPA proposed a NESHAP for the gasoline distribution source category. On August 19, 1994, the EPA also published supplementary data and recommendations on the level of control for gasoline cargo tanks. This document announces the EPA's final decisions on the rule.

This final rule requires sources to achieve emission limits reflecting application of the maximum achievable control technology (MACT) consistent with section 112(d) of the Act. The rule regulates all hazardous air pollutants (HAP's) identified in the Act's list of 189 HAP's that are emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP's or are located at plant sites that are major sources of HAP's.

DATES: *Effective Date.* December 14, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–38, containing information considered by the EPA in developing the promulgated standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document The background information document (BID) for the promulgated standards may be obtained as supplies permit from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "Gasoline Distribution Industry (Stage I)—Background Information for Promulgated Standards" (EPA–453/R–94–002b). The BID contains. (1) a summary of the public comments made on the proposed standards and the EPA's responses to the comments, and (2) a summary of the revisions made to the regulatory analysis presented at proposal. Electronic versions of the BID as well as this preamble and final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning the final rule, contact Mr. Stephen Shedd, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5397. For information regarding the economic impacts of the rule, contact Mr. Scott Mathias, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division, at the above address; telephone (919) 541–5310. For information regarding the test methods and procedures referenced in the rule, contact Mr Roy Huntley, Emission Inventory and Factors Group, Emissions, Monitoring and Analysis Division, at the above address; telephone (919) 541–1060.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows.

I. Applicability
II. Summary of Major Changes Since Proposal
A Applicability
B Level of Control
III Significant Comments and Changes
A Applicability Determination
B Equipment Leak Requirements
C. Storage Vessel Requirements
D Cargo Tank Requirements
E. Continuous Monitoring
IV Summary of the Final Rule
A Sources Covered
B Standards for Sources
C. Effective Date for Compliance
D Compliance Extensions
E. Compliance Testing and Monitoring
F Recordkeeping and Reporting
V Administrative Requirements
A Docket
B Executive Order 12866
C. Paperwork Reduction Act
D Regulatory Flexibility Act
E. Regulatory Review

I. Applicability

The final rule is applicable to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of HAP's or are located at plant sites that are major sources. Major source facilities that are subject to this rule must install and operate the control equipment and implement the work practices required in the rule Section 112(a) of the Act defines major source as a source, or group of sources, located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any individual HAP or 25 tpy or more of any combination of HAP's Area sources are stationary sources that do not qualify as "major " The term "affected source" as used in this rule means the total of all HAP emission points at each bulk gasoline terminal or pipeline breakout station that is subject to the rule

To determine the applicability of this rule to facilities that are within a contiguous area of other HAP-emitting emission sources that are not part of the source category covered by this rule, the owner or operator must determine whether the plant site as a whole is a major source. A formal HAP emissions inventory must be used to determine if total HAP emissions from all HAP emission sources at the plant site meets the definition of a major source. To determine the applicability of this rule

to facilities that are not contiguous with other HAP-emitting emission sources (i.e., to stand-alone bulk gasoline terminals or pipeline breakout station facilities), the owner or operator may use the emissions screening equations in the rule, which are intended to identify clearly nonmajor (area) sources, or conduct a formal HAP emissions inventory

Certain assumptions used by all nonmajor sources in the emission screening equations will become enforceable limitations on the facility's operations under this rule. These enforceable limitations include, type of gasoline used, type and number of storage vessels, limit on gasoline throughput, level of cargo tank vapor-tightness, and number of valves, pumps, connectors, loading arm valves, and open-ended lines in gasoline service. Federally enforceable limitations must be established outside the provisions of this rule, for facilities using the emissions inventory for determination of their major source status, and for some parameters used by facilities in the emission screening equation. The vapor processor outlet emission limit for cargo tank emissions and minimum efficiency for fixed roof storage vessel emissions are the federally enforceable limitations that must be established outside the provisions of this rule to be used in the emission screening equations. Facilities using the emission screening equations in the rule are required to record their assumptions and calculations, notify the Administrator that the facility is using the screening equations and provide the results of the calculations, and operate the facility in a manner not to exceed the operational parameters used in the calculations. Larger facilities (those that, in and of themselves, have HAP emissions over 50 percent of the major source emissions thresholds above and use the emissions screening equations in the rule) are additionally required to submit to the Administrator for approval their assumptions and calculations, maintain records to document the parameters have not been exceeded, and submit an annual certification that the operational parameters established for the facility have not been exceeded.

II. Summary of Major Changes Since Proposal

On February 8, 1994 (59 FR 5868), the EPA proposed NESHAP for all major source bulk gasoline terminals and pipeline breakout stations and provided notice of a public hearing on the proposal. A public hearing was held on March 10, 1994, and the 60-day comment period ended on April 11, 1994. On August 19, 1994 (59 FR 42788), the EPA published an announcement of the availability of supplemental information pertaining to the level of control and test procedures for cargo tank leakage, and established a comment period for this information. Public comments received in response to the proposal and the supplemental notice have been considered in this final rulemaking action.

In response to comments received on the proposed standards, changes have been made in developing the final rule. While several of these are clarifying changes designed to make the Agency's intent clearer, a number of them are significant changes to the proposed control requirements of the standards. Substantive changes made since proposal are described in the following sections. The Agency's responses to public comments that are not addressed in this preamble and the revised analysis for the final rule are contained in the BID for this final rulemaking (see **ADDRESSES** section of this document).

A. Applicability

The constants in the proposed emission estimation screening equations have been modified based on lower emission factors for leakage emissions from tank trucks and equipment components. In addition, the storage vessel constants have been recalculated using the current EPA emission equations (publication AP–42, Section 12) to estimate evaporative emissions from the storage of gasoline. Finally, an adjustment factor has been added to each equation to account for facilities that do not handle any reformulated or oxygenated gasoline containing methyl tert-butyl ether (MTBE).

For the purposes of this rulemaking and under certain conditions, the EPA has determined that a bulk gasoline terminal or pipeline breakout station facility's "potential to emit" (PTE) may be based on certain operating limitations that are made enforceable under this rule. These limitations would be established in the range between actual and maximum design conditions based on emission screening equations provided in the rule. If a facility's operation (e.g., gasoline throughput) exceeds these limitations or if a facility fails to maintain records or report as required in this final rule, it will be considered to be in violation of the rule.

B. Level of Control

The proposed leak detection and repair (LDAR) requirements for controlling equipment leaks have been replaced with a visual inspection program. Instrument leak detection and repair will be an available alternative rather than the basis of the final rule Both new and existing major sources are required to perform a visual leak inspection of their equipment on a monthly basis.

At proposal, the "floor," or minimum level of control for gasoline storage vessels at existing facilities was determined to be the requirements in 40 CFR part 60, subpart Kb, the new source performance standards (NSPS subpart Kb) which apply to new volatile organic liquid storage vessels. Based on the revised analysis, a new floor for storage vessels has been determined. Only the storage vessel floating roof closure device or "rim seal" requirements in the NSPS subpart Kb are now considered to be the floor for existing storage vessels. Gasketed "fittings" (such as hatch covers, vents, drains, etc.), which are also an NSPS subpart Kb requirement, are not now considered to be a part of the floor for this rule. However, in the final rule gasketed fittings are required to be installed on existing external floating roof storage tanks that do not meet the NSPS subpart Kb rim seal requirement, as of today's date.

The floor level of control and the control requirements for leakage from controlled cargo tanks (tank trucks and railcars) at existing and new major source bulk terminals have been changed so that cargo tanks must annually pass a certification test with a 25 mm (1 inch) of water pressure decay limit [in 5 minutes, after pressurization to +460 mm (+18 inches) of water column and then evacuation to −150 mm (−6 inches) of water] instead of the 75 mm (3 inch) of water pressure decay proposed limit. In addition, cargo tank owners and operators are required to annually perform a pressure test of the cargo tank's internal vapor valve and to be able to meet a 63 mm (2.5 inch) pressure change limit at any time. Test procedures to be used in performing these tests are added to the final rule. At proposal, new bulk gasoline terminals were required to install and operate a vacuum assist vapor collection system to minimize cargo tank leakage. The requirement for vacuum assist has been replaced with the same leak testing requirements described above for cargo tanks that load at existing facilities.

III. Significant Comments and Changes

Comments on the proposed standards and the supplemental notice were received from industry, State and local air pollution control agencies, trade associations, an environmental group, and a U.S. Government agency A detailed discussion of comments and

the EPA's responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this document. The major comments, responses, and changes made to the rule since proposal are discussed below.

A. Applicability Determination

1. Screening Equations

Several commenters felt that the EPA did not fully explain or support the development of the proposed emission estimation screening equations. As a result, these two equations were characterized by some commenters as arbitrary. One commenter who had experience preparing emissions inventories for bulk gasoline terminals in Texas pointed out that, for several terminals that do not exceed the 10/25 tons of HAP's per year threshold, the screening equation incorrectly indicates that many of these terminals emit greater than 10/25 tons of HAP's.

The development of the screening equations was discussed in the preamble to the proposed standards. This development was explained in more detail in a memorandum that was included at proposal in the rulemaking docket (item II–B–23), and has been updated and included in the final docket. These equations were not arbitrary, but were developed specifically to identify facilities that have the potential to emit (PTE) less than 10/25 tons per year of HAP and to reduce the amount of effort needed to perform applicability determinations. However, if a facility has other HAP emission sources not considered in the equation, the equation will under-predict emissions and cannot be used to determine if the facility is a major source. Some commenters expressed support for the use of screening equations as an aid in determining rule applicability, but most of them had suggestions for revising the equations to make them more accurate and useful. In response to all of these comments, the equations have been retained in the rule but have been revised to accommodate the concerns of commenters and to make them more accurate in their function as a screening tool. These modifications and the new equations are discussed in detail in the responses to the following comments.

Some commenters suggested that, instead of using "worst-case" HAP-emitting gasolines to derive the constants in the equations, the Agency should use average parameters to promote consistency between the equations and the rule. Also, the EPA should include an adjustment factor for facilities that do not handle gasoline oxygenated with MTBE.

At proposal, the EPA developed the screening equations based on a HAP to VOC ratio that was determined to represent the average MTBE content in reformulated and oxygenated gasolines, and not the "worst-case" ratio. In the gasoline composition analyses that were available to the Agency before proposal, the MTBE content in gasoline ranged from 11.8 to 16.3 percent. Based on these data, the EPA made an assumption that the average MTBE content of reformulated and oxygenated gasolines was 11.9 percent, which is slightly higher than the lowest percentage found in the data. In addition, the EPA assumed that most facilities that handle higher MTBE content oxygenated gasolines would also handle the lower MTBE content reformulated gasolines. This approach is consistent with the Agency's intent to avoid underestimating emissions in this screening process, which could allow a major source to be deemed an area source and thus improperly escape applicability of this rule. Facilities in any case will have the opportunity to perform a full emissions inventory in order to make a more accurate determination of their status.

The EPA agrees that the proposed emission factors overestimate HAP emissions from facilities handling gasoline without MTBE. As a result, an adjustment factor has been included in the screening equations for facilities in this situation. Facilities that handle, or anticipate handling, any oxygenated or reformulated gasoline containing MTBE as a component will not use the adjustment factor in performing the calculations.

Several commenters felt the EPA's assumption that annually certified and tested tank trucks with vapor control lose 10 percent of the displaced vapors through leakage while loading is too high. The EPA has reevaluated the basis for its assumption that tank trucks in an annual test program lose 10 percent of the displaced vapors as leakage emissions. The EPA has calculated a new leakage rate that is much lower than the proposed figure, and this calculation is discussed in Section III.D.1 of this notice.

Commenters stated that fixed-roof storage vessels connected to a vapor control device emit virtually no HAP's and that a term should be added to represent and quantify the low emission levels from such controlled tanks. The EPA agrees with the commenters and has added a new expression, (1–CE), to both screening equations The term "CE" represents the control efficiency of the control device used to process vapors from the fixed-roof tank. The value of CE must be documented by the facility as meeting the definition of federally enforceable in subpart A of 40 CFR part 63 (General Provisions). If the facility is not controlling emissions from its fixed-roof tanks using a vapor control device, a value of zero will be entered for the term "CE."

Several commenters felt that the emission factors used for pump seals and valves were too high, based on recent data collected at marketing facilities. The EPA has evaluated the new data and agrees with this comment. The emission factors for pump seals and valves have been revised as discussed under Section III.B.1 of this notice.

Commenters felt that the equations should provide emission credits for facilities that have implemented an instrument LDAR program or vacuum assist vapor collection. Data provided by industry show that the use of visual inspection programs is just as effective as the use of instrument LDAR in identifying equipment leaks at marketing terminals and breakout stations, as discussed further in Section III.B.2 of this notice. As a result, the EPA will not grant credits to facilities that currently use an LDAR program. The EPA has decided to not require vacuum assist as explained in Section III.D.2.a of this notice, due to Agency concerns about the control effectiveness of vacuum assist technology at bulk terminal loading racks. As a result, the EPA also will not provide emission credits for any facility using vacuum assist technology

One commenter stated that emission standards or limitations more stringent than the Federal NSPS (40 CFR part 60, subpart XX) limit (35 mg/liter) should be recognized. The term "EF" in the screening equation for bulk terminals applies to any federally enforceable emission standard in effect for the vapor processor The concept of "federally enforceable," defined in § 63.2, allows emission standards or limitations more stringent than the NSPS limit.

One commenter believed that the screening equations should be modified to account for storage vessels that store MTBE for infrequent periods and durations. The EPA does not intend to regulate under this rule storage vessels that store only MTBE or any other gasoline component or additive All the other non-gasoline liquids such as MTBE will be studied for regulation under the forthcoming NESHAP source category of "Non-Gasoline Liquid Distribution" under section 112 of the Act.

Commenters requested guidance on how to estimate emissions from "swing" tanks, which store gasoline only part of the time. In keeping with the intent of these equations as an emission estimation screening tool, the EPA has made the simplifying assumption that vessels storing gasoline for any period or periods during a year will be assumed to store gasoline year round. As a result, the emissions from "swing" tanks will be estimated in the same way as for tanks that store gasoline on a continuous basis. Owners and operators should use the emissions inventory approach, as specified in § 63.420(a)(2) and (b)(2), if these assumptions lead to a significant overestimation of HAP emissions at their facility.

2. Emissions Inventory

As a supplement to the emission estimation screening equations, § 63.420(a)(2) and (b)(2) of the proposed rule exempted those facilities "for which the owner or operator has documented to the Administrator's satisfaction that the facility is not a major source as defined in section 112(a)(1) of the Clean Air Act." The proposal preamble on page 5877 indicated that an "emissions audit" would have to be performed to satisfy these provisions. One commenter felt that the rule provisions should specifically state that the estimation of emissions for the applicability determination is to be accomplished by means of an emissions audit, as was stated in the preamble. Several other commenters found the term "emissions audit" confusing, and questioned what the EPA would consider acceptable for demonstrating applicability Some suggested that the familiar term "emission inventory" be substituted because emission inventories are common requirements and procedures are in place under many State programs. Others requested that the EPA define or provide an approved methodology for conducting the emissions audit. One commenter said that the public should have an opportunity to comment on this guidance prior to this rule being promulgated. One commenter thought that the EPA should eliminate the requirement that a source determine its applicability status by means of an emissions audit. They felt such a requirement is unnecessary and contrary to prohibitions in Executive Order 12866 since major sources, which are subject to part 70 permitting, are already required to determine their applicable regulatory requirements and identify them in their permit applications.

In describing the formal means of documenting a facility's major or area source status as an "emissions audit" in the proposal preamble, the EPA was referring to a calculation of a facility's potential to emit HAP considering federally enforceable controls. Such calculations are similar to those already being prepared under many existing Federal and State control programs. Therefore, the intent of the Agency was in accord with the thoughts of the commenters. The discussion in the preamble and the requirements in the final rule are intended to clarify and simplify compliance with the rule and are not known to be contrary to provisions of the part 70 permitting requirements. The EPA feels that guidance on performing HAP emissions inventories is not needed since the preparation of such inventories is standard practice. The activities undertaken in response to part 70 requirements are applicable and may relieve the majority of the burden of fulfilling this inventory.

3. Potential to Emit

One commenter felt that the rule was not clear in explaining whether a facility's major source applicability is determined from "potential to emit" (PTE) or actual emissions and asked for clarification. Several commenters who interpreted the rule to indicate that PTE should be used expressed disagreement with the EPA, and believed that basing major source applicability on a source's PTE would draw into the regulation many more sources than the EPA has anticipated. They said the EPA should recognize that there are inherent limits in the operational parameters (throughput, etc.) of gasoline distribution facilities, and major source determination should be based on a source's actual emissions or at least a more reasonable gasoline loading potential. The American Petroleum Institute (API) recommended a scheme for categorizing facilities based on actual emission rates that they felt would alleviate the "potentially drastic consequences" of applying the PTE definition. These categories are: I—actual emissions exceed the major source threshold (10/25 tpy), so the source is subject to all provisions of the rule; II—actual emissions are greater than 80 percent but less than 100 percent of the major source amounts. The facility would have to certify its area source status by obtaining a permit with enforceable limits, submit annual certification of emission rates, and notify the EPA of any change that could increase HAP emissions; III—actual emissions are greater than 50 percent but less than or equal to 80 percent of the major source definition. The facility would have to submit annual certification and provide notification of any change; IV—actual emissions are 50 percent or less of the major source cutoffs. This facility would only have to provide notification of any changes affecting emissions. Another commenter suggested that applicability should be based on a combination of the potential to emit of the vapor recovery system and the actual emissions of the storage vessel rim seals and fittings using the EPA's current emission factors.

At proposal, the EPA did not use the term PTE in the preamble discussion or in the proposed rule. However, the proposed rule and discussion in the preamble did reference the General Provisions (40 CFR part 63, subpart A), which includes a definition for PTE. This definition is as follows:

> Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Terminals and breakout stations have many limitations that affect emissions and some of these can vary according to gasoline demand. Industry provided data showing many methods to calculate maximum capacity, including total tank storage capacity, loading rack pumping capacity, feeder pipeline pumping rate, etc. Each of these methods of calculating capacity results in different and conflicting PTE results. The EPA has decided to provide an approach in the final rule that provides the facility an opportunity to set some operational and physical limitations that best fit its own operation only if all the HAP emitted are from affected gasoline operations. The EPA considered allowing gasoline terminals and pipeline breakout stations emitting additional HAP emissions from non-gasoline sources at the plant site to use this approach. However, the EPA believes covering all situations and other source categories under this rule would be too complex and uncertain. Therefore, those sources would have to obtain enforceable conditions and limitations outside the provisions of this rule.

Under this approach for plant sites emitting HAP only from affected gasoline operations, the bulk gasoline terminal or pipeline breakout station

facility can establish its potential to emit through a combination of operational and physical limitations that are otherwise federally enforceable outside the context of this rule or that are made enforceable through compliance with parameters included in the screening equations in this rule. Examples of allowable federally enforceable limitations and conditions are provided in the definitions section of the General Provisions (§ 63.2). Examples of limitations at bulk terminals and pipeline stations that are required to meet the definition of federally enforceable outside the context of this rule are emission limits on vapor processors that process emissions from storage vessels and cargo tanks. Recordkeeping and reporting requirements will be used to monitor compliance with all limitations. Thus, the final rule allows the facility to limit PTE by complying with the approved values of the physical or operational parameters contained in the emission screening equations, such as maximum throughput. This provides the facility the most flexibility in operations without overestimating PTE.

The proposed rule required facilities to either use a specific emission estimation screening equation or prepare an inventory of emissions to determine their emissions for determination of major or area source status. The proposal allowed area source facilities to report their applicability findings and calculations in their initial notifications to the Agency [required under § 63.9(b)]. After review and acceptance by the Agency, the facility would have been considered an area source and would not be subject to the control requirements of the rule. Changes to the final rule establish certain facility parameters used in the emission screening equation as new "physical or operational limitation[s] on the capacity of the stationary source to emit a pollutant." Upon request, the owner or operator of the bulk gasoline terminal or pipeline breakout station will be responsible for demonstrating compliance with the facility's applicability determination, including all assumptions, limitations, and parameters used to calculate potential to emit HAP.

To monitor these limitations, certain facilities are required in the final rule to annually certify that these facility parameters are not being exceeded. It would be burdensome and unnecessary for all facilities below the emissions threshold for major sources to provide detailed reports and records, and annually certify that changes have not occurred. As suggested in the API comments, only facilities within 50 percent of the emissions threshold for major sources will be required to submit a detailed report of these calculations and assumptions used in the calculations in an initial report, and then provide annual certification that the established facility parameters are not being exceeded. The remaining facilities will need to retain a record at the facility of these calculations and notify the Administrator of the use and results of the emission screening equation. These records would remain at the facility for inspection by the Administrator If the PTE "limitations" are exceeded or if the facility fails to keep records or report as required, the facility will be in violation of this rule and may in some cases be considered a major source and be subject to the emission standards of this rule.

The final rule also requires the reports submitted containing those limitations and certifications to be approved by the Administrator and made available for public inspection. The notifications and reports documenting those limitations must be submitted within 1 year of today's date to the Administrator. The final rule allows facilities to change these parameters after submittal of the revised calculations and approval by the Administrator.

If the facility becomes an area (nonmajor) source by complying with the PTE enforceable limitations and conditions established under this final rule, then the emission control requirements of this rule would not apply. Furthermore, for purposes of section 112 of the Act, it would not be a regulated area source that would be required to have an operating permit under 40 CFR part 70. In other words, being subject to the PTE limitations in this rule does not in and of itself make the facility subject to 40 CFR part 70. However, there may be other reasons that the stationary source is required to comply with 40 CFR part 70.

The EPA believes the mechanisms provided in this rule for limiting PTE provide adequate safeguards for this source category However, the EPA is still evaluating whether the general approach taken in this rule will be appropriate for other source categories.

4. Refinery Bulk Terminals

One commenter requested that, for bulk terminals contiguous to refineries, the EPA clearly define the separation between terminal storage tanks and refinery storage tanks. These terminals are usually fed from tanks located within the refinery itself, often thousands of feet from the terminal. Refinery tanks will be regulated by the NESHAP for petroleum refineries (proposed at 59 FR 36130, July 15, 1994). The commenter felt that tanks not located at the terminal itself should be considered part of the refinery for the purposes of regulation.

Several commenters were of the opinion that the EPA should distinguish the association and applicability of the gasoline distribution MACT rule from the refinery MACT rule currently under development. Many commenters believe that only cargo tank loading racks and cargo tank leakage should be regulated at terminals that are "contiguous to" refineries, and that tankage and equipment leakage emissions should be regulated under the refinery MACT rule One suggested method to distinguish whether facilities are subject to the refinery rule or the gasoline distribution rule is to consult the applicable Standard Industrial Classification (SIC) codes already assigned to these facilities.

Terminals and pipeline facilities contiguous to refineries are of two types. First, there are terminals and pipeline facilities that are located within a contiguous area and under common control, but are managed by the "marketing" or "distribution" departments, though they are located on the same property as a refinery The other type are terminals and pipeline facilities located among the refinery process units and storage tanks and managed by the "refinery" management departments. SIC codes are assigned and are currently being used by these facilities to distinguish between equipment. Industry commenters expressed a need to retain this separation because they often have separate management for maintenance, capital improvements, personnel, and operation of the assigned equipment. This separation would keep the management of the air pollution control equipment under the same management structure as the surrounding process equipment. The Agency agrees with the commenters that maintaining this structure would be beneficial, because it will increase the management of proper operation and maintenance of the control equipment, decrease compliance costs, and improve the reporting and recordkeeping and enforcement of this rule.

Since a final rule cannot refer to another standard that has not been promulgated as a final rule, this change is not incorporated into the final gasoline distribution rule. The Agency, however, plans to carry out this change by modifying this rule at the promulgation of the refinery MACT standards. The proposed refinery MACT

standards contain different requirements for equipment leaks and compliance schedules for storage tanks. The Agency will assess the differences between these two rules after it considers public comments on the refinery MACT proposal and develops the final refinery MACT standards. Meanwhile, all provisions of this gasoline distribution rule will be implemented as they are being promulgated here, since there are no requirements in this rule that must be implemented before the scheduled promulgation of the refinery MACT standards. Independent of the SIC code designation decision discussed above, the EPA will make a decision in the refinery MACT rule on the use of emission trading or averaging between the collocated gasoline distribution and refinery sources.

B. Equipment Leak Requirements

1 Emission Factors

Several commenters strongly objected to the EPA's use of 1980 refinery data to estimate emissions from equipment (pumps, valves, etc.) at bulk terminals and pipeline breakout stations. These commenters were in support of using the new API data gathered at several bulk terminals. These data indicate that leakage from bulk terminal and breakout station equipment is very small and that the refinery emission factors overestimate these emissions greatly. The commenters pointed out that the EPA's use of the higher factors would lead to incorrect calculations of applicability status and baseline emissions.

At proposal, the EPA used the refinery equipment emission factors in publication AP–42, Section 9.1, Petroleum Refining, to estimate emissions from equipment components at marketing terminals and pipeline breakout stations. The API supplied new data which indicated that corresponding emission factors for marketing terminals and breakout stations are over 99 percent lower The EPA has reviewed the data submitted by API. In May 1994, the EPA released a draft report containing new correlation equations for marketing facilities using the API data. The Agency is still reviewing and analyzing the API data to determine new EPA emission factors. For the purposes of this analysis and completion of this final rule, API's suggested emission factors are being used because in our judgement these new factors better reflect emissions from this source category than the 1980 refinery data. The EPA intends to issue new EPA emission factors in the near future.

2. Control Level

Several commenters expressed disagreement with the proposal to require a leak detection and repair (LDAR) program at bulk terminals and breakout stations, stating that the emissions from equipment leaks are much smaller than the EPA had estimated. Consequently, the commenters considered the EPA's estimated emission reductions due to an LDAR program to be greatly overstated. As a result, the cost effectiveness of such a program would be very poor. In lieu of an LDAR program, many commenters felt that a mandatory visual inspection program (similar to existing programs at many terminals) would be more appropriate. The API performed a leak rate survey at bulk terminals, including both terminals where an LDAR program was in effect and terminals that were not carrying out a formal LDAR program. The API's conclusion was that there was no statistically significant difference in the leak rates found at the two groups of terminals. The commenters concluded that LDAR programs are more appropriate for refineries, where the equipment handles fluids at higher temperatures and pressures.

Before proposal of this MACT regulation, the EPA learned that few existing terminals and pipeline breakout stations (less than 1 percent) routinely use a portable organic vapor analyzer (OVA) to carry out LDAR programs on their gasoline handling equipment. As a result, the "floor" for control of equipment leaks at existing terminals was found to be periodic visual inspections (no formal, federally enforceable inspection program). A monthly LDAR program using an OVA was determined to be in practice at a few terminals associated with refineries and therefore was determined to be the floor for equipment at new terminals and breakout stations. As stated earlier, the EPA in the proposal analysis used the refinery emission factors in AP–42 to calculate baseline emissions from equipment leaks at existing facilities and analyzed LDAR as an "above the floor" option. The EPA found LDAR to be cost effective; however, the Agency noted that there were industry concerns with the refinery factors and thus did not select the higher emission reduction alternative (monthly instead of quarterly LDAR). As discussed above, after reviewing equipment leak data submitted by API, the EPA agrees that the equipment leak factors at marketing terminals are much lower than the refinery factors, resulting in much lower potential emission reductions due to an LDAR program. As a result of this determination, the cost effectiveness of a formal instrument LDAR program has been found to be much less favorable for gasoline marketing facilities.

The new gasoline distribution equipment leak data submitted by API showed only a slight difference (0.2 percent) between emission factors at facilities performing periodic LDAR (with an instrument) and facilities with a periodic visual program. Based on its review of these data, the EPA agrees with API's assessment that this difference is statistically insignificant. Therefore, the EPA is in agreement with the majority of commenters that periodic visual inspection and LDAR programs achieve essentially equal emission reductions for these facilities.

Industry submitted survey information that 81 percent of terminal facilities are implementing some type of periodic visual inspection program. The survey data did not show the frequency of visual inspections, but API has stated that current industry periodic visual programs range in frequency from daily to quarterly. The API suggested a quarterly program and provided language to make it enforceable and verifiable through recordkeeping. The program suggested by API included: (1) A quarterly determination of leaks by visual, audible, and olfactory inspection of pumps and valves; (2) a log book listing all of the equipment in gasoline service; (3) note all non-inspected equipment; (4) if a leak is detected, repair as soon as practical (considering safety); if the leak cannot be repaired immediately, then the leak must be repaired or the equipment replaced within 15 calendar days, unless not practical for reasons stated in the log book or, when possible, use of the leaking equipment is to be suspended; (5) annual checks of log book by facility supervisor; and (6) quarterly logs and records of annual checks retained for 5 years and accessible for inspection within 3 business days.

The NSPS for bulk gasoline terminals [40 CFR part 60, subpart XX, § 60.502(j)] requires monthly inspection of loading racks as follows:

(j) Each calendar month, the vapor collection system, the vapor processing system, and each loading rack handling gasoline shall be inspected during loading of gasoline tank trucks for total organic compounds liquid or vapor leaks. For the purposes of this paragraph, detection methods incorporating sight, sound, or smell are acceptable. Each detection of a leak shall be recorded and the source of the leak repaired within 15 calendar days after it is detected.

The visual inspection program in the final rule is similar to these NSPS provisions; however, the provisions have been expanded based on suggestions of the commenters and certain requirements in existing Federal LDAR regulations. As in the NSPS, a monthly inspection using sight, sound, and smell is required. Each detection of a leak is to be recorded in a log book. Leaks must be repaired as soon as practicable, but with the first attempt at repair made no later than 5 calendar days after detection, and repair completed within 15 days after detection. Delay of repair is allowed upon demonstration to the EPA that timely repair is not feasible. Full records of each inspection are required, including for each leak a record of the date of detection, nature of the leak and detection method, dates of repair attempts and methods used, and details of any delays of repairs.

The final rule contains a requirement for both new and existing facilities to perform a visual inspection of equipment on a monthly basis because it is achieved in practice on the same and similar equipment under the 40 CFR part 60, subpart XX requirements as described above and at some facilities that are covered under monthly LDAR programs in response to 40 CFR part 60, subparts VV and GGG, and 40 CFR part 61, subparts J and V. As noted earlier, the emission reductions resulting from these visual inspection programs have not been established, so the emission benefits cannot be quantified other than to say that periodic inspections ensure low emission levels. The national annual cost for monthly visual inspections under this final rule is estimated to be $43,000.

C. Storage Vessel Requirements

1. Control Level

Several commenters claimed that the discussion in the proposal concerning the "floor" level of control for storage vessels was inadequate and unclear. The EPA's conclusion was that the NSPS requirements of 40 CFR part 60, subpart Kb (NSPS subpart Kb) constituted the floor for storage vessels at existing sources. One commenter stated that the EPA had not performed an adequate evaluation to establish the floating roof rim seal requirements of NSPS subpart Kb as the floor. Several other commenters believed that the EPA had demonstrated that NSPS subpart Kb's rim seal requirements are the floor for existing sources, but not the additional NSPS subpart Kb requirement to control the roof deck fittings. At proposal, the EPA required gasoline storage vessels at existing facilities to meet all of the control requirements in NSPS subpart Kb. Subpart Kb specifies closure devices between the wall of the storage vessel and the edge of the floating roof ("rim seals"), and the installation of gaskets on specified lids and other openings in the floating deck ("controlled fittings"). The EPA also proposed these same requirements as the floor for new facilities. Subpart Kb is the most recent (1984) new source performance standard applicable to all new, modified, and reconstructed volatile organic liquid storage vessels (including gasoline liquid storage vessels).

Regarding the comments concerning the floor determination for rim seal requirements for existing sources, the EPA continues to maintain its previous conclusion that the NSPS subpart Kb rim seal requirements are the floor for storage vessels at gasoline distribution facilities as proposed and presented in the proposal notice (February 8, 1994, 59 FR 5868) and further discussed in the promulgation BID. The EPA believes it did perform a proper evaluation, and the commenter did not provide any data or information to support a change in the finding that NSPS subpart Kb rim seals are the floor level of control.

The EPA, however, does agree with the commenters' statements that the discussion in the proposal preamble did not support the NSPS subpart Kb fitting control requirements set in 1984 for new tanks as part of the floor for storage vessels at existing facilities. The EPA did not have access to any data regarding the number of gasoline storage vessels that are equipped with controlled fittings. The commenters also did not provide any data or information on the number of storage vessels with or without fitting controls for these subcategories. Information obtained in the tank survey conducted for the refinery MACT standards was inconclusive regarding the use of controlled fittings on storage vessels. As a result, the EPA has no data to support the conclusion that controls on tank fittings are part of the floor for existing sources. Therefore, the EPA has determined the existing source MACT floor for fittings as "uncontrolled."

The Agency has considered controlled fitting requirements as an option providing the maximum degree of reduction in HAP emissions ("above the floor") as required by the Act. The Administrator is required under section 112(d) to set emission standards for new and existing sources of HAP that require the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. New tanks at new or existing facilities since 1984 are meeting the deck fitting control requirements in 40 CFR part 60, subpart Kb and, therefore, these requirements are achievable. Controlling fittings to that level is also considered the maximum degree of emission reduction.

Emission reductions and costs for controlled fittings were analyzed on both a per model storage vessel and a nationwide basis using two typical size and throughput vessels, and different potential HAP contents in gasoline. Additionally, installation of controlled fittings on many tanks requires degassing and cleaning of the tanks. Industry reports that storage vessels are degassed and cleaned at least every 10 years for safety inspections and requested that the Agency require all retrofits (fittings and rim seals) on storage tanks to occur simultaneously Therefore, the new analysis included two options, with and without degassing and cleaning costs. If fitting controls were required within 3 years of today's date, the cost impact for this standard would include the degassing and cleaning costs along with the cost of controlled fittings if a tank's routine safety inspection would not have occurred during that 3-year time period. The option of waiting until the next routine tank degassing and cleaning would avoid the additional costs of cleaning and degassing as an impact of this standard since the activity would have occurred anyway. A discussion and presentation of the model tank analysis of fitting controls are included in Appendix B of the promulgation BID

Installing controlled fittings on floating roof tanks, without degassing and cleaning costs, would result in a cost savings due to the value of gasoline vapor prevented from evaporating through openings in the floating roof deck. The capital costs of installing deck fitting controls on the model tanks, without the cost of degassing and cleaning of the tanks, ranged in the analysis from $1,200 to $2,800, annualized costs ranged from a savings to a cost of $340 per year, and the cost effectiveness ranged from a savings to a cost of $7,500 per megagram of HAP reduced. When controlled deck fitting installation costs included degassing and cleaning costs, the capital costs ranged from $21,000 to $67,000, annualized costs ranged from $4,000 to $14,000 per year, and the cost effectiveness ranged from $25,000 to $300,000 per megagram of HAP reduced. Calculation of product price increases under either option showed them to be insignificant (less than 0.05

cent per gallon). In conclusion, installing controlled deck fittings is significantly less costly if it can be done at the next scheduled tank degassing and cleaning.

The Agency has decided to require installation of controlled deck fittings on each existing external floating roof storage tank that is required to be degassed and taken out of service for the purpose of replacing or upgrading rim seals to meet 40 CFR 60, subpart Kb requirements. Since these tanks must be degassed and cleaned and have plant maintenance personnel on site, it is reasonable to require installation of the fitting controls at the same time. A national impact analysis was performed on this requirement. Table D–1 in Appendix D of the promulgation BID presents the results of the national analysis on storage tanks and other emission sources at bulk terminals and pipeline breakout stations. Installing fitting controls on external floating roof tanks is estimated to reduce 66 megagrams per year of HAP at an annualized cost savings of $93,000.

The cost analyses show that installing controlled fittings when installing or replacing rim seals on existing external floating roof tanks involves a small capital cost (approximately $2,000 per tank), with an annualized cost savings, and insignificant change in gasoline prices. Given these low costs and the simplicity of these control measures when tanks are otherwise out of service, the EPA has concluded that fitting controls are practical and affordable for existing external floating roof storage tanks. These controls also prevent pollution and conserve energy by preventing liquid gasoline from evaporating. Having given full consideration to the directives in the Act, the Administrator is requiring gasoline storage vessels at existing facilities to control the deck fittings when replacing or installing rim seals on external floating roof storage tanks to comply with the requirements in this final rule. Given the small national HAP emission reduction, the Agency has decided not to require fitting controls on existing internal floating roof storage tanks. While the EPA is not at this time requiring these controls nationally on internal floating roofs, the EPA encourages industry to consider the installation of these controls on a case-by-case basis. All new storage tanks at both new and existing facilities are already required under NSPS requirements of 40 CFR part 60, subpart Kb to install these same fitting controls. Those NSPS requirements are cross-referenced and are therefore part of today's final rule. This level of control for roof deck fittings for new sources and for existing external floating roof tanks upgrading to rim seal requirements under this rule, is the same level as proposed on February 8, 1994. The storage vessel compliance period is discussed and analyzed in the next section.

While this final rule does not require fitting controls for existing internal floating roof storage tanks or the existing external floating roof storage tanks currently meeting the rim seal requirements in this rule, the Agency believes it is appropriate and recommends the inspection, repair, and upgrading of gasketing materials on fittings in the tank roof when any storage tank is taken out of service. It is a major part of the normal safety and maintenance procedure to inspect, repair, and upgrade the physical and mechanical condition of all the tank components. Additionally, requiring fittings to be installed on all tanks will reduce additional air toxics and volatile organic compounds, and will upgrade all tanks to the same level of control. An effective mechanism to get controlled fittings in place on all tanks is the combination of this rule, the air toxics programs under section 112(l) of the Act, and the national ambient air quality programs for control of ambient ozone under the Act. The EPA recommends that State and local air pollution control agencies pursue implementation of fitting controls on the remaining tanks under those programs.

2. Compliance Period

Several commenters said that the proposed 3-year compliance period for storage tanks is unreasonable and is more stringent than the compliance schedule in other Federal regulations. To install the required controls, tanks would have to be taken out of service, cleaned, and degassed. Requiring all storage tanks to comply in a 3-year period could potentially disrupt the nation's gasoline supply, causing a gasoline shortage, especially in light of the new reformulated/oxygenated fuel requirements. One commenter stated that limited contractor resources could make the schedule logistically unworkable. Additionally, the cleaning and degassing of a storage tank creates an air emissions event that in many cases will exceed the emission reductions resulting from the new controls (e.g., the retrofit of an internal floating roof tank already meeting 40 CFR part 60, subpart Ka rim seal requirements). One commenter stated that the EPA must perform a cost effectiveness analysis to support a 3-year compliance date. All of the commenters suggested that the EPA relax the compliance schedule and allow storage tank owners and operators to comply at the next scheduled tank inspection or within 10 years, whichever comes first. One of the commenters felt that a 10-year period is an integral part of the floor for existing sources. This commenter recommended that, should the EPA not allow up to 10 years for compliance for all tanks currently equipped with floating roofs, at a minimum internal floating roof tanks currently meeting NSPS subpart Ka requirements should be provided a compliance period up to 10 years, or the next regular inspection cycle, whichever occurs first.

Section 112(i)(3) of the Act requires the Administrator to establish a compliance date which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date (promulgation) of the standards. In addition, the Administrator (or a State with a program approved under title V) may issue a permit which grants up to a 1-year extension to comply with the standards if an additional period is necessary for installation of controls. However, some commenters suggest that taking a tank out of service before its normal cleaning and inspection schedule to comply with the regulation may generate more emissions than the added controls would reduce or control in the 3-year period.

To determine whether any tanks should be allowed an extension of the compliance time to achieve the maximum degree of reduction in emissions of HAP, the EPA compared the emission reductions achieved by the controls (i.e., rim seals and fittings controls) to the emissions generated from degassing and cleaning of fixed-roof and internal and external floating roof tanks for various tank diameters and gasoline turnover rates. The results of this analysis showed that additional degassing and cleaning emissions do not exceed the emission reductions from tanks complying with this final rule within the required 3-year compliance period. The analysis did show net emissions increases for some very large tanks either installing secondary seals without installing fitting controls, or installing fitting controls alone. However, these final standards require a facility to install fitting controls when installing secondary rim seals, and no tanks are required to install fitting controls alone. A complete discussion of this analysis of emissions generated from tank cleaning and degassing is presented in Appendix B of the promulgation BID

D. Cargo Tank Requirements

1. Emission Factors

Several commenters stated that the EPA's assumption at proposal that tank trucks that have passed the EPA Method 27 annual vapor-tightness test leak 10 percent of their emissions during controlled loading is outdated and inaccurate. Consequently, the baseline emissions calculated for tank trucks are grossly overstated. New data suggest that very few tank trucks leak due to today's better construction standards and the test requirements in effect under current Federal and State rules. One commenter provided calculations indicating that, under the proposed pressure decay standard (which is the same as the 40 CFR part 60, subpart XX NSPS requirement), a typical controlled tank truck would have a leakage emission factor for loading of 5.6 mg/liter (at the allowable maximum of 18 in. H_2O backpressure). Another commenter estimated, on the basis of test failure rate data from the Bay Area Air Quality Management District (BAAQMD) and several oil companies, that the overall average leak rate is 0.88 percent of the total volume of vapors displaced during the loading of tank trucks connected to a vapor recovery system.

The EPA's estimate of 10 percent vapor leakage from emission sources in tank trucks while loading at controlled loading racks was based on data collected in 1978 on 27 tank trucks in California. These tank trucks were under a State requirement to be certified annually in a vapor tightness test, and time periods ranging from 4 days to a full year had elapsed since the last certification test for these trucks. The volume losses among the trucks varied from 0.1 to 35.8 percent, with the average leakage being about 10 percent. The data from these tests were further described, and the 10 percent figure derived, in the BID for the proposed NSPS for bulk gasoline terminals (docket item II–A–14).

The commenter who supplied the 0.88 percent overall leakage estimate relied upon vapor volume loss data for individual tank trucks reported in the 1978 study, and combined these data with test failure rate data from the BAAQMD (pressure test data) and from several oil companies (combustible gas detector results gathered during loading rack performance tests). Based on an assumption that a leak definition of 10,000 ppm is equivalent to a 1 percent loss of vapors through leakage, the commenter determined that the average leak rate for tanks with leakage rates over 1 percent ("failing" tanks) was 12.1 percent, while the average leak rate for the remaining, "passing" tanks was 0.5 percent. On the basis of the failure rate data, the overall failure rate during 1989 to 1994 was found to be 3.3 percent. Combining the average leak rate figures with these failure prevalence data, the commenter arrived at the overall leak rate for all tank trucks of 0.88 percent.

The EPA recognizes and agrees with the commenter that the available data indicate that overall vapor leakage rates from tank trucks subject to a regular test and repair program using the pressure decay procedure have been reduced over the past 16 years. However, the use of concentration data to estimate a volume leakage rate, as the commenter has done, is uncertain. In addition, neither the EPA nor industry have access to current data for several areas throughout the country that would allow a national average calculation of this volume leakage to be made. Therefore, any numerical result derived from the existing data would be at best a broad estimate, which would not account for the full range of truck ages, ownership scenarios, and local control programs.

In spite of these limitations, the EPA has made an estimate which it feels more closely reflects actual overall emissions under a vapor-tight cargo tank program than the emission factor used for the proposal. The Agency's new emission factor, 0.8 percent of the total vapors displaced or 8 mg of VOC/liter, is based on the use of a volume loss equation found in Appendix C of the tank truck CTG (EPA–450/2–78–051) combined with the test failure rate data submitted by the commenter and measured leakage from trucks that failed the test. This new emission factor represents the emissions after control to the level of today's final standards as discussed in the following sections. The promulgation BID, Appendix A presents more details on the calculation of this emission factor

2. Control Level

a. Vacuum assist vapor collection. Many commenters expressed opposition to the proposal to require use of "vacuum assist" technology at new bulk terminal loading racks. Most of the commenters felt that annual vapor tightness testing is adequate to control tank truck leakage emissions. Some commenters expressed safety concerns; e.g., the potential for fires and tank truck implosion. One of them said that internal tank vacuums can (and already do) damage the internal compartment heads of tank trucks by reversing those heads and weakening the tank's outer shell, which compromises product retention capability. Several do not believe that vacuum assist technology has been demonstrated as "achievable in practice." The technology has been used in only one State (Texas) and has not been tested under various climatic conditions, such as combined low temperatures and high humidity levels. Others believe that the complexity of the loading system would increase. Also, due to rapid fluctuations in gasoline flow rates and the requirement to maintain a vacuum at all times during loading, nuisance shutdowns of the loading operation could be a problem. One commenter said that such a system may adversely affect the efficiency of the vapor control device because air can leak into the vapor collection system and dilute the inlet VOC concentration. Another commenter felt that volatilization of fuel in the cargo tank would be increased due to the vacuum, sending more vapors to the control device. This would require a larger device which may have greater emissions, and more solid waste impact for the case of a carbon system. One commenter said that vacuum assist systems will increase electrical power consumption 15 to 400 percent depending on the type of emission control device used. Others said that vacuum assist is unnecessary, because tank trucks do not leak enough during loading to justify vacuum assist as a means of reducing the losses. Recent API data show that tank truck leakage has been significantly reduced since the EPA study performed in 1978. Three commenters said that the system addresses losses from the tank truck only while loading at the terminal and not while in transit or while operating at bulk plants and service stations. Other commenters said that vacuum assist is very expensive and not cost effective.

The vacuum assist system was proposed for new source bulk terminals to control HAP emissions due to vapor leaks from cargo tanks during gasoline loading operations. This system creates a negative pressure in the vapor collection system during loading to ensure that vapors will not be forced out into the air through any leakage points. The proposal rationale was based on the following information. Vacuum assist systems are in use at a few bulk gasoline terminals (in addition to the annual vapor tightness test for truck tanks) in Texas, so it meets the Act requirement to consider the best controlled similar source in establishing the floor level of control for new terminals. Since less than 1 percent of terminals use this vacuum assist system, it is not

considered the floor for cargo tank leakage at existing terminals. Annual vapor tightness testing of cargo tanks was considered at proposal to be the floor for existing terminals (this floor determination has been modified on the basis of public comments; see 59 FR 42788, August 19, 1994). Based on field tests in the late 1970's, an annual vapor tightness testing program was estimated to reduce the leakage rate from baseline levels at 30 percent leakage to about 10 percent leakage. The vacuum assist system was estimated to reduce the 10 percent leakage rate under the annual vapor tightness test program by nearly 100 percent.

Industry sources had expressed concerns before proposal regarding the operational reliability of a vacuum assist system, especially under extreme cold weather conditions. Those commenters also believed that the system could present a safety hazard if excess negative pressures were developed within a tank truck fuel compartment. To the Agency's knowledge, the systems in operation have not experienced any significant problems, and one of the systems has been operating for over 3 years. These systems contain safety pressure relief devices in combination with the pressure-vacuum vents already installed on each tank truck compartment. However, safety concerns are important to the Agency. The Agency specifically requested comment at proposal, including technical documentation and data where available, on the reliability, effectiveness, safety aspects, and any other issue concerning vacuum producing equipment for bulk terminal vapor collection systems. No technical documentation or data on installed systems was provided during the comment period.

As discussed above in Section III.D.1, the leakage emission factor for controlled cargo tanks under an annual vapor tightness program was adjusted to reflect current data on the frequency with which cargo tanks pass the test on the first attempt. Emissions lost from cargo tanks under test programs with a pressure decay limit of 3 in. H_2O are now estimated to be 1.3 percent of total vapor displaced during loading operations (just under 99 percent collection efficiency). In California, where an annual pressure decay limit of 1 inch of water is in effect, the emission losses during loading are estimated at 0.8 percent (slightly over 99 percent collection). The corresponding HAP emission factors are 0.4 and 1.3 mg/liter of HAP for normal and oxygenated gasolines, respectively. At proposal, the leakage emission rate was estimated to be a 10 percent loss (90 percent collection efficiency). Thus, while vacuum assist systems were previously thought to have the potential to capture an additional 10 percent of the loading emissions, they now appear to have the potential to capture about 1 percent.

The EPA shares commenters' concerns that the emission control achieved with the vacuum assist system is uncertain. The Agency's uncertainty centers on the system's effectiveness in accurately maintaining a slight vacuum to collect a small leak (1 percent of the volume displaced to the collection system) while handling the variability of flows and pressures and limiting the ingestion of air into the system to a degree where it does not affect the control effectiveness of the processor. The vapor volume collected by the system and internal pressures within the vapor collection system vary widely throughout the day. Each cargo tank loading and displacing vapors influences the pressures and flows in the system. Terminals operate on demand, just like gasoline service stations. The number of tanks loading at any given time varies from none, to a few, to 10 or more tanks. Additionally, vapor processor control efficiency may be adversely influenced by increased amounts of air sent to the control system. A vacuum assist system draws additional air into the system. Even small malfunctions in the system would be likely to increase emissions above the 1 percent control target. Finally, the Agency agrees that it lacks sufficient information to determine whether conditions outside of Texas may affect the control performance of vacuum assist methods.

The proposal of vacuum assist was based on the minimum baseline (floor) at which standards may be set. Under section 112(d)(3) of the Act, the floor for new sources

> shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator

The Administrator has determined that emission control is not being achieved in practice given the technical uncertainties about achieving emission reduction from this source as discussed in the previous paragraph. Consequently, the proposed vacuum assist requirement for new bulk terminals has been deleted from the final rule.

b. Vapor tightness standards. Two commenters recommended during the proposal's comment period that the EPA implement the cargo tank vapor tightness program in effect within the State of California since 1977. The California standard requires annual certification that cargo tanks meet 5-minute pressure and vacuum decay standards of 1 inch of water column (in H_2O). Based on a BAAQMD survey of 200 tank truck owners which quantified actual pressure change values, California is proposing to lower this annual standard to 0.5 in. H_2O. In addition, the same commenters recommended that the EPA apply the California year-round standard of 2.5 in H_2O pressure loss in 5 minutes. The EPA published a supplemental **Federal Register** notice (59 FR 42788, August 19, 1994) and opened a comment period for consideration of the existing California standards as the level of control for new and existing sources in the final MACT rule. The following comments were received on the floor determination and on the level of control that is appropriate for controlling cargo tank leakage. The promulgation BID summarizes additional comments and responses to comments received on the proposal and supplemental notice.

Five commenters felt that the existing California standards should be specified for cargo tanks at new sources, but would be inappropriate for existing sources. These commenters based their opinion on the conclusion that the EPA had inappropriately based its floor determination on California's gasoline throughput, or number of tank trucks operating in the State. They felt that, since the legal responsibility for compliance would be on the terminal owner or operator, the basis should be the number of terminals in California. One commenter said that this figure is 71, out of a total of 1,125 terminals nationwide (6.3 percent). Since this value is less than the required 12 percent, applying this control level to existing sources would be an "above the floor" option. Thus, a cost effectiveness analysis should be provided to justify the California standards as the existing source floor. Another commenter stated that the California Highway Patrol, which monitors California's tank testing program, does not include vapor tightness testing in its 44-point program for inspecting out-of-State cargo tanks. The commenter felt that this issue could impact the foundation upon which the EPA had reopened the proposal action. Two commenters favored incorporation of the California standards for both new and existing sources.

Several commenters responded to the EPA's request for comments on whether the level of control for cargo tanks at new and existing facilities should be based on the existing or the proposed

California standards. Commenters were unanimous in asserting that only the existing, and not the proposed, California standards should be considered. Two of the commenters felt that BAAQMD's survey of 200 tank truck owners was not sufficiently representative to indicate that the more stringent proposed standards should be applied. Another commenter said the proposed requirements should not be adopted because: (1) the testing in the survey has not been properly peer reviewed, (2) the proposal has yet to be adopted by the California Air Resources Board (ARB), and (3) there is no conclusive demonstration of any significant emissions difference between the current and proposed standards. Two other commenters echoed that there is no basis for considering the more stringent standards because the effect on tank truck emissions is unknown. Finally, one commenter requested that the EPA consider the proposed California standards for new and existing facilities, feeling that this would standardize regulations nationwide and result in lower costs for equipment and remove some burden from the California ARB.

The California 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 and are checked by the California air pollution control districts. In summary, they include three major standards: an annual certification, 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 in. H_2O and to 6 in. H_2O, respectively. In 5 minutes the allowable pressure change may be no more than the values shown in Table 1. Further details on the performance requirements and test procedures used in the California program were discussed at 59 FR 42788 The EPA's Control Techniques Guideline (CTG) document and NSPS, 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 75 mm of water column (3 in. H_2O) is allowed for all tank trucks under the NSPS, the CTG, and the proposal.

TABLE 1.—ALLOWABLE CARGO TANK TEST PRESSURE OR VACUUM CHANGE

Cargo tank or compartment capacity, liters (gal)	Annual certification-allowable pressure or vacuum change in 5 minutes, mm H_2O (in. H_2O)	Allowable pressure change in 5 minutes at any time, mm H_2O (in. H_2O)
9,464 or more (2,500 or more)	25 (1.0)	64 (2.5)
9,463 to 5,678 (2,499 to 1,500)	38 (1.5)	76 (3.0)
5,679 to 3,785 (1,499 to 1,000)	51 (2.0)	89 (3.5)
3,782 or less (999 or less)	64 (2.5)	102 (4.0)

In the August 19, 1994 supplemental notice, the EPA stated that the gasoline throughput in California accounts for nearly 12 percent of the national gasoline consumption (13.46 out of 117.9 billion gallons per year). Essentially all of this gasoline would be transported by tank trucks, which include both California and out-of-State cargo tanks, all of which are subject to the State's vapor tightness standards. For this reason, it was assumed that about 12 percent of the national tank truck population is under a requirement for annual certification and periodic testing in accordance with the California vapor tightness standards. On the basis of public comments, however, the EPA has examined the effect of considering the number of terminals in California on the floor determination. As pointed out by one of the commenters, California terminals account for 6.3 percent of the national total. In determining the floor for existing sources, the EPA looks at emission limitations achieved by each of the best performing 12 percent of existing sources, and averages those limitations (59 FR 29196). In this case, the "best performing" cargo tanks are presumed to be those subject to the most stringent vapor tightness standards. The Agency interprets "average" to mean a measure of central tendency such as the arithmetic mean, mode, or median. It can be seen here that on the basis of the number of terminal facilities, the California standards meet this test by constituting certainly the 94th percentile or median, and mode. Therefore, even when the number of terminals is used in the floor determination, the existing California standards constitute the floor level of control for cargo tanks at existing bulk terminals affected by the final MACT standards. As proposed and discussed in the promulgation BID, it has also been determined that the same tests can be applied to railcars since they are similar sources. Therefore, the final rule incorporates the existing California standards for cargo tanks (tank trucks and railcars) loading at existing and new facilities.

Commenters had several concerns on the level of control for cargo tanks. In the supplemental notice, the EPA had discussed promulgating cargo tank leakage control levels based either on the existing or the proposed California certification annual leak rate, 1 in. H_2O or 0.5 in. H_2O pressure change, respectively. Some commenters questioned the data collected on the number of tank trucks meeting the lower proposed California standard as not representative, not peer reviewed, and not providing a conclusive demonstration of increased emission reduction. Also, some commenters were concerned that the proposed standards based on those data have not at this time been adopted by the California ARB. The EPA shares the commenters' concerns and is reluctant to move forward and recommend a final standard based on data the California ARB has not acted on by adopting and implementing the standards that have been proposed within the State. Thus, the Agency is setting the level of cargo tank leak standards for new and existing facilities on the basis of the existing California standards.

E. Continuous Monitoring

One commenter stressed that, while continuously monitoring a key operating parameter of a vapor

processing device may serve as a guide to warn of potential problems and to gauge efficient operation, such monitoring would not be sufficient to assure compliance with the pertinent emission standard. This commenter and others were concerned that a value of the monitored process variable could be selected that is more stringent than necessary to indicate compliance with the proposed 10 mg/liter emission standard. They felt that requiring a facility to continuously maintain a parameter value determined during an initial performance test to maintain compliance and then consider the facility out of compliance if it exceeds that value would be unfair. It is highly probable that during an initial performance test the vapor control device while operating at a particular value will perform much better than the emission limit. One commenter said that, as an example, thermally controlled combustion systems do not require elevated temperatures all of the time to achieve 10 mg/liter. The commenter recommended that, for these units, a single high temperature value should not be set because assist fuel gas consumption would be very high and the unit would be made to operate at control efficiencies substantially higher than the standard.

One commenter suggested that facilities be allowed to use an extrapolative method to predict the operating parameter value at the regulated emission standard based upon the operating parameter value associated with the lower emission level recorded during the performance test. Such an allowance is needed because it is usually not possible to operate a vapor processing system at maximum design conditions. Another commenter recommended that the operating parameter value be set by the least stringent parameter value obtained during the test while the unit is in compliance with the standard.

Section 114(a)(3) of the Act requires enhanced monitoring and compliance certification of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limit or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

The required performance test is a minimum of 6 hours in duration, with outlet organic concentration and flow rate data recorded every 5 minutes. While it seems reasonable to base the selection of the parameter range or limit on a 6-hour period to be consistent with the length of the test (as the Agency did at proposal), the Agency has decided this is too long a period to calculate a meaningful average on a continuous basis. One commenter requested that the EPA consider using an extrapolative method (not specified by commenter), using a single high temperature, or setting the parameter based on data just meeting the 10 mg/liter standard. As noted at proposal, the EPA proposed that a site-specific monitoring parameter value be used to account for the different types and designs of control equipment available and the site-specific facility operating conditions. The proposal required a performance test recording 5-minute readings of outlet concentrations and flow rates while continuously recording the specified parameter values. An engineering assessment of those data, along with the manufacturer's recommendations, could be used to find the appropriate parameter value, monitoring frequency, and averaging time that is equivalent to the emission standard. This approach, which is incorporated into the final rule, is the most straightforward way of accounting for both the emission standard and the variability of the control equipment design and facility operations. Under this approach, the Agency is allowing some latitude for the method by which the parameter range of the "not to exceed" limit is developed under the final standards. The engineering assessment and manufacturer's recommendations must be documented (recorded in facility files) and reported to the Administrator for approval.

IV. Summary of the Final Rule

The final rule will be codified under part 63 of title 40 of the Code of Federal Regulations (CFR). The General Provisions of part 63 (59 FR 12408, March 16, 1994) are located in subpart A and codify procedures and criteria to implement emission standards for stationary sources that emit one or more HAP's, and provide general information and requirements that apply under the section 112 NESHAP promulgated under the Act. The applicability of the General Provisions to affected sources is clarified in subpart R, Table 1, General Provisions Applicability

A. Sources Covered

Sources in the gasoline distribution category are a combination of major sources and area sources. Some pipeline breakout stations and bulk gasoline terminals have been determined to be major sources, since gasoline operations at the larger breakout stations and terminals may have the potential to emit either 10 tpy or greater of an individual HAP (e.g., hexane or MTBE) or 25 tpy or greater of a combination of HAP's, or they are contiguous with a major source plant site that contains additional HAP emission sources other than the affected gasoline operations. For purposes of this final rulemaking, the Agency is requiring that pipeline breakout stations and bulk gasoline terminals that are major sources on their own or are contiguous with a major source plant site be regulated under maximum achievable control technology (MACT) standards. The term "affected source" means the total of all HAP emission points at a subject bulk gasoline terminal or pipeline breakout station In addition to affected sources, some nonmajor pipeline breakout stations and bulk gasoline terminals will be subject to modest recordkeeping and reporting requirements to monitor their potential to emit HAP's. The following is a summary of the methods used to determine applicability of the final rule

1. Applicability Determination

The final emission standards apply to all pipeline breakout stations and bulk gasoline terminals that themselves are major sources of HAP's or are located at plant sites that are major sources of HAP's. The standards provide two ways to determine whether a facility's potential to emit (PTE) HAP's may make it a major source. They are:

(1) The appropriate emission equation listed in § 63.420 is used (under specified conditions) to "screen" the facility for its potential HAP emissions. or (2) the owner or operator provides documentation to the Administrator of the facility's PTE by completing an emissions inventory for the facility

The screening equations in the rule are only allowed to be used at facilities that only emit HAP from gasoline operations. Certain assumptions used by all nonmajor sources in the emission screening equations will become enforceable limitations on the facility's operations under this rule Federally enforceable limitations must be established outside the provisions of this rule, for facilities using the emission inventory for determination of their major source status, and for some parameters used by facilities in the

emission screening equation. Facilities using the emission screening equations in the rule are required to record their assumptions and calculations, notify the Administrator that the facility is using the screening equations and provide the results of the calculations, and operate the facility in a manner not to exceed the operational parameters used in the calculations. Larger facilities (those that, in and of themselves, have HAP emissions over 50 percent of the major source emissions thresholds above and use the emission screening equations in the rule) are additionally required to submit to the Administrator for approval their assumptions and calculations, maintain records to document the parameters have not been exceeded, and submit an annual certification that the operational parameters established for the facility have not been exceeded. However, these nonmajor sources are not subject to any of the control requirements of this final rule. The need for and level of reporting and recordkeeping procedures for facilities using emission inventories to demonstrate nonmajor source status are established when federally enforceable limits were set for those facilities. All facilities (major and nonmajor) upon request by the Administrator or delegated State must demonstrate compliance with the applicability determination.

2. Emission Points Covered

Emission points affected under the final standards at bulk gasoline terminals are storage vessels that contain or have the potential to contain gasoline, leaks from the piping system and equipment that handle gasoline or gasoline vapors, loading racks that load gasoline into cargo tanks (tank trucks or railcars), and gasoline vapor leakage from sealed cargo tanks during loading. Emission points affected under the final standards at pipeline breakout stations are individual storage vessels that contain or have the potential to contain gasoline, and equipment leaks from the entire breakout station piping system that handles gasoline

B. Standards for Sources

The final rule specifies an equipment standard for storage vessels at affected bulk gasoline terminals and pipeline breakout stations. The final existing storage vessel provisions require that external floating roof storage vessels not already meeting the NSPS subpart Kb rim seal specifications comply within 3 years to meet the full NSPS subpart Kb specifications (both rim seal and controlled fitting requirements, and reporting and recordkeeping requirements). Any existing storage vessel currently meeting only the rim seal requirements of NSPS subpart Kb is not required to install additional equipment, but must meet the rim seal monitoring, reporting, and recordkeeping requirements. New, modified, or reconstructed storage vessels at existing and new affected sources must comply with the NSPS subpart Kb requirements at startup (as required under the NSPS).

Additionally, the rule specifies an emission limit standard of 10 milligrams (mg) of total organic compounds (TOC) per liter of gasoline loaded (10 mg TOC/liter) for the process stream outlet of control devices and continuous compliance monitoring of certain operating parameters of control devices installed at the cargo tank loading racks of new and existing affected bulk gasoline terminals. Operating the control device in a manner that exceeds or fails to maintain, as appropriate, the monitored operating parameter value established during the emission performance test is an exceedance and constitutes a violation of the emission limit standard.

The Agency is also requiring equipment and performance standards for all cargo tanks loading gasoline at existing and new affected bulk gasoline terminals. Cargo tanks loading at these facilities are required to pass an annual vapor tightness test, and are subject to a vapor tightness standard and test procedures for the tank, vapor piping, and hoses, and a pressure standard for the internal vapor valve at any time. Although the cargo tanks are subject to the "year-round" vapor tightness standard, facility owners and operators are not required to test them at specified intervals. However, as under the NSPS subpart XX, owners and operators will be required to maintain certain records on the vapor-tight status of gasoline cargo tanks and to take steps to assure that nonvapor-tight cargo tanks will not be reloaded until vapor tightness documentation has been obtained.

New and existing affected bulk gasoline terminals and pipeline breakout stations are required to perform a monthly visual (sight, sound, and smell) inspection of all pumps, valves, and other equipment components in gasoline liquid or vapor service and to maintain records of these inspections. When a leak is identified, the owner or operator must record the presence of the leak, and then has 5 calendar days in which to make an initial repair attempt and 15 calendar days in which to complete the repair. Any leaks for which repair is not attempted within 5 days or completed within 15 days must be reported as excess emissions. The final rule also includes a housekeeping provision requiring spills and open sources of gasoline vapor emissions to be minimized, and for spills to be cleaned up as quickly as possible.

C. Effective Date for Compliance

Section 112(i)(3)(A) of the Act requires compliance by existing sources as expeditiously as practicable, but in no event later than 3 years after rule promulgation (today's date), notwithstanding the provisions of sections 112(i) (1) and (2). New affected facilities are required to comply with all provisions of the standards upon startup.

D. Compliance Extensions

Section 112(i)(3)(B) of the Act allows the Administrator (or a State with a program approved under title V) to grant existing sources an extension of compliance of up to 1 year, upon application by an owner or operator of an affected facility, if such time period is necessary for the installation of controls.

Under the early reduction provisions of section 112(i)(5), existing sources may be granted a 6-year extension of compliance with an otherwise applicable section 112(d) standard (MACT standard) upon demonstration by the owner or operator of the source that HAP emissions have been reduced by 90 percent or more prior to February 8, 1994 (the proposal date of this rule), or the source made an enforceable commitment to achieve such reduction prior to January 1, 1994. The general notice governing early reduction compliance extensions was published in the **Federal Register** on June 13, 1991 (56 FR 27338).

E. Compliance Testing and Monitoring

The tests required under the final standards include initial performance testing of the bulk terminal vapor processing system, vapor leak monitoring and repair of the vapor collection system before each performance test, and annual vapor tightness testing of gasoline cargo tanks. In addition, gasoline cargo tank owners and operators are subject to test procedures to determine compliance with year-round leak rate requirements on cargo tanks, vapor collection systems, and internal vapor valves. Storage vessels at bulk terminals and pipeline stations require periodic visual inspections and/or seal gap measurements. Continuous monitoring of an operating parameter is required for vapor processing systems to ensure

continuous compliance with the 10 mg TOC/liter emission limit.

Sehedule for performance testing is provided in § 63.7 of the General Provisions. The initial performance test is required 180 days after the effective date of the standards or after initial startup for a new facility, or 180 days after the compliance date specified for an existing facility.

Methods 2A, 2B, 25A, and 25B in appendix A of 40 CFR part 60 are specified for measurement of total organic compound emissions from the vapor collection and processing systems. Due to the inherent inability to measure mass emissions from elevated flares (an elevated flare's flame is open to the atmosphere and therefore the emissions cannot be routed through stacks), these test methods are not applicable. Therefore, the Agency has established performance requirements for flares. These performance requirements, including a limitation on visible emissions, are provided in § 63.11(b), which specifies the use of Method 22 for determining visible emissions from flares.

Before each performance test on the vapor processing system, the owner or operator is required to use Method 21 to monitor potential leak sources in the terminal's vapor collection system during the loading of a gasoline cargo tank. Any leaks from the vapor collection and processing systems must be repaired before the performance test is conducted.

The final emission standards include continuous monitoring of an operating parameter as a requirement for vapor processing systems to ensure continuous compliance with the 10 mg TOC/liter emission limit. The vapor processing system's operating parameter "value," monitoring frequency, and averaging time are to be established based on data collected in performance tests of the vapor processor. The facility documents and reports their recommended value, monitoring frequency, and averaging time to the Administrator for approval. Exceeding or failing to maintain, as appropriate, the approved operating parameter value will constitute a violation of the emission limit standard. The standards also require the maintenance and repair of the system necessary to maintain the parameter value and documentation of any exceedances in a quarterly excess emissions report to the Administrator. The parameters that may be monitored include organic compounds concentration for carbon adsorption and refrigeration condenser systems, and combustion or condenser temperature for thermal oxidation and refrigeration condenser systems. An owner or operator may substitute an alternative parameter or vapor processor type upon the approval of the Administrator.

Each gasoline cargo tank loading at an affected bulk terminal is required to undergo an annual certification test by following the procedures in Method 27 of 40 CFR part 60, appendix A, which is entitled "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test." Method 27 tests the vapor tightness of the cargo tank (or compartment) under two conditions, positive pressure and negative pressure (vacuum). The procedure for testing the cargo tank for vapor tightness is as follows. The cargo tank is sealed and pressurized to 460 mm H_2O (18 in. H_2O), gauge. [If conducting a vacuum test, the cargo tank (or compartment) is evacuated to 150 mm H_2O (6.0 in. H_2O), gauge.] The source of pressure is removed, the cargo tank is sealed, and then the pressure in the tank is recorded at the end of 5 minutes. The actual change in pressure (or vacuum) after 5 minutes is compared to the maximum change allowed in the regulation.

The annual certification test also consists, in addition to the procedures in Method 27, of a leak test of the tank's internal vapor valve. A summary of these procedures, which are detailed in § 63.425(e)(2), is as follows. The cargo tank is repressurized and the leak rate across the internal vapor valve is measured after 5 minutes. This value is compared to the maximum allowable 5-minute pressure change to determine the vapor tightness of the valve.

In addition to the annual tests, cargo tanks are subject at any time to a leak detection test as described in § 63.425(f) using Method 21, and may also be subject to other procedures as discussed below. Method 21 is also in 40 CFR part 60, appendix A, and is entitled "Determination of Volatile Organic Compounds Leaks." The principle of Method 21 is that organic vapors cause a positive response in a variety of portable hand-held detectors. Thus, a positive detector response indicates the presence of a source of emissions (leak). During a Method 21 test, the tester holds the probe 3 cm (1 inch) from the sources of possible leaks. Any organic vapor concentration in excess of 21,000 ppm as propane is an indication of a leak. If leaks are found, the cargo tank must be repaired and must pass the following tests before it can be reloaded at the facility.

Cargo tanks are subject at any time to being tested for vapor tightness using the test procedures in § 63.425(g), referred to as the nitrogen pressure decay field test, and may also be subject to the procedures discussed below. A summary of this test, which includes procedures for the cargo tank and the internal vapor valve, is as follows. The headspace of a cargo tank that has been filled is pressurized to a pressure of 460 mm H_2O (18.0 in. H_2O), gauge with nitrogen gas. Vapor tightness is determined by measuring the pressure decay, if any, over time and comparing the pressure decay to the maximum allowable calculated value, which is determined using procedures described in § 63.425(g). If the pressure decay exceeds the maximum allowable value, the cargo tank must be repaired and must pass the procedure below.

Cargo tanks are also subject at any time to a test of vapor tightness using the test procedures in § 63.425(h). These procedures are similar to the procedures in § 63.425(e) except that only the positive pressure test is conducted and the acceptance criteria are less stringent.

F. Recordkeeping and Reporting

The final standards require four types of reports: initial notification, notification of compliance status, periodic reports, and other reports.

The initial notification report (§ 63.9(b)) apprises the regulatory authority of the results of the applicability determination for existing sources or of the intent to construct for new sources. This report also includes a statement as to whether the facility can achieve compliance by the required compliance date. The initial notification report under this rule is required to be submitted not later than 1 year from today's date.

The notification of compliance status (§ 63.9(h))demonstrates that compliance has been achieved. This report lists the methods used to determine compliance, the results of the initial performance test and the continuous monitoring system (CMS) performance evaluation, which include a description of the continuous monitoring program and supporting data for the monitored operating parameter value for the vapor processor, and a list of equipment subject to the standard.

Periodic reports to the Administrator are required on a semiannual basis. These reports will include loadings of gasoline cargo tanks for which vapor tightness documentation was not on file at the facility, reports of storage vessel control systems and inspections, and the excess emissions and CMS performance report and/or summary report required under § 63.10(e)(3). Excess emissions and continuous monitoring reports are also required to be submitted quarterly if a listed

exceedance has occurred. Procedures have been established in § 63.10(e)(3) to reduce the reporting frequency once exceedances no longer occur. Excess emissions and continuous monitoring exceedances reported quarterly will include exceedances or failures to maintain the monitored operating parameter value, failures to take steps to assure that a nonvapor-tight gasoline cargo tank will not be reloaded at the facility before vapor tightness documentation is obtained, reloadings of such gasoline cargo tanks, and equipment leaks for which repair is not attempted within 5 days or completed within 15 days.

Certain additional reporting is occasionally necessary because a short-term response may be needed from the reviewing authority. For example, the Administrator may request more frequent reports of the monitored operating parameter or visual inspection data if it is deemed necessary to ensure compliance with the standard.

Records, reports, and notifications required under the final standards must be available for inspection for 5 years, in accordance with § 63.10(b). The records include the applicability determination for all bulk terminals and pipeline breakout stations, regardless of their size and the outcome of the determination. For affected sources, the records also include (but are not limited to) gasoline cargo tank vapor tightness test results, as well as CMS monitoring data from the vapor processor. Records from the visual inspection program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of the vapor processor are required to ensure that the controls in place are continuing to be effective. Section 63.10(b) allows the records to be retained at the facility for 2 years and off site for the remaining 3 years.

All pipeline breakout stations and bulk gasoline terminals using the emission screening equations will have additional modest recordkeeping and reporting requirements to monitor their potential to emit HAP's. Only facilities that are within 50 percent of the major source criteria, as determined from using the appropriate emission screening equation, must report the calculations and support information for their nonmajor source determination. Once this determination is approved by the Administrator, the source must keep records and certify annually that it has continued to not exceed any of the enforceable operating limitations contained in its most recent applicability determination. That report of calculations and assumptions must be submitted to the Administrator by the owner or operator within 1 year of the date of today's notice. Nonmajor sources using the screening equations with HAP emissions under the 50 percent threshold must keep records of their determination for possible inspection by the Administrator, operate the facility in a manner not to exceed the parameters used in the equation, and notify the Administrator of the use and the results of the emission screening equation. That notification must be submitted to the Administrator by the owner or operator within 1 year of the date of today's notice. The owner or operator is also required to demonstrate, upon request, compliance with the facility operating limits used in the applicability determination.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to 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 government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

Pursuant to the terms of Executive Order 12866, it has been determined to treat this action as a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the docket listed at the beginning of this notice under **ADDRESSES**. The docket is available for public inspection at the Agency's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0325. An Information Collection Request document has been prepared by the EPA (ICR No. 1659.02) to reflect the changed information requirements of the final rule and has been submitted to OMB for review A copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street SW. (mail code 2136), Washington, DC 20460, or by calling (202) 260–2740.

This collection of information has an estimated annual reporting burden averaging 155 hours per bulk gasoline terminal respondent and 45 hours per pipeline breakout station respondent. Similarly, the estimated annual recordkeeping burden is approximately 125 hours per bulk gasoline terminal respondent and 20 hours per pipeline breakout station respondent. These estimates include time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, Environmental Protection Agency, 401 M Street SW., (mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis must be prepared. However, regulatory alternatives that

would alleviate the potential impact of the standards on directly affected companies were not selected because the Act requires all facilities that are members of a category or subcategory of major sources to meet, at a minimum, the requirements of the MACT floor.

For the affected industry sectors, the Small Business Administration's definition of small business is independently owned companies with 100 or fewer employees. The promulgated standards directly impact small companies owning bulk gasoline terminals and pipeline breakout stations. Also, due to downstream wholesale gasoline price increases, the promulgated standards will indirectly impact small companies owning gasoline bulk plants and gasoline service stations.

A definitive estimate of the number of small businesses that will be directly or indirectly affected by the promulgated standards could not be feasibly obtained because of the lack of data related to the extent of vertical integration in the gasoline distribution chain. However, the EPA believes that a maximum of 56 percent of all bulk gasoline terminals are owned by small companies. Potentially, up to 99 percent of the indirectly affected gasoline bulk plants and service stations are owned by small companies. The actual percentage of small companies in these sectors, especially the bulk gasoline terminal sector, is projected to be much smaller due to vertical integration with petroleum refiners. No estimate has been made of the percentage of pipeline breakout stations owned by small companies, but since they are typically affiliated with petroleum refiners, the percentage is projected to be small.

The EPA believes that the promulgated regulation will not result in financial impacts that significantly or differentially stress affected small companies. The per unit compliance cost differentials between large throughput and small throughput facilities are minor. Small facilities are likely to be serving small or specialized markets, which makes it unlikely that the minor differential in unit control costs between large throughput and small throughput facilities will seriously affect the competitive position of small companies, even assuming that small companies own small facilities.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: November 23, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
National Emission Standards for Hazardous Air Pollutants for Source Categories.	
* * *	* *
63.420	2060–0325
63.422–63.428	2060–0325
* * *	* *

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

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

4. Part 63 is amended by adding a new subpart R to read as follows:

Subpart R—National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

Sec.
63.420 Applicability.
63.421 Definitions.
63.422 Standards: Loading racks.
63.423 Standards: Storage vessels.
63.424 Standards: Equipment leaks.
63.425 Test methods and procedures.
63.426 Alternative means of emission limitation.
63.427 Continuous monitoring.
63.428 Reporting and recordkeeping.
63.429 Delegation of authority.

Subpart R—National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

§ 63.420 Applicability.

(a) The affected source to which the provisions of this subpart apply is each bulk gasoline terminal, except those bulk gasoline terminals:

(1) For which the owner or operator has documented and recorded to the Administrator's satisfaction that the result, E_T, of the following equation is less than 1, and complies with requirements in paragraphs (c), (d), (e), and (f) of this section:

$$E_T = CF\,[0.59\,(T_F)\,(1-CE) + 0.17\,(T_E) + 0.08\,(T_{ES}) + 0.038\,(T_I) + 8.5 \times 10^{-6}\,(C) + KQ]$$

where:

E_T = emissions screening factor for bulk gasoline terminals;

CF = 0.161 for bulk gasoline terminals that do not handle any reformulated or oxygenated gasoline containing methyl tert-butyl ether (MTBE), *OR*

CF = 1.0 for bulk gasoline terminals that handle reformulated or oxygenated gasoline containing MTBE;

CE = federally enforceable control efficiency of the vapor processing system used to control emissions from fixed-roof gasoline storage vessels [value should be added in decimal form (percent divided by 100)];

T_F = total number of fixed-roof gasoline storage vessels without an internal floating roof;

T_E = total number of external floating roof gasoline storage vessels with only primary seals;

T_{ES} = total number of external floating roof gasoline storage vessels with primary and secondary seals;

T_I = total number of fixed-roof gasoline storage vessels with an internal floating roof;

C = number of valves, pumps, connectors, loading arm valves, and

open-ended lines in gasoline service;

Q = federally enforceable gasoline throughput limit or gasoline throughput limit in compliance with paragraphs (c), (d), and (f) of this section (liters/day);

$K = 4.52 \times 10^{-6}$ for bulk gasoline terminals with uncontrolled loading racks (no vapor collection and processing systems), *OR*

$K = (4.5 \times 10^{-9})(EF + L)$ for bulk gasoline terminals with controlled loading racks (loading racks that have vapor collection and processing systems installed on the emission stream);

EF = federally enforceable emission standard for the vapor processor outlet emissions (mg of total organic compounds per liter of gasoline loaded);

L = 13 mg/l for gasoline cargo tanks meeting the requirement to satisfy the test criteria for a vapor-tight gasoline tank truck in § 60.501 of this chapter, *OR*

L = 304 mg/l for gasoline cargo tanks not meeting the requirement to satisfy the test criteria for a vapor-tight gasoline tank truck in § 60.501 of this chapter; or

(2) For which the owner or operator has documented and recorded to the Administrator's satisfaction that the facility is not a major source, or is not located within a contiguous area and under common control of a facility that is a major source, as defined in § 63.2 of subpart A of this part.

(b) The affected source to which the provisions of this subpart apply is each pipeline breakout station, except those pipeline breakout stations:

(1) For which the owner or operator has documented and recorded to the Administrator's satisfaction that the result, E_P, of the following equation is less than 1, and complies with requirements in paragraphs (c), (d), (e), and (f) of this section:

$$E_P = CF\,[\,6.7\,(T_F)\,(1 - CE) + 0.21\,(T_E) + 0.093\,(T_{ES}) + 0.1\,(T_I) + 5.31 \times 10^{-6}\,(C)\,]$$

where:

E_P = emissions screening factor for pipeline breakout stations, and

the definitions for CF, T_F, CE, T_E, T_{ES}, T_I, and C are the same as provided in paragraph (a)(1) of this section; or

(2) For which the owner or operator has documented and recorded to the Administrator's satisfaction that the facility is not a major source, or is not located within a contiguous area and under common control of a facility that is a major source, as defined in § 63.2 of subpart A of this part.

(c) A facility for which the results, E_T or E_P, of the calculation in paragraph (a)(1) or (b)(1) of this section has been documented and is less than 1.0 but greater than or equal to 0.50, is exempt from the requirements of this subpart, except that the owner or operator shall:

(1) Operate the facility such that none of the facility parameters used to calculate results under paragraph (a)(1) or (b)(1) of this section, and approved by the Administrator, is exceeded in any rolling 30-day period; and

(2) Maintain records and provide reports in accordance with the provisions of § 63.428(i).

(d) A facility for which the results, E_T or E_P, of the calculation in paragraph (a)(1) or (b)(1) of this section has been documented and is less than 0.50, is exempt from the requirements of this subpart, except that the owner or operator shall:

(1) Operate the facility such that none of the facility parameters used to calculate results under paragraph (a)(1) or (b)(1) of this section is exceeded in any rolling 30-day period; and

(2) Maintain records and provide reports in accordance with the provisions of § 63.428(j).

(e) The provisions of paragraphs (a)(1) and (b)(1) of this section shall not be used to determine applicability to bulk gasoline terminals or pipeline breakout stations that are either:

(1) Located within a contiguous area and under common control with another bulk gasoline terminal or pipeline breakout station, or

(2) Located within a contiguous area and under common control with other sources not specified in paragraphs (a)(1) or (b)(1) of this section, that emit or have the potential to emit a hazardous air pollutant.

(f) Upon request by the Administrator, the owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of any paragraphs in this section shall demonstrate compliance with those paragraphs.

(g) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart that is also subject to applicable provisions of 40 CFR part 60, subpart Kb or XX of this chapter shall comply only with the provisions in each subpart that contain the most stringent control requirements for that facility.

(h) Each owner or operator of an affected source bulk gasoline terminal or pipeline breakout station is subject to the provisions of 40 CFR part 63, subpart A—General Provisions, as indicated in Table 1.

§ 63.421 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act; in subparts A, K, Ka, Kb, and XX of part 60 of this chapter; or in subpart A of this part. All terms defined in both subpart A of part 60 of this chapter and subpart A of this part shall have the meaning given in subpart A of this part. For purposes of this subpart, definitions in this section supersede definitions in other parts or subparts.

Controlled loading rack, for the purposes of § 63.420, means a loading rack equipped with vapor collection and processing systems that reduce displaced vapor emissions to no more than 80 milligrams of total organic compounds per liter of gasoline loaded, as measured using the test methods and procedures in § 60.503 (a) through (c) of this chapter.

Equipment means each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in the gasoline liquid transfer and vapor collection systems. This definition also includes the entire vapor processing system except the exhaust port(s) or stack(s).

Gasoline cargo tank means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

In gasoline service means that a piece of equipment is used in a system that transfers gasoline or gasoline vapors.

Operating parameter value means a value for an operating or emission parameter of the vapor processing system (e.g., temperature) which, if maintained continuously by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with the applicable emission standard. The operating parameter value is determined using the procedures outlined in § 63.425(b).

Oxygenated gasoline means the same as defined in 40 CFR 80.2(rr).

Pipeline breakout station means a facility along a pipeline containing storage vessels used to relieve surges or receive and store gasoline from the pipeline for reinjection and continued transportation by pipeline or to other facilities.

Reformulated gasoline means the same as defined in 40 CFR 80.2(ee).

Uncontrolled loading rack means a loading rack used to load gasoline cargo tanks that is not a controlled loading rack.

Vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding

months that it meets the annual certification test requirements in § 63.425(e), and which is subject at all times to the test requirements in § 63.425 (f), (g), and (h).

Volatile organic liquid (VOL) means, for the purposes of this subpart, gasoline.

§ 63.422 Standards: Loading racks.

(a) Each owner or operator of loading racks at a bulk gasoline terminal subject to the provisions of this subpart shall comply with the requirements in § 60.502 of this chapter except for paragraphs (b), (c), and (j) of that section. For purposes of this section, the term "affected facility" used in § 60.502 of this chapter means the loading racks that load gasoline cargo tanks at the bulk gasoline terminals subject to the provisions of this subpart.

(b) Emissions to the atmosphere from the vapor collection and processing systems due to the loading of gasoline cargo tanks shall not exceed 10 milligrams of total organic compounds per liter of gasoline loaded. Each owner or operator shall comply as expeditiously as practicable, but no later than December 15, 1997 at existing facilities and upon startup for new facilities.

(c) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall comply with § 60.502(e) of this chapter as follows:

(1) For the purposes of this section, the term "tank truck" as used in § 60.502(e) of this chapter means "cargo tank."

(2) Section 60.502(e)(5) of this chapter is changed to read: The terminal owner or operator shall take steps assuring that the nonvapor-tight gasoline cargo tank will not be reloaded at the facility until vapor tightness documentation for that gasoline cargo tank is obtained which documents that:

(i) The gasoline cargo tank meets the applicable test requirements in § 63.425(e);

(ii) For each gasoline cargo tank failing the test in § 63.425 (f) or (g) at the facility, the cargo tank either:

(A) Before repair work is performed on the cargo tank, meets the test requirements in § 63.425 (g) or (h), or

(B) After repair work is performed on the cargo tank before or during the tests in § 63.425 (g) or (h), subsequently passes the annual certification test described in § 63.425(e).

§ 63.423 Standards: Storage vessels.

(a) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall equip each gasoline storage vessel with a design capacity greater than or equal to 75 m^3 according to the requirements in § 60.112b(a) (1) through (4) of this chapter, except for the requirements in §§ 60.112b(a)(1) (iv) through (ix) and 60.112b(a)(2)(ii) of this chapter.

(b) Each owner or operator shall equip each gasoline external floating roof storage vessel with a design capacity greater than or equal to 75 m^3 according to the requirements in § 60.112b(a)(2)(ii) of this chapter if such storage vessel does not currently meet the requirements in paragraph (a) of this section.

(c) Each gasoline storage vessel at existing bulk gasoline terminals and pipeline breakout stations shall be in compliance with the requirements in paragraphs (a) and (b) of this section as expeditiously as practicable, but no later than December 15, 1997. At new bulk gasoline terminals and pipeline breakout stations, compliance shall be achieved upon startup.

§ 63.424 Standards: Equipment leaks.

(a) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall perform a monthly leak inspection of all equipment in gasoline service. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Each piece of equipment shall be inspected during the loading of a gasoline cargo tank.

(b) A log book shall be used and shall be signed by the owner or operator at the completion of each inspection. A section of the log shall contain a list, summary description, or diagram(s) showing the location of all equipment in gasoline service at the facility.

(c) Each detection of a liquid or vapor leak shall be recorded in the log book. When a leak is detected, an initial attempt at repair shall be made as soon as practicable, but no later than 5 calendar days after the leak is detected. Repair or replacement of leaking equipment shall be completed within 15 calendar days after detection of each leak, except as provided in paragraph (d) of this section.

(d) Delay of repair of leaking equipment will be allowed upon a demonstration to the Administrator that repair within 15 days is not feasible. The owner or operator shall provide the reason(s) a delay is needed and the date by which each repair is expected to be completed.

(e) Initial compliance with the requirements in paragraphs (a) through (d) of this section shall be achieved by existing sources as expeditiously as practicable, but no later than December 14, 1995. For new sources, initial compliance shall be achieved upon startup.

(f) As an alternative to compliance with the provisions in paragraphs (a) through (d) of this section, owners or operators may implement an instrument leak monitoring program that has been demonstrated to the Administrator as at least equivalent.

(g) Owners and operators shall not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(1) Minimize gasoline spills;

(2) Clean up spills as expeditiously as practicable;

(3) Cover all open gasoline containers with a gasketed seal when not in use;

(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard in § 63.422(b) or § 60.112b(a)(3)(ii) of this chapter shall conduct a performance test on the vapor processing system according to the test methods and procedures in § 60.503, except a reading of 500 ppm shall be used to determine the level of leaks to be repaired under § 60.503(b). If a flare is used to control emissions, and emissions from this device cannot be measured using these methods and procedures, the provisions of § 63.11(b) shall apply.

(b) For each performance test conducted under paragraph (a) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor processing system using the following procedure:

(1) During the performance test, continuously record the operating parameter under § 63.427(a);

(2) Determine an operating parameter value based on the parameter data monitored during the performance test, supplemented by engineering assessments and the manufacturer's recommendations; and

(3) Provide for the Administrator's approval the rationale for the selected operating parameter value, and monitoring frequency and averaging time, including data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous

compliance with the emission standard in § 63.422(b) or § 60.112b(a)(3)(ii) of this chapter.

(c) For performance tests performed after the initial test, the owner or operator shall document the reasons for any change in the operating parameter value since the previous performance test.

(d) The owner or operator of each gasoline storage vessel subject to the provisions of § 63.423 shall comply with § 60.113b of this chapter. If a closed vent system and control device are used, as specified in § 60.112b(a)(3) of this chapter, to comply with the requirements in § 63.423, the owner or operator shall also comply with the requirements in paragraph (b) of this section.

(e) Annual certification test. The annual certification test for gasoline cargo tanks shall consist of the following test methods and procedures:

(1) Method 27, appendix A, 40 CFR part 60. Conduct the test using a time period (t) for the pressure and vacuum tests of 5 minutes. The initial pressure (P_i) for the pressure test shall be 460 mm H_2O (18 in. H_2O), gauge. The initial vacuum (V_i) for the vacuum test shall be 150 mm H_2O (6 in. H_2O), gauge. The maximum allowable pressure and vacuum changes (Δp, Δv) are as shown in the second column of Table 2 of this paragraph.

TABLE 2.—ALLOWABLE CARGO TANK TEST PRESSURE OR VACUUM CHANGE

Cargo tank or compartment capacity, liters (gal)	Annual certification-allowable pressure or vacuum change (Δp, Δv) in 5 minutes, mm H_2O (in. H_2O)	Allowable pressure change (Δp) in 5 minutes at any time, mm H_2O (in. H_2O)
9,464 or more (2,500 or more)	25 (1.0)	64 (2.5)
9,463 to 5,678 (2,499 to 1,500)	38 (1.5)	76 (3.0)
5,679 to 3,785 (1,499 to 1,000)	51 (2.0)	89 (3.5)
3,782 or less (999 or less)	64 (2.5)	102 (4.0)

(2) Pressure test of the cargo tank's internal vapor valve as follows:

(i) After completing the tests under paragraph (e)(1) of this section, use the procedures in Method 27 to repressurize the tank to 460 mm H_2O (18 in. H_2O), gauge. Close the tank's internal vapor valve(s), thereby isolating the vapor return line and manifold from the tank.

(ii) Relieve the pressure in the vapor return line to atmospheric pressure, then reseal the line. After 5 minutes, record the gauge pressure in the vapor return line and manifold. The maximum allowable 5-minute pressure increase is 130 mm H_2O (5 in. H_2O).

(f) Leak detection test. The leak detection test shall be performed using Method 21, appendix A, 40 CFR part 60, except omit section 4.3.2 of Method 21. A vapor-tight gasoline cargo tank shall have no leaks at any time when tested according to the procedures in this paragraph.

(1) The leak definition shall be 21,000 ppm as propane. Use propane to calibrate the instrument, setting the span at the leak definition. The response time to 90 percent of the final stable reading shall be less than 8 seconds for the detector with the sampling line and probe attached.

(2) In addition to the procedures in Method 21, include the following procedures:

(i) Perform the test on each compartment during loading of that compartment or while the compartment is still under pressure.

(ii) To eliminate a positive instrument drift, the dwell time for each leak detection shall not exceed two times the instrument response time. Purge the instrument with ambient air between each leak detection. The duration of the purge shall be in excess of two instrument response times.

(iii) Attempt to block the wind from the area being monitored. Record the highest detector reading and location for each leak.

(g) Nitrogen pressure decay field test. For those cargo tanks with manifolded product lines, this test procedure shall be conducted on each compartment.

(1) Record the cargo tank capacity. Upon completion of the loading operation, record the total volume loaded. Seal the cargo tank vapor collection system at the vapor coupler. The sealing apparatus shall have a pressure tap. Open the internal vapor valve(s) of the cargo tank and record the initial headspace pressure. Reduce or increase, as necessary, the initial headspace pressure to 460 mm H_2O (18.0 in. H_2O), gauge by releasing pressure or by adding commercial grade nitrogen gas from a high pressure cylinder capable of maintaining a pressure of 2,000 psig.

(i) The cylinder shall be equipped with a compatible two-stage regulator with a relief valve and a flow control metering valve. The flow rate of the nitrogen shall be no less than 2 cfm. The maximum allowable time to pressurize cargo tanks with headspace volumes of 1,000 gallons or less to the appropriate pressure is 4 minutes. For cargo tanks with a headspace of greater than 1,000 gallons, use as a maximum allowable time to pressurize 4 minutes or the result from the equation below, whichever is greater.

$$T = V_h \times 0.004$$

where:

T = maximum allowable time to pressurize the cargo tank, min;

V_h = cargo tank headspace volume during testing, gal.

(2) It is recommended that after the cargo tank headspace pressure reaches approximately 460 mm H_2O (18 in. H_2O), gauge, a fine adjust valve be used to adjust the headspace pressure to 460 mm H_2O (18.0 in. H_2O), gauge for the next 30 ± 5 seconds.

(3) Reseal the cargo tank vapor collection system and record the headspace pressure after 1 minute. The measured headspace pressure after 1 minute shall be greater than the minimum allowable final headspace pressure (PF) as calculated from the following equation:

$$P_F = \left(\frac{N}{18.0}\right)^{\frac{V_s}{5 \times V_h}}$$

where:

P_f = minimum allowable final headspace pressure, in. H_2O, gauge;

V_s = total cargo tank shell capacity, gal;

V_h = cargo tank headspace volume after loading, gal;

18.0 = initial pressure at start of test, in. H_2O, gauge;

N = 5-minute continuous performance standard at any time from the third

column of Table 2 of § 63.425(e)(i), in. H_2O.

(4) Conduct the internal vapor valve portion of this test by repressurizing the cargo tank headspace with nitrogen to 460 mm H_2O (18 in. H_2O), gauge. Close the internal vapor valve(s), wait for 30 ± 5 seconds, then relieve the pressure downstream of the vapor valve in the vapor collection system to atmospheric pressure. Wait 15 seconds, then reseal the vapor collection system. Measure and record the pressure every minute for 5 minutes. Within 5 seconds of the pressure measurement at the end of 5 minutes, open the vapor valve and record the headspace pressure as the "final pressure."

(5) If the decrease in pressure in the vapor collection system is less than at least one of the interval pressure change values in Table 3 of this paragraph, or if the final pressure is equal to or greater than 20 percent of the 1-minute final headspace pressure determined in the test in paragraph (g)(3) of this section, then the cargo tank is considered to be a vapor-tight gasoline cargo tank.

TABLE 3.—PRESSURE CHANGE FOR INTERNAL VAPOR VALVE TEST

Time interval	Interval pressure change, mm H_2O (in. H_2O)
After 1 minute	28 (1.1)
After 2 minutes	56 (2.2)
After 3 minutes	84 (3.3)
After 4 minutes	112 (4.4)
After 5 minutes	140 (5.5)

(h) Continuous performance pressure decay test. The continuous performance pressure decay test shall be performed using Method 27, appendix A, 40 CFR Part 60. Conduct only the positive pressure test using a time period (t) of 5 minutes. The initial pressure (P_i) shall be 460 mm H_2O (18 in. H_2O), gauge. The maximum allowable 5-minute pressure change (Δp) which shall be met at any time is shown in the third column of Table 2 of § 63.425(e)(1).

§ 63.426 Alternative means of emission limitation.

For determining the acceptability of alternative means of emission limitation for storage vessels under § 63.423, the provisions of § 60.114b of this chapter apply.

§ 63.427 Continuous monitoring.

(a) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) as specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, except as allowed in paragraph (a)(5) of this section.

(1) Where a carbon adsorption system is used, a continuous emission monitoring system (CEMS) capable of measuring organic compound concentration shall be installed in the exhaust air stream.

(2) Where a refrigeration condenser system is used, a continuous parameter monitoring system (CPMS) capable of measuring temperature shall be installed immediately downstream from the outlet to the condenser section. Alternatively, a CEMS capable of measuring organic compound concentration may be installed in the exhaust air stream.

(3) Where a thermal oxidation system is used, a CPMS capable of measuring temperature shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, shall be installed in proximity to the pilot light to indicate the presence of a flame.

(5) Monitoring an alternative operating parameter or a parameter of a vapor processing system other than those listed in this paragraph will be allowed upon demonstrating to the Administrator's satisfaction that the alternative parameter demonstrates continuous compliance with the emission standard in § 63.422(b) or § 60.112b(a)(3)(ii) of this chapter.

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall operate the vapor processing system in a manner not to exceed the operating parameter value for the parameter described in paragraphs (a)(1) and (a)(2) of this section, or to go below the operating parameter value for the parameter described in paragraph (a)(3) of this section, and established using the procedures in § 63.425(b). In cases where an alternative parameter pursuant to paragraph (a)(5) of this section is approved, each owner or operator shall operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the alternative operating parameter value. Operation of the vapor processing system in a manner exceeding or going below the operating parameter value, as specified above, shall constitute a violation of the emission standard in § 63.422(b).

(c) Each owner or operator of gasoline storage vessels subject to the provisions of § 63.423 shall comply with the monitoring requirements in § 60.116b of this chapter, except records shall be kept for at least 5 years. If a closed vent system and control device are used, as specified in § 60.112b(a)(3) of this chapter, to comply with the requirements in § 63.423, the owner or operator shall also comply with the requirements in paragraph (a) of this section.

§ 63.428 Reporting and recordkeeping.

(a) The initial notifications required for existing facilities under § 63.9(b)(2) shall be submitted not later than 1 year after a facility becomes subject to the provisions of this subpart.

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall keep records of the test results for each gasoline cargo tank loading at the facility as follows:

(1) Annual certification testing performed under § 63.425(e); and

(2) Continuous performance testing performed at any time at that facility under § 63.425 (f), (g), and (h).

(3) The documentation file shall be kept up-to-date for each gasoline cargo tank loading at the facility. The documentation for each test shall include, as a minimum, the following information:

(i) Name of test:

Annual Certification Test—Method 27 (§ 63.425(e)(1)),

Annual Certification Test—Internal Vapor Valve (§ 63.425(e)(2)),

Leak Detection Test (§ 63.425(f)),

Nitrogen Pressure Decay Field Test (§ 63.425(g)), or

Continuous Performance Pressure Decay Test (§ 63.425(h)).

(ii) Cargo tank owner's name and address.

(iii) Cargo tank identification number

(iv) Test location and date.

(v) Tester name and signature.

(vi) Witnessing inspector, if any: Name, signature, and affiliation.

(vii) Vapor tightness repair: Nature of repair work and when performed in relation to vapor tightness testing.

(viii) Test results: Pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument and leak definition.

(c) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall:

(1) Keep an up-to-date, readily accessible record of the continuous monitoring data required under § 63.427(a). This record shall indicate the time intervals during which loadings of gasoline cargo tanks have

occurred or, alternatively, shall record the operating parameter data only during such loadings. The date and time of day shall also be indicated at reasonable intervals on this record.

(2) Record and report simultaneously with the notification of compliance status required under § 63.9(h):

(i) All data and calculations, engineering assessments, and manufacturer's recommendations used in determining the operating parameter value under § 63.425(b); and

(ii) The following information when using a flare under provisions of § 63.11(b) to comply with § 63.422(b):

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted); and

(B) All visible emissions readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required under § 63.425(a).

(3) If an owner or operator requests approval to use a vapor processing system or monitor an operating parameter other than those specified in § 63.427(a), the owner or operator shall submit a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application.

(d) Each owner or operator of storage vessels subject to the provisions of this subpart shall keep records and furnish reports as specified in § 60.115b of this chapter, except records shall be kept for at least 5 years.

(e) Each owner or operator complying with the provisions of § 63.424 (a) through (d) shall record the following information in the log book for each leak that is detected:

(1) The equipment type and identification number;

(2) The nature of the leak (i.e., vapor or liquid) and the method of detection (i.e., sight, sound, or smell);

(3) The date the leak was detected and the date of each attempt to repair the leak,

(4) Repair methods applied in each attempt to repair the leak,

(5) "Repair delayed" and the reason for the delay if the leak is not repaired within 15 calendar days after discovery of the leak,

(6) The expected date of successful repair of the leak if the leak is not repaired within 15 days, and

(7) The date of successful repair of the leak.

(f) Each owner or operator subject to the provisions of § 63 424 shall report to the Administrator a description of the types, identification numbers, and locations of all equipment in gasoline service. For facilities electing to implement an instrument program under § 63.424(f), the report shall contain a full description of the program.

(1) In the case of an existing source or a new source that has an initial startup date before the effective date, the report shall be submitted with the initial notifications required under paragraph (a) of this section, unless an extension of compliance is granted under § 63.6(i). If an extension of compliance is granted, the report shall be submitted on a date scheduled by the Administrator.

(2) In the case of new sources that did not have an initial startup date before the effective date, the report shall be submitted with the application for approval of construction, as described in § 63.5(d).

(g) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall include in a semiannual report to the Administrator the following information:

(1) Each loading of a gasoline cargo tank for which vapor tightness documentation had not been previously obtained by the facility;

(2) Periodic reports required under paragraph (d) of this section; and

(3) The number of equipment leaks not repaired within 5 days after detection.

(h) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall include in the excess emissions report to the Administrator required under § 63.10(e)(3) the following information:

(1) Each exceedance or failure to maintain, as appropriate, the monitored operating parameter value determined under § 63.425(b). The report shall include the monitoring data for the days on which exceedances or failures to maintain have occurred, and a description and timing of the steps taken to repair or perform maintenance on the vapor collection and processing systems or the CMS.

(2) Each instance of a nonvapor-tight gasoline cargo tank loading at the facility in which the owner or operator failed to take steps to assure that such cargo tank would not be reloaded at the facility before vapor tightness documentation for that cargo tank was obtained.

(3) Each reloading of a nonvapor-tight gasoline cargo tank at the facility before vapor tightness documentation for that cargo tank is obtained by the facility in accordance with § 63.422(c)(2).

(4) For each occurrence of an equipment leak for which no repair attempt was made within 5 days or for which repair was not completed within 15 days after detection:

(i) The date on which the leak was detected;

(ii) The date of each attempt to repair the leak;

(iii) The reasons for the delay of repair; and

(iv) The date of successful repair.

(i) Each owner or operator of a facility meeting the criteria in § 63.420(c) shall perform the requirements of this paragraph (i), all of which will be available for public inspection:

(1) Document and report to the Administrator not later than December 14, 1995 for existing facilities, within 30 days for existing facilities subject to § 63.420(c) after December 14, 1995 or at startup for new facilities the methods, procedures, and assumptions supporting the calculations for determining criteria in § 63.420(c);

(2) Maintain records to document that the facility parameters established under § 63.420(c) have not been exceeded; and

(3) Report annually to the Administrator that the facility parameters established under § 63.420(c) have not been exceeded.

(4) At any time following the notification required under paragraph (i)(1) of this section and approval by the Administrator of the facility parameters, and prior to any of the parameters being exceeded, the owner or operator may submit a report to request modification of any facility parameter to the Administrator for approval. Each such request shall document any expected HAP emission change resulting from the change in parameter.

(j) Each owner or operator of a facility meeting the criteria in § 63.420(d) shall perform the requirements of this paragraph (j), all of which will be available for public inspection:

(1) Document and report to the Administrator not later than December 14, 1995 for existing facilities, within 30 days for existing facilities subject to § 63.420(d) after December 14, 1995 or at startup for new facilities the use of the emission screening equations in § 63.420(a)(1) or (b)(1) and the calculated value of E_T or E_P;

(2) Maintain a record of the calculations in § 63.420 (a)(1) or (b)(1), including methods, procedures, and assumptions supporting the calculations for determining criteria in § 63.420(d); and

(3) At any time following the notification required under paragraph (j)(1) of this section, and prior to any of

the parameters being exceeded, the owner or operator may notify the Administrator of modifications to the facility parameters. Each such notification shall document any expected HAP emission change resulting from the change in parameter.

§ 63.429 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authority contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.426 and § 63.427(a)(5) will not be delegated to any State.

TABLE 1 TO SUBPART R—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
63.1(a)(1)	Yes	
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	
63.1(a)(4)	Yes	
63.1(a)(5)	No	Section reserved
63.1(a)(6)(8)	Yes	
63.1(a)(9)	No	Section reserved
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	
63.1(a)(12))–(a)(14)	Yes	
63.1(b)(1)	No	Subpart R specifies applicability in § 63.420
63.1(b)(2)	Yes	
63.1(b)(3)	No	Subpart R specifies reporting and recordkeeping for some large area sources in § 63.428
63.1(c)(1)	Yes	
63.1(c)(2)	Yes	Some small sources are not subject to subpart R
63.1(c)(3)	No	Section reserved
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	
63.1(d)	No	Section reserved
63.1(e)	Yes	
63.2	Yes	Additional definitions in § 63.421
63.3(a)–(c)	Yes	
63.4(a)(1)–(a)(3)	Yes	
63.4(a)(4)	No	Section reserved
63.4(a)(5)	Yes	
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)(1)	Yes	
63.5(a)(2)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Section reserved
63.5(b)(3)	Yes	
63.5(b)(4)	Yes	
63.5(b)(5)	Yes	
63.5(b)(6)	Yes	
63.5(c)	No	Section reserved
63.5(d)(1)	Yes	
63.5(d)(2)	Yes	
63.5(d)(3)	Yes	
63.5(d)(4)	Yes	
63.5(e)	Yes	
63.5(f)(1)	Yes	
63.5(f)(2)	Yes	
63.6(a)	Yes	
63.6(b)(1)	Yes	
63.6(b)(2)	Yes	
63.6(b)(3)	Yes	
63.6(b)(4)	Yes	
63.6(b)(5)	Yes	
63.6(b)(6)	No	Section reserved
63.6(b)(7)	Yes	
63.6(c)(1)	No	Subpart R specifies the compliance date
63.6(c)(2)	Yes	
63.6(c)(3)–(c)(4)	No	Sections reserved
63.6(c)(5)	Yes	
63.6(d)	No	Section reserved
63.6(e)	Yes	
63.6(f)(1)	Yes	

TABLE 1 TO SUBPART R—GENERAL PROVISIONS APPLICABILITY TO SUBPART R—Continued

Reference	Applies to subpart R	Comment
63.6(f)(2)	Yes	
63.6(f)(3)	Yes	
63.6(g)	Yes	
63.6(h)	No	Subpart R does not require COMS
63.6(i)(1)–(i)(14)	Yes	
63.6(i)(15)	No	Section reserved
63.6(i)(16)	Yes	
63.6(j)	Yes	
63.7(a)(1)	Yes	
63.7(a)(2)	Yes	
63.7(a)(3)	Yes	
63.7(b)	Yes	
63.7(c)	Yes	
63.7(d)	Yes	
63.7(e)(1)	Yes	
63.7(e)(2)	Yes	
63.7(e)(3)	Yes	
63.7(e)(4)	Yes	
63.7(f)	Yes	
63.7(g)	Yes	
63.7(h)	Yes	
63.8(a)(1)	Yes	
63.8(a)(2)	Yes	
63.8(a)(3)	No	Section reserved
63.8(a)(4)	Yes	
63.8(b)(1)	Yes	
63.8(b)(2)	Yes	
63.8(b)(3)	Yes	
63.8(c)(1)	Yes	
63.8(c)(2)	Yes	
63.8(c)(3)	Yes	
63.8(c)(4)	Yes	
63.8(c)(5)	No	Subpart R does not require COMS
63.8(c)(6)–(c)(8)	Yes	
63.8(d)	Yes	
63.8(e)	Yes	
63.8(f)(1)–(f)(5)	Yes	
63.8(f)(6)	Yes	
63.8(g)	Yes	
63.9(a)	Yes	
63.9(b)(1)	Yes	
63.9(b)(2)	No	§63.428(a) specifies 1-year initial notification requirement
63.9(b)(3)	Yes	
63.9(b)(4)	Yes	
63.9(b)(5)	Yes	
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	Yes	
63.9(f)	Yes	
63.9(g)	Yes	
63.9(h)(1)–(h)(3)	Yes	
63.9(h)(4)	No	Section reserved
63.9(h)(5)–(h)(6)	Yes	
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)	Yes	
63.10(b)(3)	Yes	
63.10(c)(1)	Yes	
63.10(c)(2)–(c)(4)	No	Sections reserved
63.10(c)(5)–(c)(8)	Yes	
63.10(c)(9)	No	Section reserved
63.10(c)(5)–(c)(8)	Yes	

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H (CONCLUDED)

Reference	Applies to subpart R	Comment
63.10(d)(1)	Yes	
63.10(d)(2)	Yes	
63.10(d)(3)	Yes	
63.10(d)(4)	Yes	
63.10(d)(5)	Yes	
63.10(e)	Yes	
63.10(f)	Yes	
63.11(a)–(b)	Yes	
63.12(a)–(c)	Yes	
63.13(a)–(c)	Yes	
63.14(a)–(b)	Yes	
63.15(a)–(b)	Yes	

[FR Doc. 94–30402 Filed 12–13–94; 8:45 am]

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40 CFR Part 52

[UT4–1–6465 and UT2–1–6694; FRL–5119–1]

Approval and Promulgation of State Implementation Plans: Utah; Stack Height Analyses and Regulations and SO_2 Nonattainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving two revisions to the Utah State Implementation Plan (SIP): Section 16, Stack Height Demonstration, and Section 9, Part B, Sulfur Dioxide. Sections 16 and 9 were submitted by the Governor of Utah in letters dated December 23, 1991, and May 15, 1992, respectively. The revisions to Section 16 were to address the stack-height demonstration requirements for the Kennecott Minerals Company Smelter near Magna, Utah. Minor corrections to the other stacks in the State were also made. Section 9, Part B was revised to be consistent with Section 16. Prior to the revision, the SO_2 attainment demonstration for Salt Lake County and portions of Tooele County was based on multipoint rollback emission rates at the Kennecott smelter. The PM_{10} SIP adopted for Salt Lake County in 1991 established significantly lower emission rates (which would meet the 24-hour National Ambient Air Quality Standard (NAAQS) for the smelter based on reasonable available control technology (RACT).) Section 16 and Section 9, Part B needed to be consistent with the PM_{10} SIP (the PM_{10} SIP is located in Section 9, Part A). In addition, Section 9 Part B was revised to include an analysis and the emission limitation that would demonstrate attainment of the 3-hour secondary NAAQS. General SO_2 regulations initially determined as deficient with respect to meeting the statewide SO_2 SIP requirements are also being approved.

EFFECTIVE DATE: January 13, 1995.

ADDRESSES: Copies of the documents relevant to this proposed action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999–18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Lee Hanley at (303) 293–1760.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History and Regulatory Requirement for Stacks Greater Than GEP

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (CAA) As a result of a court challenge, EPA promulgated revisions to the stack height regulations on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height credit.

Subsequent to the July 8, 1985 promulgation, the stack height regulations were again challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S Court of Appeals for the D.C. Circuit issued its decision affirming the regulations, for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

However, none of these provisions is at issue here.

GEP has been established by the regulations to be the greater of: (1) 65 meters; (2) the height derived through application of one of two formulas which base GEP on the dimensions of nearby buildings; or (3) the height demonstration through a field study or fluid modeling demonstration to be necessary to avoid excessive concentrations of any air pollutant due to downwash, eddies, or wakes caused by the source itself or nearby buildings or terrain obstacles (40 CFR 51.100(ii). Where EPA or a State finds that a source emission limit is affected by dispersion from a stack in excess of GEP, the State must then model to establish an emission limit which will provide for attainment of the NAAQS when stack height credit is restricted to GEP.

The reader is referred to 59 FR 18341, April 18, 1994, for additional information on the regulatory history and regulatory requirement for stacks greater than good engineering practice (GEP).

B. The 1981 and 1986 SIP Submittals

1 The 1981 SO_2 SIP Submittal

A Utah SO_2 SIP revision was submitted with a letter dated August 17, 1981, by the Governor of Utah to address the attainment of the SO_2 NAAQS in Salt Lake County and portions of the nonattainment area in Tooele County. Additional information was submitted by the State on December 7, 1981, and January 25, 1983 On February 7, 1983, the Governor submitted a request to redesignate all of Salt Lake County and the nonattainment portion of Tooele County to attainment On March 23, 1984 (49 FR 10926), EPA proposed to delay any action on the request to redesignate the area to attainment until final resolution of several issues. A detailed discussion of this SIP revision is contained in the March 23, 1984 notice of proposed rulemaking and should be used as a reference for additional information.

The control strategy for the 1981 SIP has several parts: (1) Emission limitations on several low-level stacks at the smelter (e.g., boilers and heat treaters); (2) reasonably available measures to control or eliminate fugitive emissions; and (3) cumulative emission limits for the main stack (see additional discussion on these emission limits in 2.b. below). The State's strategy was based upon measured ambient data in the lower elevation near the smelter. EPA identified the major deficiencies of the State analysis: (1) The State made no attempt to demonstrate the effects in the upper elevation (above 5600 feet in the Oquirrh Mountains); and (2) the database at the smelter was insufficient to be used reliably with the established emission limits, given the assumption in the development of the emission limits technique. Modeling analyses performed by the State and EPA to demonstrate attainment in the upper elevation were screening analyses only. EPA concluded that dispersion modeling in this complex terrain was unreliable and that the only method that could be used for this determination was monitoring. The 1981 SO_2 SIP was conditionally approved on the assumption that the emission limits were consistent with federal 1985 stack height rules and, therefore, adequate for attainment of the SO_2 NAAQS. The redesignation of the area to attainment was denied. (50 FR 7059, February 20, 1985)

2. The May 2, 1986 GEP SIP Submittal

The Utah Stack Height SIP was submitted by the Governor with a letter dated May 2, 1986. The submittal included regulations to address: (1) GEP stack height credit and dispersion techniques; (2) a new Section 17 of the SIP that listed all existing stacks in Utah greater than 65 meters; and (3) a technical support document for Section 17 of the SIP. The Kennecott Magna stack analyses were part of this submittal. Subsequent submittals to support the Kennecott analyses were received in letters dated October 6, 1986, December 3, 1986, November 13, 1987, and May 17, 1988. The Kennecott smelter stack height credit was a significant component of the Utah SO_2 SIP emission limits conditionally approved on February 20, 1985

a. Applicability of the NSPS Regulation The federal NSPS regulation for primary copper smelters applies to any such facility that commences construction or modification after October 16, 1974 (42 FR 37937, July 25, 1977, and 40 CFR 60 160) Modification generally means any physical or operational change which results in an increase in the emission rate to the atmosphere.

The Kennecott Magna smelter expansion/modification began in the early 1970s, with a commitment to the 1215-foot stack in 1973 and completion of the project in 1977. The modification of the acid plant system resulted in an increase from 60% sulfur capture to 86%, approximately a 65% reduction of sulfur emissions. Based on this information, EPA concluded that the 1970's Kennecott expansion/modification did not subject the smelter to NSPS requirements.

b. Analyses on the 1986 Submittal. The Kennecott stack height analyses were undertaken to comply with the July 8, 1985 stack height regulation, as well as the condition specified in the approval of the Utah SO_2 SIP. The reader should refer to the February 2, 1985 final conditional approval (50 FR 7056) and March 23, 1984 proposed approval (49 FR 10946) **Federal Register** actions for additional information on the Utah SO_2 SIP.

Kennecott originally had two 400-foot stacks (grandfathered stack heights) from which SO_2 emissions from the smelter were vented. The 1970's modification/expansion included the replacement of the 400-foot stacks with a single 1215-foot stack. The GEP formula height (H + 1.5 L), considering the nearby buildings, is 212.5 feet.

The initial Kennecott GEP demonstration was submitted on May 2, 1986, with subsequent submittals on October 6, 1986, December 3, 1986, November 13, 1987, and May 11, 1988. There are two basic parts to the Kennecott analyses: the GEP demonstration and BART analysis. The GEP demonstration consists of three subparts: the fluid modeling protocol, the fluid modeling results, and an evaluation of the fluid modeling results with respect to the stack height regulations. The BART analysis is performed if the source contends that the NSPS emission limits are infeasible Relevant factors for this analysis include: high cost-effectiveness ratio, excessive local community impact, excessive plant impact, and technological infeasibility. Kennecott provided responses to all the BART factors mentioned above. The cost-effectiveness ratio and technical infeasibility issues, however, were determined critical to this review because of their relationship to the emission limitations used in the GEP analyses

Since the Kennecott emissions, as established through Multi-point Rollback (MPR), were used in the 1981 SO_2 SIP, EPA's primary concern, with the use of any emission rate in the demonstration of GEP, is ensuring protection of the NAAQS (i.e., to protect health and welfare). The basic concept behind GEP is to prevent sources from using illegal dispersion techniques to avoid emissions controls.

Kennecott provided extensive data on its GEP analyses. The reader is referred to 53 FR 48942 for information on the GEP demonstration and BART analysis. To summarize, the GEP demonstration showed that the existing stack height of 1215-foot (370.4m) met the 40% criterion due to terrain effects and an exceedance of the NAAQS at MPR emission rates. (Discussion of the MPR emission rates for Kennecott can be found in 49 FR 10948, March 12, 1983, proposed rulemaking). MPR is a technique designed for sources with variable emission rates (e.g., smelters). MPR allows for a frequency distribution of emission rates which will permit extremely high emissions on rare occasions. The MPR methodology is constructed around the recognition that any control strategy will have a predictable probability of allowing a violation of the NAAQS. The MPR is based upon allowing a 26% probability of recording a violation (Additional information on MPR is found in Appendix A). The GEP demonstration satisfies the excessive concentration criteria in EPA's regulation if MPR reflects the proper emission rates. After review, EPA concluded that Kennecott's analyses were acceptable, since Kennecott performed a fluid modeling study consistent with existing guidance and the study was approved by EPA.

Application of the level of control required by NSPS would reduce the

emissions of SO_2 at Kennecott during the stable process phase, but would not affect emission rates under startup, shutdown, malfunction, and upset conditions. This is because the NSPS emission rate is for normal operations and excludes such process conditions. MPR includes startup, shutdown, malfunction, and upset conditions. From the Kennecott assessment, considering only long-term averages, the cost portion is consistent with the tons of SO_2 reduction expected from similar NSPS applications. In the Kennecott BART analysis, the controlling emissions for the determination of GEP appear to be those under upset, start-up, shutdown, and malfunction. Therefore, while there would be no difference in the emission rates under these conditions as a result of meeting NSPS, there would be a substantial additional cost to control these emissions.

In summary, the emissions at the smelter from startups, shutdowns, upsets, and malfunctions are included in the MPR emission limits and could be considered in the NAAQS attainment and GEP analyses. Application of NSPS technology will not affect these emission rates and will, therefore, result in no change in demonstrating GEP. It may be possible to reduce annual emissions by requiring additional controls on the smelter, but such reduction would have no relevance to the limiting case for determination of GEP.

Given the above discussion, EPA proposed to approve (53 FR 48942, December 5, 1988) the Kennecott analysis in the Utah GEP SIP submitted on May 2, 1986, with subsequent submittals on October 6, 1986, December 3, 1986, November 13, 1987, and May 17, 1988. However, EPA's review was conducted under a specific assumption: That the emission rate(s) in the SO_2 SIP were sufficient to demonstrate attainment. That assumption followed another critical assumption: That Kennecott owned or controlled the lands in the upper elevation for which no monitoring data exist to demonstrate attainment of the NAAQS.

Only one comment was received in response to the December 5, 1988 **Federal Register** proposed approval of the Kennecott GEP demonstration. The comment was from Kennecott in support of this action. However, prior to publication of the proposed approval **Federal Register**, EPA did receive a letter from a landowner in the Oquirrh Mountains expressing concerns due to the lack of ambient monitoring in the nonattainment area. This was EPA's first documented information on public access in the nonattainment area other than the Kennecott operation. EPA proceeded to continue its evaluation of the State submittal and to publish its position on the GEP demonstration based on the State submittal, but initiated a reevaluation on land ownership above the 5600-ft. elevation in the Oquirrh Mountains. Documentation on the claim of land ownership, other than that of the Kennecott operations, was provided by Howard Haynes, Jr. in March 1989.

3. Utah 1981 SO_2 and 1986 GEP SIP Reassessment

Data from the Salt Lake County and Tooele County Assessor offices showed over 80 landowners in this nonattainment area. Kennecott, in its land ownership research, verified the list of landowners.

One of the critical assumptions of the conditional approval of the 1981 SO_2 SIP and the emission rate was Kennecott's ownership or control of those lands in the potential nonattainment area in the Oquirrh Mountains. The land ownership research revised the EPA's earlier assumptions on the adequacy of the 1981 SO_2 and the 1986 GEP Stack SIPs.

EPA entered into discussions with Kennecott and the State for resolution of these issues and attempted to outline the procedures for addressing the SO_2 and GEP SIPs. During these negotiations, the State was developing the PM_{10} SIP for Salt Lake County The Salt Lake County PM_{10} SIP development process identified SO_2 as a precursor for PM_{10}. (Precursors are secondary particles which are formed in the atmosphere from gases which are directly emitted by the source. Sulfates are one of the most common secondary particles in a PM_{10} nonattainment area and result from sulfur dioxide emissions.) The Kennecott smelter SO_2 emissions comprised ≈56% of the total (primary and secondary) PM_{10} emissions in Salt Lake County

The PM_{10} SIP was adopted by the State in August 1991 and submitted to EPA in November 1991. The reader is referred to 59 FR 35036, July 8, 1994, for information on the PM_{10} SIP. The PM_{10} SIP required significant emission reduction for the Kennecott operations (refinery, concentrator, mine, power plant and smelter). The Kennecott smelter emission limits were reduced from 76,000 tpy or 18,000 lb/hr annual average (as allowed in the 1981 SO_2 and 1986 GEP SIPs) to ≈18,500 tpy (which includes fugitive emissions, and applies to the entire smelter). The 1981 SO_2 and 1986 GEP SIPs addressed emissions from smelter processing units and SO_2 collection and removal equipment vented to the smelter tall stack. They did not include fugitive emissions. For clarification, the 76,000 tpy was reduced to the 14,191 tpy limit on the 1215-foot stack for emissions from the smelter processing units and SO_2 collection and removal equipment.

D. The 1991 GEP and 1992 SO_2 SIP Submittals

Prior to the State's adoption of the PM_{10} SIP, EPA discussed the uncertainties of finalizing the 1986 GEP SIP with the State and Kennecott. In a letter dated July 18, 1991, EPA clarified its position on the need for consistency within the Utah SIP with respect to emission limitations at the Kennecott smelter. EPA stated that it could not knowingly and legally proceed to approve a regulation and emission limitation that were no longer applicable, or a stack height demonstration analysis based on an obsolete regulation or emissions limitation.

In a letter dated December 23, 1991, the Governor of Utah submitted a revision to Section 16, Demonstration of GEP Stack Height, of the Utah SIP. The 1991 submittal was received on December 30, 1991. On February 28, 1992, EPA advised the Governor of Utah that this submittal was administratively and technically complete in accordance with the Federal SIP completeness criteria.

The revisions to Section 16 specify the allowable emission limit for the 1215-foot main stack at 14,191 tons/year as derived in the PM_{10} SIP. This emission limit is based on double contact acid plant technology (which is considered NSPS for the smelter acid plant tail gas), significant capture improvement of fugitive emissions, and improved operation and maintenance. The 1991 submittal also contained a reanalysis of other sources in the State for which stack heights above the de minimis level (65m) were previously reported. (These sources' stack heights were published in 54 FR 24334, June 7, 1989.)

EPA found minor changes between the June 7, 1989 **Federal Register** and the 1991 revision to Section 16 for the "actual" stack height of some sources. EPA is not concerned with these minor changes since they could be attributed to errors in rounding and the stack height changes are less than one foot. Listed below are the differences between the June 7, 1989 **Federal Register** and the 1991 submittal:

Source	6/7/89 FR	1991 revision
Deseret Units 1 & 2 .	182.9 m ..	182 m
UP&L Hunter Units 1 & 2.	183.08 m	183 m
UP&L Hunter Unit 3 .	183.1 m ..	183 m*
UP&L Huntington Units 1 & 2.	182.93 m	183 m
IPP Units 1 & 2	216.46 m	216 m
Chevron USA HCC cracker.	1946*	1950**

*The State indicated very insignificant changes to these sources "calculated" GEP stack heights; the State has indicated that the "actual" height will be the enforceable stack height.

** Correction of grandfathered date.

The State's revised analyses are presented in the table below. Detailed documentation for these analyses and the corresponding EPA review is contained in the EPA technical support document and air compliance files, and the State files.

Source name	Stack height (M)	Allowable SO_2 emissions (ton year)
Deseret Units 1&2	182	1,512
U.P.&L. Hunter Units 1&2.	183	4,347
U.P.&L. Hunter Unit 3.	183	1,283
U.P.&L. Huntington Units 1&2.	183	9,448
I.P.P. Units 1&2	216	17,870
U.P.&L. Gadsby Units 1,2&3.	76.2	67.7+
Geneva Steel blast furnaces 1&2.	79.2	12.5+*
Geneva Steel Coke blast furnace.	68.6	
Geneva Steel Coke Combustion 1–4.	76.2	102.8+
Kennecott Utah Copper Smelter Main Stack.	370	14,191+*
Chevron USA HCC Cracker Cat. Dis.	88.4	66.7+
Chevron Research Air Heater.	69.8	0
Chevron Research Retort.	69.8	0+
Amax melt reactor	76.22	0
Amax electrolytics	76.22	0
Amax emergency off gas.	76.22	0
Amax spray dryers 1–3.	76.22	83
Phillips thermal cat. cracking.	80.8	3.5+
White River Shale Lift Pipes.	76.2	–
White River Elutriators.	76.2	–
White River Hydrogen Plant.	76.2	–
White River Power Plants.	76.2	–
White River Ball Heaters.	76.2	1,180.8*
Tosco Preheat Stacks.	95	–
Tosco Warm Ball Elutriators.	95	–
Tosco Process Shale Wetters.	95	1,166.6*

+SO_2 emissions derived from the PM_{10} SIP adopted August 14, 1991

*The total SO_2 emissions are given for these sources.

On May 15, 1992, the Governor of Utah submitted a revision to Section 9, Part B, Sulfur Dioxide, Utah SIP. The revision was to address the 1990 CAA requirement that a SIP revision be submitted by May 15, 1992, for any area that did not have a fully approved SIP (the 1981 SO_2 SIP was only conditionally approved). The significant changes in this SIP revision from that of the 1981 submittal are as follows:

a. The MPR emission limitations and assumptions are removed and replaced with the emission limitation which can be achieved using the NSPS technology, double contact acid plant, or the equivalent of NSPS. (NSPS is the presumptive norm for RACT for this facility.) The SO_2 SIP now references the same emission limitations as those stated in PM_{10} SIP.

b. The SO_2 NAAQS are the 0.14 ppm, 24-hour primary standard, and the 0.5 ppm, 3-hour secondary standard. The 24-hour impact analysis was a rollback analysis which compared the smelter emissions in 1991 (PM_{10} SIP emission limitation) with 1979 emissions. The State had monitoring data showing attainment at Lake Point (an area originally defined as ambient air and owned by the Bureau of Land Management, but now owned by Kennecott) where exceedances were recorded. The Lake Point site could be considered representative of the closest point in the elevated terrain that would be impacted by the tall stack emissions. Demonstrating attainment at Lake Point would technically support the attainment elsewhere in the elevated terrain that is considered ambient air. The area considered ambient air in the elevated terrain is a significant distance downwind from Lake Point.

c. The PM_{10} SIP addressed, to some degree, the 3-hour impact. The PM_{10} SIP emission limitation was based on a 24-hour SO_2 limit; this emission limitation would be achieved through a given lb/hr calculated on a 6-hour average. The 24-hour limit was considered "controlling" for PM_{10} and SO_2 (i.e., the 24-hour limitation was believed to be the level of control necessary for PM_{10} attainment, as well as for the SO_2 attainment demonstration). The SO_2 SIP established a 3-hour limitation and verified that such limitation would protect the 3-hour NAAQS.

d. Section 4.2 of the Utah Air Conservation Regulations was revised to include a 24-hour averaging period for the sulfur content of coal, fuel oil, and fuel mixtures, and to specify the ASTM methods to be used to demonstrate compliance with the limitation and reporting requirement. (The previous rule specified a limit for the sulfur content of fuels, but did not specify an averaging time or specific ASTM methods.) Section 4.6 was also revised to include a 3-hour averaging time for Sulfur Burning Production Sulfuric Acid Plants.

e. Specific regulations which provided for special consideration (including malfunction provisions) on the smelter fluctuating operation are removed. Malfunction provisions for the Kennecott smelter operation are now the same as for any stationary source in Utah. This issue was addressed during the PM_{10} SIP development and is being approved under the PM_{10} SIP federal approval process. These regulation impacts were clarified in this SIP revision.

II. Final Action

This document makes final the action at 59 FR 18341, April 16, 1994. No adverse public comment was submitted with the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table I to a Table III under the processing procedures established at 54 FR 2214, January 19, 1989.

The December 23, 1991 Section 16, Stack Height revision and the May 15, 1992 Section 9, Part B, SO_2 revision are consistent with other provisions in the State-wide SIP. EPA is approving these revisions because they are consistent with EPA guidance for GEP stack height demonstration and the attainment demonstration for the SO_2 NAAQS. General SO_2 regulations initially determined as deficient with respect to meeting the statewide SO_2 SIP requirements are also being approved.

These revisions resolve EPA's concerns regarding ambient air, attainment demonstration in the elevated terrain, and the enforceability issues related to the smelter operations. The previous emission limitations have been the subject of litigation filed by the Environmental Defense Fund. The legal actions have been stayed pending EPA final action on the past SIP revisions. The 1991 and 1992 revisions are

believed to have settled the litigants' concerns about applying reasonable control technology and demonstrating attainment per the traditionally accepted federal requirements (i.e., application of RACT (double contact acid plant or the equivalent), monitoring demonstration, etc).

The May 15, 1992 submittal also contained an updated Appendix A.2.1 (Emission Limitations and Operating Practices for Davis and Salt Lake Counties). EPA is not acting on this part of the submittal since no information on the stationary source updates was provided with this submittal. In addition, EPA's review during the State's public hearing for the SO_2 SIP did not include information on these emission limitations.

Since State adoption of this SO_2 and Stack Height SIPs, the State has been finalizing the permit conditions for these SO_2 sources. EPA has advised the State on the need to ensure consistency with the State's permits and the federally enforceable SIP. The State's permit program is in the federally approved SIP. The final approval to the SO_2 and Stack Height SIPs will also make the emission limitations for these stationary sources federally enforceable. EPA is giving notice that should different emission limitations exist, EPA will enforce the more stringent of the two (or more) emission limitations. EPA must have assurance that the attainment demonstration of a nonattainment area plan is maintained. The less stringent emission limitation may not provide that assurance without a reanalysis of the attainment demonstration. It is, therefore, critical that the State maintain consistent emission limitations in the permits and in the federally approved nonattainment area plan and update the emission limitations section of these plans to ensure clarity and consistency in the Statewide SIP. The tracking of this effort will be documented annually in the EPA/State Agreement.

Regulatory Process

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 population of less than 50,000.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1995. 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)).

Executive Order 12866

The OMB has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: October 6, 1994.

Jack W. McGraw,

Acting Regional Administrator

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 TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(26) The Governor of Utah submitted a Section 16, Stack Height Demonstration and Section 9, Part B, Sulfur Dioxide of the Utah State Implementation Plan (SIP) a letter dated December 23, 1991, and May 15, 1992, respectively. The Governor's submittal also included statewide SO_2 regulations

(i) Incorporation by reference.

(A) Utah State Implementation Plan, Section 16, effective December 16, 1991

(B) Utah State Implementation Plan, Section 9, Part B effective June 15, 1992

(C) Utah Air Conservation Regulations, R307–1–4. Emission Standards, changes to 4.2 Sulfur Content of Fuels and 4.6.2, effective June 15, 1992.

[FR Doc. 94–30607 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 71–6–6615a; FRL–5114–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). These rules control VOC emissions from gasoline transfer operations and from sumps, pits, ponds and well cellars during the production, gathering, separation, processing, and storage of crude oil or petroleum material. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on February 13, 1995 unless adverse or critical comments are received by January 13, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are

available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: VCAPCD Rule 70, Storage and Transfer of Gasoline; Rule 71, Crude Oil and Reactive Organic Compound Liquids; and Rule 71.4, Petroleum Sumps, Pits, Ponds, and Well Cellars. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Ventura County Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2) of the 1977 Act, that VCAPCD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Ventura County Area is classified as severe;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993, including the rules being acted on in this document. This document addresses EPA's direct final action for VCAPCD Rule 70, Storage and Transfer of Gasoline; Rule 71, Crude Oil and Reactive Organic Compound Liquids; and Rule 71.4, Petroleum Sumps, Pits, Ponds, and Well Cellars. VCAPCD adopted Rule 70 on May 4, 1993, and adopted Rules 71 and 71.4 on June 8, 1993. These submitted rules were found to be complete on December 23, 1993 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP.

Rule 70 controls emissions of volatile organic compounds (VOCs) during the loading and transfer of gasoline. Rule 71 contains only definitions, many of which are referenced in Rule 71.4. Rule 71.4 controls VOCs from petroleum materials in sumps, pits, ponds, and well cellars. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of VCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG documents applicable to Rule 70 are entitled, "Control of Volatile Organic Emissions from Bulk Gasoline Plants," EPA-450/2-77-035; "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051; and "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA-450/2-77-026. There is no applicable CTG document for Rules 71 and 71.4. For source categories where EPA did not publish a CTG, the air pollution control agency may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities with the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

VCAPCD's submitted Rule 70, Storage and Transfer of Gasoline, includes the following significant changes from the current SIP:

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Ventura County Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

—Deletion of Executive Officer discretion in approving equivalent vapor control systems.
—Expansion of rule applicability to cover more sources.
—Addition of operation and maintenance requirements, definitions, and more specific recordkeeping requirements.

The only changes to VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids, are the addition of a definition for the term "crude oil," and a clarification to the definition of "petroleum material."

VCAPCD Rule 71.4 is a new rule for which there is no current SIP rule. The major provisions of Rule 71.4 are listed below:

—The use of first stage production sumps is prohibited.
—Properly installed and maintained covers are required for sumps, pits, and ponds.
—Storage of petroleum materials in well cellars is prohibited except during equipment maintenance or well workover.
—Recordkeeping requirements and test methods are specified to verify rule applicability.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, VCAPCD Rule 70, Storage and Transfer of Gasoline; Rule 71, Crude Oil and Reactive Organic Compound Liquids; and Rule 71.4, Petroleum Sumps, Pits, Ponds, and Well Cellars, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. The direct final action will be effective February 13, 1995, unless, by January 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective Feburary 13, 1995.

Regulatory Process

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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 18, 1994.

David P. Howekamp,

Acting Regional Administrator.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(194) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) New and amended regulations for the following APCDs were submitted on November 18, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Rule 70, adopted on May 4, 1993; Rule 71, adopted on June 8, 1993; and Rule 71.4, adopted on June 8, 1993.

* * * * *

[FR Doc. 94–30610 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[CO36–4–6305a; FRL–5117–6]

Clean Air Act Approval and Promulgation of PM_{10} Contingency Measure Plans for Canon City and Lamar, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the contingency measures submitted by the State of Colorado on December 9, 1993 as a revision to the State Implementation Plan (SIP), for the moderate nonattainment areas of Canon City and Lamar for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The submittal was made in accordance with the requirements for contingency measures specified under section 172(c)(9) of the Clean Air Act (Act).

DATES: This final rule will be effective February 13, 1995 unless notice is received by January 13, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed. Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado, 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado, 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

The cities of Canon City and Lamar, Colorado were designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act upon enactment of the Clean Air Act Amendments of 1990 (1990 Amendments).[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Canon City and Lamar)). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this action and the supporting rationale.

Those states containing initial moderate PM_{10} nonattainment areas (i.e., those areas designated nonattainment for PM_{10} under section 107(d)(4)(B) of the Act) were required to submit several provisions by November 15, 1991. These provisions are described in the **Federal Register** documents approving the Canon City PM_{10} SIP (59 FR 68036, December 23, 1993) and the Lamar PM_{10} SIP (59 FR 29732, June 9, 1994). Such States were also required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13510–13512 and 13543–13544.) The State submitted PM_{10} contingency measures for the Canon City and Lamar PM_{10} nonattainment areas on December 9, 1993. The State's December 9, 1993, submittal also contained contingency measures and some additional control measures for the State's other PM_{10} nonattainment areas. EPA will take action on those measures in separate **Federal Register** documents.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). On December 9, 1993, the Governor of Colorado submitted revisions to the Colorado State SIP. Included in this submittal were PM_{10} contingency measures for Canon City and Lamar intended to satisfy the requirements for contingency measures specified under section 172(c)(9) of the Act.

In this action, EPA is granting approval of the PM_{10} contingency measures for the cities of Canon City and Lamar, Colorado, that were due on November 15, 1993, and submitted by the State on December 9, 1993. See section 110(k)(3) of the Act. EPA believes that the PM_{10} contingency measures submitted for Canon City and Lamar meet the applicable requirements of the Act.

A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Colorado, after providing adequate notice, held a public hearing on November 12, 1993, to entertain public comment on the contingency measures for Canon City and Lamar. After considering oral comments made during the hearing and written comments submitted prior to the hearing, the contingency measures were approved and adopted by the Colorado Air Quality Control Commission (AQCC). On December 9, 1993, the Governor of Colorado submitted the contingency measures to the EPA. After reviewing the submittal for conformance with the completeness criteria in 40 CFR part 51, appendix V, EPA sent a letter to the Governor of Colorado on February 15, 1994, declaring the submittal to be administratively and technically complete.

B. The Contingency Measures

Section 172(c)(9) of the Act, as amended, requires that nonattainment area SIPs provide for the implementation of specific measures, termed contingency measures, if an area fails to timely attain the NAAQS or make RFP. Section III(C)(3) of the General Preamble further explains that contingency measures should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (RACM) (see section 172(a)(1)(c) of the Act) and, therefore, beyond those reasonably required to expeditiously attain the standards. (See 57 FR 13543.)

The State's regulation provides that the contingency measures for Canon City and Lamar described in sections (i) and (ii) below, represent measures that are in addition to those necessary to meet RACM and can be implemented at any time prior to EPA's determination that either area has failed to attain the PM_{10} NAAQS or make RFP. Early implementation of the contingency measures will not result in the requirement to implement additional moderate PM_{10} nonattainment area contingency measures if the area

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq*

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

eventually is determined to fail to attain the PM_{10} NAAQS or make RFP. In EPA's judgement, it would not be reasonable to penalize the State for taking the precautionary air quality management step of accelerating the implementation of contingency measures. However, additional "serious area" contingency measures may be necessary if the area is reclassified as a serious nonattainment area.

Section 172(c)(9) of the Act specifies that contingency measures shall "take effect * * * without further action by the State, or the [EPA] Administrator." EPA has interpreted this latter requirement [in the General Preamble (at 57 FR 13512)] to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions, needed to affect full implementation of the contingency measures, to occur within 60 days after EPA notifies the State of its failure to timely attain the NAAQS or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking actions such as public hearings or legislative review.

The Act, as amended in 1990, did not set a date certain for the submission of contingency measures. Rather, section 172(b) of the Act authorized EPA to establish a date for submission, extending no later than 3 years from the area's nonattainment designation. EPA established such a date for those areas designated nonattainment for PM_{10} on November 15, 1990 by operation of law upon enactment of the 1990 Amendments. That is, in section III(C)(3) of the General Preamble, EPA established a schedule that calls for the submittal of contingency measures for initial PM_{10} moderate nonattainment areas no later than November 15, 1993. (See 57 FR 13543.)

The PM_{10} contingency measures for Canon City and Lamar were developed by their respective local governments and by the Colorado Air Pollution Control Division (APCD). Input from the Colorado Department of Transportation, the Colorado Attorney General's Office, and the EPA were utilized in further developing the measures.

(i) Contingency Measures for Canon City

The City of Canon City selected street sweeping as the contingency measure to reduce fugitive dust emissions. According to Section V. of the State regulation entitled "Nonattainment Areas" adopted on November 12, 1993, if EPA makes a determination that the Canon City nonattainment area has failed to attain the PM_{10} NAAQS or make RFP in reducing emissions, the City of Canon City must sweep specified roadways to which street sanding materials are applied. The street sweeping efforts will entail sweeping streets which are regularly sanded throughout the winter season within four days of each winter street sanding deployment.

(ii) Contingency Measures for Lamar

Of a list of 14 different fugitive dust control measures from which contingency measures could be selected, the State selected and developed regulations for two: a) stabilize and hard surface some of the remaining dirt/gravel streets throughout the City of Lamar, and b) street sweeping of the main streets after sanding events.

According to Section IV. of the State's nonattainment area regulation adopted on November 12, 1993, if EPA makes a determination that the Lamar nonattainment area has failed to attain the PM_{10} NAAQS or make RFP in reducing emissions, the City of Lamar must chip-seal pave 3 miles of unpaved dirt road within the city limits. The chip-seal paving must be completed as soon as possible, but no later than the end of the first complete paving season following EPA's determination that the area failed to attain the PM_{10} NAAQS or make RFP. ("Paving season" is defined as that portion of the year when weather conditions permit the chip-seal paving of the roads). Furthermore, upon determination by EPA that the Lamar nonattainment area has failed to attain the PM_{10} NAAQS or make RFP, the regulation requires the City of Lamar to sweep the "Snow Removal Route" identified in the State's nonattainment area regulation. Each traffic lane of the specified roadways must be swept within four days of the roadways becoming free and clear of snow and ice following each street sanding deployment, as weather and street conditions permit. In addition to this, each traffic lane of the specified roadways must be swept within four days following each high wind event that occurs between March 1 and May 31 of each year, as weather and street conditions permit. The street sweeping measure must be implemented within 2 months following EPA's determination that the area failed to attain the PM_{10} NAAQS or make RFP.

Details of the contingency measure programs are included in the Technical Support Document (TSD) for the Canon City and Lamar contingency plans. The December 9, 1993 submittal included data showing the benefits of the implementation of the contingency measures. In general, the contingency measures for Canon City are expected to provide 15.56 pounds per day (lbs/day) PM_{10} emissions reduction and, for Lamar, 79.9 lbs/day PM_{10} emissions reduction. These data are tabulated in the TSD, which is available for review at the EPA address identified at the beginning of this notice.

C. Evaluation

With respect to PM_{10}, section III(C)(3) of the General Preamble recommends the emission reductions which the implementation of contingency measures should achieve. The General Preamble suggests, "contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year." Thus, reductions equal to 25% of the total emissions reductions are appropriate for a moderate nonattainment area since the control strategy must generally be implemented within a three to four year period between SIP development and the attainment date, and since RFP generally requires annual incremental reductions in emissions to attain the standards.

For the Canon City and Lamar nonattainment areas, this 25% reduction is not required because emission reductions were not necessary to demonstrate attainment and maintenance of the PM_{10} NAAQS. The design value for Canon City is 93 $\mu g/m^3$, and for Lamar, 101 $\mu g/m^3$. Due to these low design values, these areas were able to demonstrate attainment and maintenance of the NAAQS without the adoption of control measures. Contingency measures are still necessary for the area, however, so that some degree of emission reductions will occur if the area fails to attain the PM_{10} NAAQS, and is redesignated as a serious nonattainment area.

D. Enforceability Issues.

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan

provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act). The specific measures contained in the Canon City and Lamar contingency plans are addressed above in section B.

The APCD has the authority to implement and enforce all emission limitations and control measures adopted by the AQCC, as provided for in Colorado Revised Statutes (CRS) 25-7-111. In addition, CRS 25-7-115 provides that the APCD shall enforce compliance with the emission control regulations of the AQCC, the requirements of the SIP, and the requirements of any permit. Civil penalties of up to $15,000 per day per violation are provided for in CRS 25-7-122 for any person in violation of these requirements, and criminal penalties are provided for in CRS 25-7-122.1. Thus, the APCD has adequate enforcement capabilities to ensure compliance with the Canon City and Lamar PM_{10} contingency measures.

III. Final Action.

In this final action, EPA is announcing its approval of the contingency measures for Canon City and Lamar, Colorado moderate PM_{10} nonattainment areas, and believes that the State has adequately met the Federal requirements.

EPA is also correcting 40 CFR 52.332 in this notice to indicate that the PM_{10} contingency measures for Pagosa Springs, which were also submitted on December 9, 1993, have been approved by EPA. EPA approved the Pagosa Springs contingency measures, along with the PM_{10} attainment plan for the area, on May 19, 1994 (59 FR 26126), and inadvertently neglected to indicate in the amendatory language for 40 CFR 52.332 that the State had also submitted approvable PM_{10} contingency measures for Pagosa Springs.

Also in this notice, EPA is amending 40 CFR 52.329 regarding Colorado's nonattainment area new source review (NSR) program approvals, to reflect two recent EPA rulemaking actions. Specifically, on August 18, 1994, EPA only partially approved the NSR programs for, among others, the Aspen and Telluride moderate PM_{10} nonattainment areas, because the State had not submitted NSR rules for sources of PM_{10} precursors in these areas and because EPA had not yet promulgated findings that sources of PM_{10} precursors did not contribute significantly PM_{10} exceedances in these areas. (See 59 FR 42505.) However, EPA has since promulgated findings that stationary sources do not contribute significantly to exceedances of the PM_{10} NAAQS in both the Aspen and the Telluride PM_{10} nonattainment areas (see, respectively, 59 FR 47092, September 14, 1994, and 58 FR 47809, September 19, 1994). In those two notices, EPA declared those areas to have fully approved NSR programs based on those findings. Therefore, EPA is amending 40 CFR 52.329 to reflect that the State has fully approved NSR programs for the Aspen and Telluride moderate PM_{10} nonattainment areas.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective February 13, 1995 unless, by January 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 13, 1995.

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

The OMB has exempted these actions from review under Executive Order 12866.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air 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); 42 U.S.C. 7410(a)(2).

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 February 13, 1995. 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) of the Act).

List of Subjects in 40 CFR Part 52

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

Dated: November 25, 1994.

Jack W. McGraw,

Acting Regional Administrator.

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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(64) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(64) On December 9, 1993, the Governor of Colorado submitted PM_{10} contingency measures for the moderate nonattainment PM_{10} areas of Canon City

and Lamar, Colorado. The submittal was made to satisfy the moderate PM_{10} nonattainment area requirements for contingency measures due for Canon City and Lamar on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Area Regulation, Section IV. "Lamar Nonattainment Area," and Section V. "Canon City Nonattainment Area—PM-10," adopted on November 12, 1993, and effective December 30, 1993.

3. Section 52.329 is amended by revising paragraph (a) to read as follows:

§ 52.329 Rules and regulations.

(a) On January 14, 1993, the Governor of Colorado submitted revisions to the State's nonattainment area new source review permitting regulations to bring the State's regulations up to date with the 1990 Amendments to the Clean Air Act. With these revisions, the State's regulations satisfy the part D new source review permitting requirements for the following nonattainment areas: the Canon City, Lamar, Pagosa Springs, Aspen, and Telluride moderate PM-10 nonattainment areas, the Denver/Metro Boulder, Longmont, Colorado Springs, and Fort Collins moderate carbon monoxide nonattainment areas, the Greeley not classified carbon monoxide nonattainment area, and the Denver transitional ozone nonattainment area.

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4. Section 52.332 is amended by adding paragraph (d) to read as follows:

§ 52.332 Moderate PM_{10} Nonattainment Area Plans.

* * * * *

(d) On December 9, 1993, the Governor of Colorado submitted PM_{10} contingency measures for the moderate PM_{10} nonattainment areas of Canon City, Lamar, and Pagosa Springs. The submittal was made to satisfy the moderate PM_{10} nonattainment area requirements for contingency measures due for Canon City, Lamar, and Pagosa Springs on November 15, 1993.

[FR Doc. 94-30608 Filed 12-13-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[CA 95-6-6691a; FRL-5118-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern a rule from the Placer County Air Pollution Control District (PCAPCD). This approval action will incorporate the rule into the federally approved SIP.

The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on February 13, 1995, unless adverse or critical comments are received by January 13, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744-1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is PCAPCD's Rule 230, "Plastic Products and Materials—Paper Treating Operations." This rule was submitted by the California Air Resources Board to EPA on July 13, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Placer County area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987 (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit reasonably available control technology (RACT) rules for all major stationary sources of VOCs by November 15, 1992 (the RACT catch-up requirement).

The Placer County area is classified as serious;[1] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on July 13, 1994, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for PCAPCD's Rule 230, "Plastic Products and Materials—Paper Treating Operations." PCAPCD adopted Rule 230 on June 28, 1994. This submitted rule was found to

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[1] Placer County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] California did not make the required SIP submittal by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rule being acted on in this NFRM was submitted in response to the EPA finding of failure to submit.

be complete on July 22, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and is being finalized for approval into the SIP.

Rule 230 controls VOC emissions from paper treating operations at the Formica Corporation's Sierra plant, located in Sunset Whitney Ranch, California. VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of PCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to section 182(b)(2)(C). A similar rule was proposed by EPA on February 14, 1994 (59 FR 23263–23605, May 5, 1994) as part of an ozone attainment Federal Implementation Plan (FIP)[4] with final promulgation set for February 14, 1995. By taking final action on Rule 230, EPA does not anticipate the need to finalize action on the comparable rule proposed in the ozone attainment FIP since both rules achieve equivalent emission reductions. The following is EPA's evaluation and final action for Rule 230.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.[5] Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "catch-up" their RACT rules. See section 182(b)(2). For some categories, such as paper treating operations, EPA did not publish a CTG. In such cases, the state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Therefore, the PCAPCD must determine the VOC control measures that are reasonable and available for Formica based on its operations. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 5. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

PCAPCD's Rule 230, "Plastic Products and Materials—Paper Treating Operations" requires that phenolic and melamine resins used in paper treating operations at Formica not exceed 1.75 and 0.1 pounds of VOC per gallon, less water and exempt compounds, respectively. The VOC content of resins is determined by EPA Method 24. Alternatively, non-compliant resins may be used provided that emission control systems with overall efficiencies (capture and control) of 85% are installed. Capture efficiency is determined by the EPA protocol in 40 CFR 52.741(a)(4)(iii), and control efficiency is determined by EPA Method 25 or 25A. Final compliance with Rule 230 is required by February 1, 1995. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for Rule 230, dated September 29, 1994.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, PCAPCD's Rule 230, "Plastic Products and Materials—Paper Treating Operations" is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Therefore, if this direct final action is not withdrawn, on February 13, 1995, any FIP clock associated with the finding of failure to submit is stopped.

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.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 13, 1995, unless by January 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 13, 1995.

Regulatory Process

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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

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[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] The ozone attainment FIP is a court ordered requirement, which applies to the Sacramento, Ventura, and South Coast ozone nonattainment areas in California.

[5] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on (May 25, 1988); and the existing control techniques guideline (CTGs).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 1, 1994.

Nora L. McGee,

Acting Regional Administrator.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(B) Placer County Air Pollution Control District

(*1*) Rule 230, adopted on June 28, 1994.

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[FR Doc. 94–30510 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA21–6–6643; FRL–5117–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on July 5, 1994. The revisions concern rules from the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_x emissions from electric utilities and stack monitoring requirements for making compliance determinations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on January 13, 1995.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, Rule Development Section, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1994 in 59 FR 34399, EPA proposed to approve the following rules into the California SIP: VCAPCD's Rule 59, Electrical Power Generating Equipment—Oxides of Nitrogen Emissions, and Rule 103, Stack Monitoring. Rule 59 and Rule 103 were adopted by VCAPCD on September 15, 1992 and June 4, 1991, respectively. The California Air Resources Board (CARB) submitted these revisions to EPA on November 18, 1993 and October 25, 1991. These rules were adopted as part of Ventura County's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to section 182(f) NO_x RACT requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated both of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD), dated June 1994, which is available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 34399. EPA received no comments.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the CAA.

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.

Regulatory Process

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. The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 28, 1994.

John Wise,

Acting Regional Administrator

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 F—California

2. Section 52.220 is amended by adding paragraphs (c) (186)(i)(D)(2) and (194)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(186) * * *

(i) * * *

(D) * * *

(2) Rule 103, adopted on June 4, 1991.

* * * * *

(194) * * *

(i) * * *

(A) * * *

(2) Rule 59, adopted on September 15, 1992.

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[FR Doc. 94–30742 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 123, 124, 131, 142, 144, 145, 233, and 501

[FRL–5119–9]

RIN 2020–AA20

Indian Tribes; Eligibility for Program Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends regulations addressing the role of Indian tribes so as to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under certain environmental statutes. Three EPA regulatory statutes address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: The Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA). All three statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. In addition, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise. Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, EPA has adopted a new policy to improve and simplify the process and this regulation implements the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

As of the effective date of this regulation, it is the intent of EPA to follow the new process in making determinations on tribal eligibility for program authorization. With respect to pending "TAS" applications for program authorization, the Agency will utilize the information contained in such applications to determine tribes' eligibility and tribes will be requested to supplement such applications only to the extent necessary to determine program eligibility

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: C. Marshall Cain, Office of Federal Activities (2251), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–8792.

SUPPLEMENTARY INFORMATION:

Background

In order to simplify and streamline the process of assessing tribal eligibility for program authorization while still ensuring full compliance with all applicable statutes, on March 23, 1994, EPA published in the **Federal Register** (59 FR 13819) a notice of proposed rulemaking to amend regulations governing the process whereby Indian tribes become eligible to assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

The proposals set forth in the proposed rule involved the following:

1. Elimination of "TAS" review as a separate step in the process. No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for program approval. The only requirements imposed by statute are that, to be eligible for program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets the applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for program approval. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing program approval applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling.

2. Discontinuance of use of the term "treatment as a state." To the extent possible, the rule amends existing regulations so as to discontinue use of the term "treatment as a state"; however, since the phrase is included in several statutes, its continued use may sometimes be necessary.

3. Simplified determination as to "recognition" and "government." A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the **Federal Register**. A tribe establishes that

it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

As a general rule, the "recognition" and "governmental" requirements are essentially the same under the Clean Water, Safe Drinking Water and Clean Air Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts or the Clean Air Act will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA will request that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the **Federal Register**. If the tribe notifies EPA that it has been recognized but does not appear on this list because the list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial "governmental" showing can do so by certifying that it has a government carrying out substantial functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification, (1) describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (*e.g.*, tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

4. Simplified jurisdictional analysis. A tribe may have jurisdiction over, and capability to carry out, certain activities (*e.g.*, protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (*e.g.*, waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this Rule. These changes are outlined below.

For approvals of all Drinking Water regulatory programs and most Clean Water programs under existing regulations, EPA will not authorize a state to operate a program without determining that the state has adequate authority to carry out those actions required to run the program. *See e.g.* 40 CFR 142.10 (PWS), 145.24 (UIC). This applies also to a tribe seeking program approval, and ensures that a close analysis of the legal basis of a tribe's jurisdiction will occur before program authorization.

Accordingly, a separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement and, therefore, will be eliminated for all programs under the Safe Drinking Water Act, and for the Clean Water Act's 404 and NPDES programs. This change will have the effect only of eliminating duplicative requirements. In no case can a tribe receive program approval until the Agency has received full and adequate input concerning the scope and extent of the tribe's jurisdiction. Moreover, EPA will expect each tribe seeking program approval to provide a precise description of the physical extent and boundaries of the area for which it seeks regulatory authority. This description should ordinarily include a map and should identify the sources or systems to be regulated by the tribe.

However, for the Water Quality Standards program, there is no review of tribal civil regulatory authority as part of the standards approval process under section 303(c) of the Clean Water Act. Accordingly, for that program, a comment process will be retained. However, the Agency wishes to clarify the operation of that process by reiterating that comments must be offered in a timely manner, and, further, by specifying that where no timely comments are offered, the Agency will conclude that there is no objection to the tribal applicant's jurisdictional assertion. Moreover, to raise a competing or conflicting claim a comment must clearly explain the substance, basis, and extent of its objections. Finally, when questions are raised concerning a tribe's jurisdiction, EPA may, in its discretion, seek additional information from the tribe or the commenting party, and may consult as it sees fit with other federal agencies prior to making a determination as to tribal jurisdictional authority, but is not required to do so. Henceforth, EPA will no longer be required, by regulation, to consult with the Department of the Interior.

Finally, the Agency notes that certain disputes concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities and obtain program approval under several environmental statutes. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities within the scope of EPA programs. However, it also believes that, once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information. By contrast, however, a determination that a tribe has inherent jurisdiction to regulate activities in one medium might not conclusively establish its jurisdiction over activities in another medium. See generally Discussion of inherent tribal authority in Water Quality Standards Regulation, 56 FR 64877–64879.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, *e.g.* 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355

(April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

5. More flexible requirements to establish capability. EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, Section 404, and NPDES regulations will be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval will be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, *e.g.*, 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); § 145.1(h) (Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider:

(1) The tribe's previous management experience;

(2) Existing environmental or public health programs administered by the tribe;

(3) The mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government;

(4) The relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and

(5) The technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

The notice of proposed rulemaking invited public comments on the proposed amendments, which would be considered before adoption of a final rule. The public comment period closed on May 23, 1994.

Analysis of Comments

A total of seven commenters responded to the solicitation of comments during the public comment period. Of these, four expressed support for the proposed changes in varying degrees, one of whom expressed strong support and others supported the changes generally but disagreed with certain aspects or had specific recommendations for other changes. One commenter did not express support or opposition but urged EPA to continue to stress that tribes should enact water quality programs similar to current state water quality programs. Another commenter, while not explicitly supporting the proposed amendments, urged that they be extended to include two other programs under the Safe Drinking Water Act. A final commenter opposed one aspect of the simplification process as it related to state review of tribal applications. These comments, suggested changes, and the EPA responses thereto, are set forth below.

Comment: Consistent with the EPA Indian Policy and sound administrative practice, EPA should recognize tribal authority over all environmental matters within reservation boundaries, without requiring tribes to demonstrate their inherent authority.

Response: EPA recognizes the importance of comprehensive management of reservation environments. However, EPA does not have the legal authority to expand the scope of tribal jurisdiction. Consequently, EPA must continue to analyze each tribal claim of jurisdiction in light of appropriate statutory and common law principles to ensure that the tribe in fact has adequate authority to carry out the functions it proposes to undertake.

Comment: EPA is to be commended for eliminating the state opportunity to comment on tribal jurisdictional assertions for all SDWA programs and for the Clean Water Act Section 404 and NPDES programs. However, since tribes cannot comment on state jurisdictional assertions in any programs, in fairness EPA should also eliminate state opportunity to comment on tribal jurisdictional assertions regarding Water Quality Standards.

Response: EPA continues to believe that it has the legal authority to approve a tribal Water Quality Standards program only upon a determination that the tribe has adequate authority to operate that program, and that state comments may be useful to the Agency in making that determination.

Comment: EPA could further simplify the TAS process by providing that, when EPA reviews a new TAS application for a tribe that has already obtained TAS approval for one program, EPA will rely on the jurisdictional assertions in the prior approval to establish jurisdiction for a subsequent program. Where the earlier jurisdictional assertions do not establish jurisdiction adequately for the subsequent application, EPA would notify the tribe of any deficiencies and the tribe could then supplement or amend the original jurisdictional statement.

Response: EPA agrees with the commenter that this would simplify the process. However, EPA believes that it should look in the first instance to each tribal applicant's views as to its own jurisdiction. Thus a tribe that believes it is appropriate to provide more information regarding jurisdiction on a subsequent application than it provided on a previous one should be able to do so directly, without waiting for EPA to determine, after it begins processing an application, that more information is needed. EPA believes that under the current proposal, a tribe that wishes to use the process described by the commenter could do so by expressly incorporating the earlier jurisdictional assertion into a subsequent application.

In addition, the jurisdictional approach the Agency has determined the Clean Air Act allows it to follow differs substantially from the approach it follows under the Water Acts. For this reason, EPA does not believe it would be appropriate to establish a process under which a tribe would assume that, unless advised to the contrary, a jurisdictional assertion that was adequate under the Clean Air Act would also be adequate under one of the Water Acts.

Comment: States should be able to comment on the jurisdictional assertions contained in tribal grant applications. Also, states should not be totally bypassed in decisions to approve tribal regulatory programs.

Response: As stated in the **Federal Register** notice amending the EPA financial assistance regulations for tribes, EPA has extensive experience awarding grants to tribes, and has concluded that it is fully capable of evaluating grant applications to ensure adequate tribal jurisdiction without seeking comments from states. EPA agrees that it should obtain information from states concerning tribal applications for program approval, and

the proposed regulatory changes would ensure that this occurs.

Comment: One commenter, while supporting the intent of the proposed revisions, urged that (1) EPA regulations relating to Section 401 Certification (40 CFR part 121) be amended to expressly include Indian tribes so as to facilitate tribal involvement in the section 401 process, to resolve disagreements between tribes and states and to resolve disputes between tribes as well; (2) an apparent inconsistency in the definition of "State" in § 122.2 (which references Indian tribes that have obtained approval of their NPDES program but not their WQS program) be changed so that water quality standards set by approved tribes will be protected in NPDES permits under §§ 122.44, 124.53 and similar provisions; and (3) the regulations for the dispute resolution mechanism, 40 CFR 131.7, be revised to expressly authorize the use of this process for resolving disputes between two or more tribes that have differing standards for common bodies of water.

Response: (1) EPA believes it is unnecessary to amend the 401 regulations in Part 121 through the present TAS revisions rule in order to clarify that tribes have the authority to provide 401 certifications once they have approved water quality standards (WQS). It is EPA's position that tribes clearly have 401 authority once they receive approval of their WQS as specified in 40 CFR 131.4(c).

(2) EPA also does not believe that changes are necessary to the definition of "State" in § 122.2. The intent of EPA's regulations was to require the permitting authority (whether EPA or an authorized NPDES State) to issue permits which comply with all applicable water quality standards (including WQS approved by EPA for an Indian tribe). EPA interprets its regulations to require that all NPDES permits comply with applicable and EPA approved tribal WQS regardless of whether the tribe has been authorized as a permitting authority for the NPDES program. EPA's new regulatory provision in 40 CFR 124.51(c) supports the tribes' 401 certification authority and reads as follows: "As stated in 40 CFR 131.4, an Indian Tribe that is qualified for Treatment as a State for purposes of the WQS program is likewise qualified for treatment as a State for purposes of State certification of WQS pursuant to section 401(a)(1) of the Act [Clean Water Act] and Subpart D of this part." The preamble of the final NPDES rule at 58 FR 67967 (December 10, 1993) discusses this new provision in more depth.

In addition, the recent EPA guidance concerning EPA's implementation of the NPDES and sludge management programs with respect to Federal Indian Reservations (FIRs) specifies that "In situations where a State is the upstream NPDES permitting authority and downstream FIR Tribal WQS have been approved by EPA, the State will provide notice of the preparation of a draft permit to the affected Tribe pursuant to CWA sections 401 and 402. Under CWA sections 402(b)(3) and 40 CFR 124.12(a), the upstream NPDES state must provide an opportunity for public hearing on the issuance of the draft permit where there is significant public interest in so doing. Under CWA section 402(b)(5), the affected Tribe may submit written recommendations to the permitting State and EPA, and the failure to accept the recommendations and the reasons for doing so. EPA can object to the upstream State permit where EPA believes that the reasons for rejecting the recommendations are inadequate." Therefore, this guidance reflects EPA's general view that applicable tribal WQS are to be reflected in all water quality-based NPDES permit limits. When the Part 122–124 regulations refer to WQS of a "State," this also refers to Indian tribes with EPA approved WQS.

(3) EPA previously responded to comments regarding the scope of the dispute resolution mechanism on the rule allowing tribes to establish WQS (56 FR 64876, December 12, 1991). At that time, OW commented that the rule was written in this manner because Section 518 of the Clean Water Act specified that a dispute resolution mechanism be developed to resolve disputes arising between a tribe and a state. OW further commented that EPA believes the requirements that the State standards provide for protection of downstream standards in § 131.10(b) of the WQS Regulation, supported by a 25 year history of informal negotiation of issues between states, provides sufficient basis for resolving disputes between two states or two tribes. 56 FR 64888–64889. Further comments on this issue are beyond the scope of this rule and, therefore, EPA declines to revisit it at this time.

Comment: Although the proposed regulation would simplify the TAS process for a number of programs, it would not apply expressly to wellhead protection programs or sole source aquifer demonstration programs under the Safe Drinking Water Act. The Agency should consider seriously the inclusion of these important programs under the new regulation as well.

Response: EPA does not believe that it would be appropriate to expand the scope of the regulation at this stage of its development. However, as pointed out previously in the Summary of this regulation, to the extent possible, the Agency plans to use the new process in future regulations regarding determinations of tribal eligibility.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, EPA believes that the proposed regulatory amendments as published in the **Federal Register** on March 23, 1994 (59 FR 13819) should be adopted as a final rule as discussed above and set forth below.

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 OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for Indian tribes by making them simpler and less burdensome; Indian tribes are not considered small entities under this rulemaking for RFA purposes.

Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply

40 CFR Part 131

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply

40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

40 CFR Part 145

Environmental protection, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 501

Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal.

Dated: November 18, 1994.

Fred Hansen,

Acting Administrator

For the reasons set forth in the preamble, 40 CFR parts 123, 124, 131, 142, 144, 145, 233, and 501 are amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

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

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 123.1 [Amended]

2. Section 123.1(h) is amended by removing the phrase "treated as a State."

§ 123.21 [Amended]

3. In § 123.21 paragraph (a)(1) is amended by revising the phrase "eligible for treatment as a state in accordance with § 123.33(e)" to read "in accordance with § 123.33(b)".

4. In § 123.21 paragraph (b)(2) is amended by removing the phrase "for treatment as a State" both times they appear and by revising the text "§ 123.33(e)" to read "§ 123.33(b)"

§ 123.22 [Amended]

5. In § 123.22 paragraph (g) is amended by removing the phrase "for treatment as a State" and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

§ 123.31 [Amended]

6. The heading of § 123.31 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

7. In § 123.31 paragraph (a) is amended by removing the phrase "a State for purposes of making the Tribe."

8. In § 123.31 paragraph (a)(4) is amended by removing all language following "in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program."

§ 123.32 [Amended]

9. The heading of § 123.32 is amended by removing "for treatment as a State."

10. In § 123.32 the introductory text is amended by removing the phrase "for treatment as a State."

11. In § 123.32 paragraph (b) introductory text is amended by revising the words "This statement shall" to read "This statement should."

12. In § 123.32 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

13. In § 123.32 paragraph (d) introductory text is amended by revising the phrase "The statement shall include" to read "The statement should include."

14. In § 123.32 paragraph (d)(1) is amended by revising the words "including, but not limited to," to read "which may include."

15. In § 123.32 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

16. In § 123.32 paragraph (f) is revised to read as follows:

§ 123.32 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the NPDES program which is requested by the Regional Administrator.

§ 123.33 [Amended]

17. The heading of § 123.33 is amended by removing the phrase "for treatment as a State."

18. In § 123.33 paragraph (a) is amended by removing the phrase "for treatment as a State."

19. In § 123.33 paragraphs (b),(c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*, Clean Water Act, 33 U.S.C. 1251 *et seq.*, Clean Air Act, 42 U.S.C. 7401 *et seq.*

§ 124.2 [Amended]

2. In § 124.2 the definition of "State" is amended by revising the phrase "an Indian Tribe treated as a State" to read "an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State".

§ 124.51 [Amended]

3. In § 124.51 paragraph (c) is amended by revising the phrase "is qualified for treatment as a State" to

read "meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State" and by revising the phrase "likewise qualified for treatment as a State" to read "likewise qualified for such treatment."

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.3 [Amended]

2. In § 131.3 paragraph (j) is amended by revising the phrase "qualify for treatment as States for purposes of water quality standards" to read "to be eligible for purposes of a water quality standards program".

§ 131.4 [Amended]

3. In § 131.4 paragraph (c) is amended by revising the phrase "qualifies for treatment as a State" in both places that it appears to read "is eligible to the same extent as a State"

§ 131.7 [Amended]

4. In § 131.7 paragraph (b)(2) is amended by revising the phrase "qualifies to be treated as a State" to read "is eligible to the same extent as a State".

§ 131.8 [Amended]

5. The heading of § 131.8 is amended by revising the phrase "to be treated as States for purposes of water quality standards" to read "to administer a water quality standards program".

6. In § 131.8 paragraph (a) introductory text is amended by revising the phrase "treat an Indian Tribe as a State for purposes of the water quality standards program" to read "accept and approve a tribal application for purposes of administering a water quality standards program".

7. In § 131.8 paragraph (b) introductory text is amended by revising the phrase "for treatment as states for purposes of water quality standards" to read "for administration of a water quality standards program".

8. In § 131.8 paragraph (b)(2) introductory text is amended by revising the word "shall" to read "should"

9. In § 131.8 paragraph (b)(3) introductory text is amended by revising the word "shall" to read "should".

10. In § 131.8 paragraph (b)(3)(ii) is amended by removing the semi-colon and adding to the end of the paragraph the phrase "and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and".

11. Section 131.8(b)(3)(iii) is removed.

12. In § 131.8 paragraph (b)(3)(iv) is redesignated as (b)(3)(iii).

13. In § 131.8 paragraph (b)(4) introductory text is amended by revising the word "shall" to read "should".

14. In § 131.8 paragraph (b)(4)(i) is amended by revising the phrase "including, but not limited to" to read "which may include".

15. In § 131.8 paragraph (b)(5) is amended by revising the phrase "request for treatment as a State," to read "application".

16. In § 131.8 paragraph (b)(6) is amended by revising the phrase "qualified for treatment as a State" to read "qualified for eligibility or 'treatment as a state'" and by removing the second occurrence of the phrase "treatment as a State".

17. In § 131.8 paragraphs (c) introductory text, (c)(1) and (c)(2) introductory text are amended by removing the words "for treatment as a State".

18. In § 131.8 paragraph (c)(4) is amended by revising the phrase "after consultation with the Secretary of the Interior, or his designee" to read "after due consideration".

19. In § 131.8 paragraph (c)(5) is amended by revising the words "has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part" to read "is authorized to administer the Water Quality Standards program".

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

§ 142.2 [Amended]

2. In § 142.2 the definition of "State" is amended by revising the phrase "or an Indian Tribe treated as a State," to read "or an eligible Indian tribe"

§ 142.3 [Amended]

3. In § 142.3 paragraph (c) is amended by revising the phrase "be designated by the Administrator for treatment as a State" to read "meet the statutory criteria at 42 U.S.C. 300j-11(b)(1)"

Subpart H—Indian Tribes

4. The heading for subpart H of part 142 is revised to read as set forth above.

§ 142.72 Requirements for Tribal eligibility.

5. The heading of § 142.72 is revised to read as set forth above.

6–7. Section 142.72 is amended by revising the introductory text and paragraph (d) to read as follows.

§ 142.72 Requirements for Tribal eligibility

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Public Water System Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program

* * * * *

§ 142.76 [Amended]

8. The heading of § 142.76 is amended by revising the phrase "of treatment as a State" to read "of eligibility"

9. Section 142.76 is amended by revising in the introductory text the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

10. In § 142.76 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

11. In § 142.76 paragraph (c) is amended by revising the word "all" to read "those" and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction"

12. In § 142.76 paragraph (d) introductory text is amended by revising the word "shall" to read "should"

13. In § 142.76 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include"

14. In § 142.76 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State to read "a Tribe's eligibility"

15. In § 142.76 paragraph (f) is revised to read as follows:

§ 142.76 Request by an Indian tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraph (c), (d)(5) and (6) of this section).

§ 142.78 [Amended]

16. The heading of § 142.78 is amended by removing the phrase "for treatment as a State".

17. In § 142.78 paragraph (a) is amended by removing the words "for treatment as a State submitted pursuant to § 142.76"

18. In § 142.78 paragraphs (b), (c) and (d) are removed and paragraph (e) is redesignated as (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 142.72, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 142.72 is eligible to apply for"

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq*; Resource Conservation and Recovery Act, 42 U.S.C. 6902 *et seq*.

2. Section 144.3 is amended by adding the definition of "eligible Indian tribe" in alphabetical order to read as follows:

§ 144.3 Definitions.

* * * * *

Eligible Indian Tribe is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

* * * * *

PART 145—STATE UIC PROGRAM REQUIREMENTS

1 The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq*.

§ 145.1 [Amended]

2. In § 145.1 paragraph (h) is amended by adding the word "eligible" between "to" and "Indian Tribes" in the first sentence; and by removing the second sentence.

Subpart E—Indian Tribes

3. The heading of subpart E of part 145 is revised to read as set forth above.

§ 145.52 Requirements for Tribal eligibility.

4. The heading of § 145.52 is revised to read as set forth above.

5–6. Section 145.52 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 145.52 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program.

* * * * *

§ 145.56 [Amended]

7 The heading of § 145.56 is amended by revising the phrase "of treatment as a State" to read "of eligibility"

8. In § 145.56 the introductory text is amended by revising the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

9. In § 145.56 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

10. In § 145.56 paragraph (c) is amended by revising the word "all" to read "those," and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction"

11. In § 145.56 paragraph (d) introductory text is amended by revising the word "shall" to read "should"

12. In § 145.56 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

13. In § 145.56 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility".

14. In § 145.56 paragraph (f) is revised to read as follows:

§ 145.56 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§ 145.76(c) and (d)(6)).

§ 145.58 [Amended]

15. The heading of § 145.58 is amended by removing the phrase "for treatment as a State".

16. In § 145.58 paragraph (a) is amended by removing the phrase "for treatment as a State submitted pursuant to § 145.56".

17. In § 145.58 paragraphs (b), (c), and (d) are removed and paragraph (e) is redesignated as paragraph (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 145.52, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 145.52 is eligible to apply for"

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S C. 1251 *et seq*.

Subpart G—Eligible Indian Tribes

2. The heading of subpart G of part 233 is revised to read as set forth above.

§ 233.60 Requirements for eligibility.

3. The heading of § 233.60 is revised to read as set forth above.

4. Section 233.60 introductory text is amended by removing the words "a State for purposes of making the Tribe"

§ 233.61 Determination of Tribal eligibility.

5. The heading of § 233.61 is revised to read as set forth above.

6. In § 233.61 the introductory text is amended by revising the phrase "that it qualifies for treatment as a State pursuant to Section 518 of the Act" to read "that it meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State"; by revising the word "shall" in the last sentence to read "should."

7. In § 233.61 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

8. In § 233.61 paragraph (c)(2) is amended by adding at the end of the paragraph before the semicolon "which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority".

9. Section 233.61 (c)(3) is removed.

10. In § 233.61 paragraph (d) introductory text is amended by revising the word "shall" to read "may".

11. In § 233.61 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include".

12. In § 233.61 paragraph (e) is amended by revising the words "request for treatment as a State" to read "application".

13. In § 233.61 paragraph (f) is amended by adding the words "for eligibility or" between "has met the

requirements" and "for 'treatment as a State.'"

§ 233.62 [Amended]

14. The heading of § 233.62 is amended by removing the phrase "for treatment as a State".

15. In § 233.62 paragraph (a) is amended by removing the phrase "for treatment as a State".

16. In § 233.62 paragraphs (b), (c), (d), and (e) are removed.

17. In § 233.62 paragraph (f) is redesignated as paragraph (b).

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

1. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 501.11 [Amended]

2. In § 501.11 (a)(1) remove the phrase "eligible for treatment as a state" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

3. In § 501.11(b)(2) remove the phrase "for treatment as a State" both times it appears and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.12 [Amended]

4. In § 501.12(g) remove the phrase "for treatment as a State" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.22 [Amended]

5. The heading of § 501.22 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

6. In § 501.22 paragraph (a) introductory text is amended by removing the phrase "a State for purposes of making the Tribe."

7. In § 501.22 paragraph (a)(4) is amended by removing the last two sentences.

§ 501.23 [Amended]

8. The heading of § 501.23 is amended by removing the phrase "for treatment as a State".

9. In § 501.23 the introductory text is amended by removing the phrase "for treatment as a State."

10. In § 501.23 paragraph (b) introductory text is amended by revising the word "shall" to read "should."

11. In § 501.23 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

12. In § 501.23 paragraph (d) introductory text is amended by revising the word "shall" to read "should."

13. In § 501.23 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

14. In § 501.23 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

15. In § 501.23 paragraph (f) is revised to read as follows:

§ 501.23 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the sludge management program which is requested by the Regional Administrator.

§ 501.24 [Amended]

16. The heading of § 501.24 is amended by removing the phrase "for treatment as a State."

17. In § 501.24 paragraph (a) is amended by removing the words "for treatment as a State."

18. In § 501.24 paragraphs (b), (c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

[FR Doc. 94–30401 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941241–4341; I.D. 112394B]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Interim 1995 specifications of groundfish, associated management measures, and closures.

SUMMARY: NMFS issues interim 1995 initial total allowable catches (ITACs) for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also closing specified fisheries consistent with the interim 1995 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: January 1, 1995, until the effective date of the final 1995 initial specifications.

ADDRESSES: The preliminary 1995 Stock Assessment and Fishery Evaluation (SAFE) Report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907–271–2809

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907–586–7228

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI are governed by Federal regulations (50 CFR 611.93 and parts 675 and 676) that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify for each calendar year the total allowable catch (TAC) for each target species and the "other species" category (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to publish and solicit public comment on amounts of proposed annual TACs and ITACs for each target species, apportionments of each TAC, prohibited species catch (PSC) allowances under § 675.21(b), and seasonal allowances of pollock TAC. The Council, at its September 1994 meeting, based on the recommendations of its Scientific and Statistical Committee (SSC) and other information, approved preliminary initial specifications for 1995, as detailed below NMFS is publishing these specifications in today's proposed rule section of the **Federal Register**

Preliminary TAC Specifications

The Council developed its TAC recommendations (Table 1) based on the preliminary acceptable biological catches (ABCs) as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required optimum yield range of 1.4–2.0 million metric tons (mt). Each of the Council's recommended TACs for 1995 is equal to or less than the final 1995 ABC for each species category Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The preliminary

ABCs, TACs, ITACs, overfishing levels, and initial apportionments of groundfish in the BSAI area for 1995 are given in Table 1 of this action. The apportionment of TACs among fisheries and seasons is discussed below.

Apportionment of TAC

As required by § 675.20(a)(3) and (a)(7)(i), each species' TAC initially is reduced by 15 percent, except the hook-and-line and pot gear allocation for sablefish. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Interim ITAC Specifications

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each PSC allowance established under § 675.21(b), and the first seasonal allowance of pollock be in effect on January 1, on an interim basis, and remain in effect until superseded by publication of the final initial specifications in the **Federal Register**. Therefore, effective January 1, 1995, the interim 1995 specifications of groundfish are as follows: (1) Twenty-five percent of the proposed ITAC and apportionments thereof, as contained in Table 1 of this action; (2) the first seasonal allowance of pollock as contained in Table 2 of this action; and (3) twenty-five percent of the annual PSC bycatch allowances as contained in Table 3 of this action. These interim specifications will remain in effect until superseded by publication of the final 1995 initial specifications in the **Federal Register** or until harvested.

TABLE 1.—PROPOSED 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA.[1,2]

Species	ABC	TAC	ITAC[3]	Overfishing level
Pollock:				
BS	1,330,000	1,330,000	1,130,500	1,590,000
AI	56,600	56,600	48,110	60,400
Bogoslof District	20,000	1,000	850	147,000
Pacific cod	191,000	191,000	162,350	228,000
Sablefish:				
BS	540	540	446	
AI	2,800	2,800	2,275	
Total	3,340	3,340	2,721	4,160
Atka mackerel:				
Western AI	71,810	10,000	8,500	
Central AI	73,440	44,525	37,846	
Eastern AI, BS	17,950	13,475	11,454	
Total	163,200	68,000	57,800	484,000
Yellowfin sole	230,000	150,325	127,776	269,000
Rock sole	313,000	75,000	63,750	363,000
Greenland turbot:				
BS		4,690	3,986	
AI		2,310	1,964	
Total	7,000	7,000	5,950	24,800
Arrowtooth flounder	93,400	10,000	8,500	130,000
Flathead sole	119,000	29,618	25,175	145,000
Other flatfish[4]	106,000	26,382	22,425	125,000
Pacific ocean perch:				
BS	1,910	1,910	1,623	2,920
AI	10,900	10,900	9,265	16,600
Western AI	6,104	6,104	5,188	
Central AI	3,052	3,052	2,594	
Eastern AI	1,744	1,744	1,483	
Other red rockfish:[5]				
BS	1,400	1,400	1,190	1,400
Sharpchin/Northern:				
AI	5,670	5,670	4,820	5,670
Shortraker/Rougheye:				
AI	1,220	1,220	1,037	1,220
Other rockfish:[6]				
BS	365	365	310	365
AI	770	770	655	770
Squid[7]	3,110	3,110	2,643	
Other Species[8]	27,500	26,390	22,432	141,000
Totals	2,685,385	2,000,000	1,699,882	

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Zero amounts of groundfish are specified for Joint Venture Processing and Total Allowable Level of Foreign Fishing.

[3] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 0.20 of the allocated TAC is reserved for use by CDQ participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[4] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

[6] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

[7] Squid may be combined with "other species" category in the final initial specifications of TAC. The Council will consider combining squid with the "other species" category at its December 1994 meeting.

[8] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. (The "other species" category may include squid in the final 1995 initial specifications of TAC.)

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season). On September 26, 1994, a proposed rule was published in the **Federal Register** (59 FR 49051) that would delay the opening of the pollock roe season for the offshore component fishery to January 26th. If approved by NMFS, this season delay would be effective for the 1995 fishing year.

In 1994, the seasonal allowance for the roe season was 45 percent and the non-roe season 55 percent for the BS pollock fisheries. The pollock TACs specified for the AI subarea and the Bogoslof District were not seasonally apportioned. For 1995, the Council is considering an alternative to the 1994 seasonal allowance that reduces the allowance for pollock fisheries in the BS during the roe season to 40 percent and increases the pollock non-roe allowance to 60 percent (Table 2). The Council declined to choose an alternative until its December 1994 meeting. Regulations at § 675.20(a)(7)(i) require that the first seasonal allowance of pollock be in effect on January 1 on an interim basis, and remain in effect until superseded by publication of the final initial specifications in the **Federal Register** or until harvested. Therefore, NMFS establishes a seasonal allowance of 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season (Table 2), noting that these allowances are subject to change as a result of public comment and consultation with the Council at its December 1994 meeting.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the 1995 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component (Table 2). Definitions of these components are found at § 675.2.

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS.[1, 2]

Subarea	TAC	ITAC[3]	Roe season[4]		Non-roe season[5]	
			45%	40%	55%	60%
Bering Sea:						
Inshore		395,675	178,054	158,270	217,621	237,405
Offshore		734,825	330,671	293,930	404,154	440,895
Total	1,330,000	1,130,500	508,725	452,200	621,775	678,300
Aleutian Islands:						
Inshore		16,838		16,838		remainder.
Offshore		31,272		31,272		remainder.
Total	56,600	48,110		48,110		remainder.
Bogoslof:						
Inshore		298		298		remainder.
Offshore		552		552		remainder.
Total	1,000	850		850		remainder.

[1] TAC = total allowable catch.
[2] Based on an offshore component allocation of 0.65 (TAC) and an inshore component allocation of 0.35 (TAC).
[3] ITAC = initial TAC = 0.85 of TAC.
[4] January 1 through April 15—based on a 45/55 or 40/60 split (roe = 45 percent or 40 percent).
[5] August 15 through December 31—based on a 45/55 or 40/60 split (non-roe = 55 percent or 60 percent).

Allocation of PSC Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the BS subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). The current PSC limits are:

1. Zone 1 trawl fisheries, 200,000 red king crabs;

2. Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;

3. Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;

4. BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;

5. BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut, pending the implementation of the IFQ program; and

6. BSAI trawl fisheries, 1,962 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern BS herring biomass. At this time, the best estimate of 1995 herring biomass is 196,200 mt. This amount was derived using 1993 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the interim herring PSC limit is 1,962 mt. This value is subject to change, pending an updated forecast analysis of 1994 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1994 meeting.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 675.21(b)(1)(iii) specify seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2)

authorize the apportionment of the nontrawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other nontrawl fisheries). The preliminary PSC allowances are listed in Table 3. In general, the fishery bycatch allowances listed in Table 3 reflect the recommendations made to the Council by its Advisory Panel. These recommendations are unchanged from 1994 and were based on 1993 and 1994 bycatch amounts, anticipated 1995 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1991–93 observer data. As in 1994, the Council proposed to exempt the 1995 pot gear fisheries from halibut bycatch restrictions.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final initial specifications or until harvested. These interim PSC bycatch allowances are 25 percent of the annual allowances listed in Table 3.

TABLE 3. PRELIMINARY 1995 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

	Zone 1 [1]	Zone 2 [1] wide	BASI-wide
TRAWL FISHERIES			
Red king crab, number of animals:			
yellowfin sole	40,000		
rcksol/otherflat [2]	110,000		
rockfish	0		
turb/arrow/sab [3]/rockfish	0		
Pacific cod	10,000		
plck/Atka/othr [4]	40,000		
Total	200,000		
C. bairdi Tanner crab, number of animals:			
yellowfin sole	175,000	1,275,000	
rcksol/oth.flat	475,000	260,000	
turb/arrow/sabl	0	5,000	
rockfish	0	10,000	
Pacific cod	175,000	200,000	
plck/Atka/othr	175,000	1,250,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
yellowfin sole			592
rcksol/oth.flat			688
turb/arrow/sabl			137
rockfish			201
Pacific cod			1,200
plck/Atka/othr			957
Total			3,775
Pacific herring, mt:			
midwater pollock			1,419
yellowfin sole			332
rcksol/oth.flat			0
turb/arrow/sabl			0
rockfish			8
Pacific cod			25
plck/Atka/othr [5]			178
Total			1,962
Nontrawl Fisheries BSAI-Wide			
Pacific halibut, mortality (mt):			
Pacific cod Hook-and-line			725
Other nontrawl			175
Groundfish pot gear			([6])
Total			900

[1] Refer to § 675.2 for definitions of areas.
[2] Rock sole and other flatfish fishery category. A technical amendment to add flathead sole to this fishery category will be prepared by NMFS if the Council makes a final recommendation at its December 1994 meeting to break out flathead sole from the "other flatfish" species group (see Table 1).
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock, Atka mackerel, and "other species" fishery category.
[5] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.
[6] Exempt.

Closures to Directed Fishing

If the Director, Alaska Region, NMFS (Regional Director), establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8). The Regional Director has determined that the interim TAC amounts of groundfish for species or species groups identified below will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1995 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components, to prevent exceeding the interim amounts of groundfish TACs specified. These closures will be implemented for the period that the interim specifications of groundfish TACs are effective (from January 1 until the effective date of the final 1995 initial groundfish specifications or until harvested). After consideration of public comments on the proposed 1995 initial specifications and additional scientific information presented at its December 1994 meeting, the Council may recommend other actions at the time the final 1995 initial specifications of groundfish TACs are implemented or during the 1995 fishing year, as necessary for effective management.

TABLE 4.—CLOSURES TO DIRECTED FISHING UNDER 1995 INTERIM TACS.[1]

Fishery (all gear)	*Closed area*[2]
Pollock in Bogoslof District	Statistical Area 518.
Pacific ocean perch	Bering Sea. Eastern AI.[3] Central AI. Western AI.
Shortraker/rougheye rockfish.	AI.
Other rockfish[4]	BSAI.
Other red rockfish[5]	Bering Sea.
Rockfish, Greenland turbot/arrowtooth/sablefish.	Zone 1.

TABLE 4.—CLOSURES TO DIRECTED FISHING · UNDER 1995 INTERIM TACS.[1]—Continued

Fishery (all gear)	*Closed area*[2]
Arrowtooth	BSAI.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.

[2] Refer to § 675.2 for definitions of areas.

[3] "AI" means Aleutian Islands area.

[4] In the BSAI, "Other rockfish" includes *Sebastes* and Sebastolobus species except for Pacific ocean perch and the "other red rockfish" species.

[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and part 676; and is exempt from review under E.O. 12866.

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

Dated: December 9, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–30726 Filed 12–19–94; 4:22 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 239
Wednesday December 14, 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.

FEDERAL ELECTION COMMISSION

[Notice 1994—18]

11 CFR Parts 9003, 9004, 9006, 9007, 9033, 9034, 9037, and 9038

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Extension of comment period.

SUMMARY: On October 6, 1994, the Federal Election Commission published a Notice of Proposed Rulemaking seeking comments on proposed revisions to its regulations governing publicly financed Presidential primary and general election candidates. The Commission has now decided to extend the comment period until January 9, 1995.

DATES; Comments must be received on or before January 9, 1995.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission has initiated a rulemaking to determine what changes should be made to its regulations at 11 CFR Parts 9001 *et seq.* and 9031 *et seq.* governing public financing of Presidential campaigns. See 59 FR 51006 (October 6, 1994). These regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Notice of proposed rulemaking indicated that comments were due on December 5, 1994. Two requests for an extension of the comment period have been received. Commenters who are engaged in winding down 1994 election activities are finding it difficult to submit timely comments. Accordingly, the Commission has now concluded that it would be appropriate to extend the comment period until January 9, 1995 to allow commenters sufficient time after the elections to prepare their comments and suggestions.

Dated: December 9, 1994.

Trevor Potter,

Chairman.

[FR Doc. 94–30692 Filed 12–13–94, 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0863]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed revisions would clarify regulatory provisions or provide further guidance on issues of general interest, such as the treatment of various fees and taxes associated with real estate-secured loans and a creditor's responsibilities when investigating a claim of unauthorized use of a credit card.

DATES: Comments must be received on or before February 1, 1995.

ADDRESSES: Comments should refer to Docket No. R–0863, and may be mailed to William W Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 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 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane Jensen Gell or Obrea O. Poindexter Staff Attorneys; for Subparts A and C (closed-end credit), Kyung Cho-Miller Sheilah A. Goodman, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA, 15 U.S.C. 1601 et seq.) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling It also imposes limitations on some credit transactions secured by a consumer s principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). The regulation authorizes the issuance of official staff interpretations of the regulations (See Appendix C to Regulation Z)

The Board is publishing proposed amendments to the commentary to Regulation Z. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is a substitute for individual staff interpretations It is updated periodically to address significant questions that arise It is expected that this update will be adopted in final form in March 1995 with compliance optional until October 1, 1995, the effective date for mandatory compliance

II. Proposed Commentary

Subpart A—General

Section 226.2—Definitions and Rules o Construction

2(a) Definitions

2(a)(17) Creditor

Paragraph 2(a)(17)(i)

Comment 2(a)(17)(i)-8 would be revised to provide further guidance on

the identity of the creditor for participant loans from an employee savings plan, such as 401(k) plans. Under applicable law, it is the plan that extends the credit, not the trust or trustee receiving and disbursing plan funds. Therefore, for purposes of the TILA, the plan is deemed to be the creditor.

Section 226.4—Finance Charge

4(a) Definition

Comment 4(a)–1 would be revised to indicate to creditors that section 12 of the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2610) prohibits fees from being charged for preparing TILA disclosure statements in RESPA-covered transactions.

Comment 4(a)–3 would be revised to provide additional guidance on when fees charged by a third party are finance charges.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(7)

Comment 4(c)(7)–1 would be revised to clarify the interplay of the fourth and fifth sentences, dealing with a lump sum charge for services. Proposed new language makes clear that a lawyer's attendance at a closing or a charge for conducting the closing is entirely excluded from the finance charge, even though fees for the incidental services might not be excluded if they were imposed separately; this is an exception to the general rule on the treatment of lump sum fees.

Proposed comment 4(c)(7)–2 would clarify that real estate or residential mortgage transaction charges excludable under § 226.4(c)(7) are those charges imposed in connection with the initial decision to grant credit and paid prior to or at consummation or loan closing—for example, a fee to search for tax liens on the property or to determine if flood insurance is required. Additional fees assessed during the loan term to monitor a consumer's continued compliance with contract provisions, such as paying property taxes or purchasing flood insurance, are not excludable under § 226.4(c)(7). These recurring administrative fees, paid by the consumer to protect the creditor's security interest, are finance charges.

4(e) Certain Security Interest Charges

Comment 4(e)–1 would be revised to clarify that the security interest charges excludable as finance charges are those that relate to the agreement between the creditor and the consumer. When a creditor sells or otherwise assigns the consumer's obligation to a third party and the fee to record the assignment is imposed on the consumer, that fee is not excludable from the finance charge under § 226.4(e).

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

(5b) Time of Disclosures

5(b)(1) Initial Disclosures

Comment 5(b)(1)–1 provides that initial disclosures must be provided before the consumer makes the first purchase under an open-end plan; the proposed revision provides an example to illustrate that when a consumer makes a purchase and opens an account contemporaneously with a retailer, for example, disclosures must be given to the consumer at that time.

Proposed comment 5(b)(1)–5 addresses the timing of disclosures for open-end credit plan solicitations that offer consumers an option to transfer outstanding balances with other creditors.

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Comment 6(b)–1 would be revised to state that a fee imposed for terminating an open-end credit plan must be disclosed as an "other charge." Under § 226.6(b) of the regulation, significant charges related to the plan (that are not finance charges) must be disclosed.

While a termination fee might technically meet the definition of a finance charge, there is no detriment to the consumer for a creditor to disclose this fee as a significant charge under § 226.6(b)—other charges—rather than a finance charge under § 226.4. There seems to be little benefit to the consumer's receiving an APR (disproportionately high in some cases) on what might be the last periodic statement under an active plan for a fee imposed when the consumer closes the account.

Section 226.12—Special Credit Card Rules

12(b) Liability of Cardholder for Unauthorized Use

Proposed comments 12(b)–2 and –3 address a card issuer's rights and responsibilities in responding to a claim of unauthorized use under § 226.12. Proposed comment 12(b)–2 clarifies that card issuers are not required to impose any liability. Proposed comment 12(b)–3 clarifies that a card issuer wishing to impose liability must investigate claims in a reasonable manner.

Proposed comment 12(b)–3 lists some of the steps that card issuers may take in the investigation of a claim. For example, card issuers may request that a cardholder provide information needed to resolve the claim. But a card issuer cannot automatically deny a claim based on a cardholder's failure, for instance, to submit a signed statement or notarized document, or to file a police report. The steps appropriate for investigating particular claims may differ, and card issuers are not required to take certain minimum steps on all claim investigations. Specific comment is solicited on the proposed approach for providing guidance that identifies, by example, actions that card issuers may take in a reasonable investigation of a claim of unauthorized use.

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

Paragraph 15(a)(1)

Comments 15(a)(1)–5 and –6 would be revised to provide further guidance on the right to rescind a transaction secured by a consumer's principal dwelling. The right of rescission does not apply to residential mortgage transactions. (See § 226.15(f)(1).) Proposed comment 15(a)(1)–5 adds examples of transactions that are and are not rescindable.

Comment 15(a)(1)–6—which contains an exception to the "one principal dwelling" rule of comment 15(a)(1)–5—would be revised to clarify that a credit transaction secured by the equity in the consumer's current principal dwelling, not by the new home, is subject to the rescission requirements of § 226.15.

15(d) Effects of Rescission

Consumers who rescind transactions are refunded any fees that they paid to obtain the loan. Comment 15(d)(2)–1 would be revised to clarify that broker fees, although paid by the consumer to a third party, must be refunded by the creditor to the consumer if the consumer rescinds the transaction.

Section 226.16—Advertising

16(d) Additional Requirements for Home Equity Plans

Proposed comment 16(d)–7 would clarify disclosure requirements for balloon payments in home equity plan advertisements. Commentary to § 226.5b(d)(5)(ii) provides that for plans in which a balloon payment will occur if the consumer makes only the minimum payments, the disclosure must state that fact. The proposed

comment would apply this requirement to advertisements, since the regulatory provisions on treatment of balloon payments in home equity advertising and in disclosures are generally parallel.

Subpart C—Closed-end Credit

Section 226.17—General Disclosures

17(a) Form of Disclosures

Paragraph 17(a)(1)

Comment 17(a)(1)–5 would be revised to include a late payment fee on a single payment loan as information directly related to the segregated disclosures. Section 226.18(l) requires disclosure of a late payment fee only if a dollar or percentage charge may be imposed *before maturity* due to a late payment, other than a deferral or extension charge. Creditors suggest that the only distinction between requiring the fee to be reflected on a loan that has not matured, as compared with a loan that has matured, is of a technical nature. Disclosure of a late payment fee is information valuable to a consumer obligated on a single payment loan that would not distract from or obscure the segregated disclosures.

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(4)

Section 226.17(c)(4) allows creditors to disregard in the payment schedule and other calculations small variations in the first payment due to a long or short first period. Proposed comment 17(c)(4)–4 clarifies that prepaid finance charges, such as odd days interest paid at or prior to closing, may not be considered as the first payment on a loan. Thus, creditors cannot disregard any irregularity in disclosing such finance charges in the payment schedule.

17(f) Early Disclosures

Comment 226.17(f)–1 would be revised to clarify that redisclosure is not only required if the annual percentage rate in the consummated transaction differs from the disclosed rate by more than the allowable 1/8 or 1/4 of 1 percent tolerance, but also if the early disclosures were not indicated as estimates, and consummated terms other than the rate differ from the terms disclosed.

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Paragraph 18(c)(1)(iv)

Proposed comment 18(c)(1)(iv)–2 clarifies disclosure requirements under the TILA that are affected by new rules under the Real Estate Settlement Procedures Act (RESPA; 12 U.S.C. 2601). In October 1994, the Department of Housing and Urban Development (HUD), which implements RESPA through Regulation X (24 CFR Part 3500), amended its regulation to implement new procedures for calculating the amount consumers must pay into escrow accounts associated with RESPA-covered home mortgage loans (59 FR 53890, October 26, 1994). These procedures are being phased in over time for existing escrow accounts; all new escrow accounts established on or after April 24, 1995 must comply with the new procedures. Eventually, all lenders will be required to use an aggregate accounting method instead of a single-item method for RESPA transactions. The use of the aggregate method will affect disclosure requirements under Regulation Z.

Currently, in calculating the amounts required to be paid into escrow accounts at closing, lenders use what is referred to as the single-item analysis. (Property taxes, insurance, and mortgage insurance premiums are common examples of escrow items.) Under single-item analysis, lenders account separately for each item to be collected at closing and held in escrow.

Under the aggregate accounting method, rather than accounting for each item separately, the amount for escrow is determined as a whole. This will make it difficult for a creditor to determine how much of the aggregate amount is actually allocated to each escrow item.

Regardless of how they collect the funds under RESPA, lenders will continue to disclose escrow items on the HUD settlement statement using the single-item analysis. If the amount actually collected at settlement is affected by the aggregate accounting method, the settlement statement will reflect the adjustment on a separate line in the 1000 series. Mortgage insurance premiums, one of the items typically paid at settlement and included in the escrow account, are listed on line 1002 of the HUD statement. This amount is also a prepaid finance charge under Regulation Z.

If a creditor is collecting the settlement charges using aggregate analysis the amount actually collected may be less than the amount listed on line 1002. Guidance has been requested on what amount lenders should use as the prepaid finance charge, since the amount disclosed is not precisely the amount collected. Various alternatives have been considered to ensure as accurate and uniform a disclosure as possible. The proposed comment provides that creditors may use the amount on line 1002, without adjustment, to calculate the prepaid finance charge under the TILA. This approach will ease compliance and provide consumers with an easily identifiable amount for the mortgage insurance. While this method does slightly overstate the amount of the prepaid finance charge for mortgage insurance, nonetheless this method seems to provide the more accurate and equitable treatment possible given the problems associated with identifying the amount of any single item in an aggregate accounting analysis. Comment is solicited on the use of the figure in line 1002 as the amount for the prepaid finance charge for mortgage insurance along with any other concerns the shift to aggregate accounting raises for lenders under Regulation Z.

18(d) Finance Charge

Proposed comment 18(d)–2 states that although there is no specific tolerance for the amount financed, an error in that figure—resulting from an error in a finance charge that is a component part of the amount financed—does not violate the act or the regulation provided the finance charge disclosed under § 226.18(d) is within the permissible tolerance provided in footnote 41 of the regulation. The same interpretation would apply to other disclosures for which the regulation provides no specific tolerance, such as the total of payments.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

Paragraph 19(b)(2)(vii)

Proposed comment 19(b)(2)(vii)–2 states that loans with more than one way to trigger negative amortization are separate variable-rate loan programs requiring disclosures under § 226.19(b)(2) (viii) and (x) to the extent they vary from each other. For example, a loan that provides for monthly interest rate changes but only annual payment changes, or automatic payment caps for a set period of time, or an option for the borrower to cap the amount of monthly payments whenever the new payment would exceed the old payment by more than a certain margin, consists of three separate variable-rate programs. Each program may trigger negative amortization. For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as negative amortization occurs and the principal

balance will increase), except that the disclosure in § 19(b)(2)(vii) need not be given for the option.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraph 22(a)(1)

Comment 22(a)(1)–5 would be revised to correct an erroneous footnote reference.

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

Paragraph 23(a)(1)

The right of rescission does not apply to residential mortgage transactions. (See § 226.23(f)(1).) Comments 23(a)(1)–3 and –4 would be revised to provide further guidance on the right to rescind a transaction secured by a consumer's principal dwelling. Proposed comment 23(a)(1)–3 adds examples of transactions that are and are not rescindable.

Comment 23(a)(1)–4—which contains an exception to the "one principal dwelling" rule in comment 23(a)(1)–3—would be revised to clarify that a credit transaction secured by the equity in the consumer's current principal dwelling, not by the new home, is subject to the rescission requirements of § 226.23.

23(d) Effects of Rescission

Paragraph 23(d)(2)

Consumers who rescind transactions are refunded any fees that they paid to obtain the loan. Comment 23(d)(2)-1 would be revised to clarify that broker fees, although paid by the consumer to a third party, must be refunded by the creditor to the consumer if the consumer rescinds the transaction.

23(f) Exempt Transactions

Paragraph 23(f)(4)

Section 226.23(f)(2) exempts refinancings by the original creditor, to whom the obligation was originally payable. (See definition of a creditor under TILA in § 226.2(a)(17).) Comment 23(f)-4 would be revised to clarify that in a merger, consolidation, or acquisition, the successor institution is considered the original creditor for purposes of the exemption in § 226.23(f)(2). For example, if two lending institutions merge, the resulting institution is considered the original creditor for refinancings of any mortgage loans that were made by either of the two institutions. In refinancing transactions, any creditor that is not the original creditor for the obligation being refinanced must deliver the general rescission notice (model form H–8).

Appendix J—Annual Percentage Rate Computations for Closed-end Credit Transactions

In the reference section, the *1981 changes* paragraph would be revised to make a technical correction to the second sentence. Paragraph (b)(5)(vi) does not permit creditors to use either the 12-month or the 365-day unit period methods "in all cases" where the transaction term equals a whole number of months, but only in a single-advance, single-payment transaction in which the term is less than a year and is equal to a whole number of months.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0863, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806, 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

* * * * *

2. In supplement I to part 226, under *§ 226.2—Definitions and rules of construction*, under *Paragraph 2(a)(17)(i)*., paragraph 8. would be revised to read as follows:

Supplement I—Official Staff Interpretations

§ 226.2 Definitions and rules of construction.

* * * * *

Paragraph 2(a)(17)(i)

* * * * *

8. *Loans from employee savings plan.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances[.]►, and use a trust to administer the receipt and disbursement of funds. The plan (not the trust or the trustee) is the creditor for purposes of this regulation. Thus, unless◄ [Unless] each participant's account is an individual ►plan and◄ trust ►, such as an individual retirement account◄, the numerical tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account.

* * * * *

3. In Supplement I to part 226, *§ 226.4—Finance Charge*, the following amendments would be made:

a. Under *4(a) Definition*., paragraphs 1. and 3. would be revised;

b. Under *Paragraph 4(c)(7)*., paragraph 1. would be revised and a new paragraph 2. would be added; and

c. Under *(4)(e) Certain security interest charges*., paragraph 1. would be revised.

The revisions and additions would read as follows:

* * * * *

§ 226.4 Finance charge.

4(a) Definition

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

►i.◄ For example, the following items are not finance charges:

►A.◄ Taxes, license fees, or registration fees paid by both cash and credit customers;

►B.◄ Discounts that are available to cash and credit customers, such as quantity discounts;

►C.◄ Discounts available to a particular group of consumers because

they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided credit customers who are members of the group and don't qualify for the discount pay no more than the non-member cash customers.

►D.◄ Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

►ii.◄ In contrast, the following items are finance charges:

►(A)◄ Inspection and handling fees for the staged disbursement of construction loan proceeds;

►(B)◄ Fees for preparing a Truth in Lending disclosure statement►, if permitted by law (for example, the Real Estate Settlement Procedures Act (RESPA) prohibits such charges in certain transactions secured by real property).

►(C)◄ Charges for a required maintenance or service contract imposed only in a credit transaction.

►iii.◄ If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

►(A)◄ If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

* * * * *

3. *Charges by third parties.* ►i. Third party charges paid by the consumer are not finance charges if the creditor does not retain the charges or require the service. For example:

A. A state or local tax on the credit transaction paid by the consumer, even if the tax is collected by the creditor; and

B. A fee for a courier charged by an independent closing agent to send a document to the title company or some other party, provided that the creditor has not required the use of the courier.

ii. In contrast, third party charges are finance charges (unless otherwise excluded) if the creditor requires the service as a condition of making the loan, even if the consumer can choose the service provider. Examples are:

A. The cost of required mortgage insurance, even if the consumer is allowed to choose the insurer; and

B. A mortgage broker fee when the use of a broker is required, such as when a consumer cannot get the same loan terms and conditions directly through the creditor (for example, the consumer is offered a loan for 8 percent only by using a broker; otherwise, the particular loan is offered at 9 percent).◄ [Charges imposed on the consumer by someone other than the creditor for services not required by the creditor are not finance charges, as long as the creditor does not retain the charges.

In contrast, charges imposed on the consumer by someone other than the creditor are finance charges (unless otherwise excluded) if the creditor requires the services of the third party. For example:

• A fee charged by a loan broker if the consumer cannot obtain the same credit terms from the creditor without using a broker.

For example:

• A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker).

• A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor).]

* * * * *

Paragraph 4(c)(7)

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, credit report fees include not only the cost of the report itself, but also the cost of verifying information in the report. If a lump sum is charged for several services and includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. ►However, a◄ [A] charge for a lawyer's attendance at the closing or a charge for conducting the closing (for example, by a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties, are performed. ►The entire charge is excluded even though a fee for the incidental services would be a finance charge if it was imposed separately.◄ In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

►2. *Charges assessed during the loan term.* The exclusion in § 226.4(c)(7) for charges imposed in real estate or residential mortgage transactions is not available for fees to be assessed periodically during the loan term. For example, a fee to be assessed at intervals during a 30-year loan (whether collected at closing or when the service is rendered) for determining current tax lien status or flood insurance requirements is a finance charge. In contrast, where such fees are imposed solely in connection with the creditor's initial decision to grant credit, the fees are excluded from the finance charge under § 226.4(c)(7).◄

* * * * *

4(e) Certain Security Interest Charges

1. *Examples.* ►Only sums actually paid to public officials are excludable from the finance charge under § 226.4(e)(1).◄ Examples of ►excludable◄ charges ►are◄ [excludable from the finance charge under § 226.4(e)(1) include]:

►i.◄ Charges for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents► that evidence the obligation between the creditor and the consumer◄;

►ii.◄ Stamps evidencing payment of taxes on property if the stamps are required to file a security agreement on the property; and

►iii. An intangible tax on the property if the payment of the tax is required to file a security agreement on the property.◄

[Only sums actually paid to public officials are excludable under § 226.4(e)(1).]

* * * * *

Subpart B—Open-End Credit

4. In Supplement I to part 226, under *§ 226.5—General Disclosure Requirements*, under *5(b)(1) Initial disclosures.*, in paragraph 1., the first and second sentences would be revised, and a new paragraph 5. would be added to read as follows:

* * * * *

§ 226.5 General disclosure requirements.

* * * * *

5(b)(1) Initial Disclosures

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes

obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase ►(such as when consumers open credit plans and make purchases contemporaneously at retail stores)◄, receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below).* * *

* * * * *

►5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must comply with § 226.6 before the consumer authorizes the balance transfer. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement.◄

* * * * *

5. In Supplement I to part 226, under *§ 226.6—Initial disclosure statement*, under *6(b) Other charges.*, paragraph 1 would be revised to read as follows:

* * * * *

§ 226.6 Initial disclosure statement.

* * * * *

6(b) Other Charges

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

►i.◄ Late payment and over-the-credit-limit charges.

►ii.◄ Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

►iii.◄ Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees. (See § 226.4(c)(7).)

►iv.◄ A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances. (See the commentary to § 226.4(a).)

►v.◄ Membership or participation fees for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union would not be an "other charge," even if membership is required to apply for credit.

►vi.◄ Automated teller machine (ATM) charges described in comment 4(a)–5 that are not finance charges.

►vii. Charges imposed for the termination of an open-end credit plan.◄

* * * * *

6. In Supplement I to part 226, under *26.12—Special credit card provisions*, under *12(b) Liability of cardholder for unauthorized use.*, new paragraphs 2. and 3. would be added to read as follows:

* * * * *

§ 226.12 Special credit card provisions.

* * * * *

12(b) Liability of Cardholder for Unauthorized Use

* * * * *

►2. Imposing liability. A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation, but the card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request. The steps necessary for investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records including other credit slips.

v. Requesting a written, signed statement from the cardholder or authorized user.

vi. Advising the cardholder that an appearance may be required in a court action against the person who allegedly used the card without authority.

vii. Requesting a copy of a police report, if one was filed.◄

* * * * *

7. In Supplement I to part 226, under *§ 226.15—Right of rescission*, the following amendments would be made:

a. Under *Paragraph 15(a)(1).*, in paragraph 5., the third sentence is revised, and two new sentences are added following the third sentence;

b. Under *Paragraph 15(a)(1).*, paragraph 6. would be revised; and

c. Under *Paragraph 15(d)(2).*, in paragraph 1., the third sentence would be revised.

The additions and revisions would read as follows:

* * * * *

§ 226.15 Right of Rescission.

* * * * *

Paragraph 15(a)(1)

* * * * *

5. *Principal dwelling.* * * * When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling [when] ►if◄ it secures the open-end credit line. ►In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction.◄ * * *

6. *Special rule for principal dwelling* When the consumer is acquiring or constructing a new principal dwelling, [any]►a◄ credit plan or extension ►that is subject to Regulation Z and is◄ secured by the equity in the consumer's current principal dwelling (for example, an advance to be used as a bridge loan) is still subject to the right of rescission. ►For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. But a credit transaction secured by both A and B is a residential mortgage transaction and is not rescindable.◄

* * * * *

Paragraph 15(d)(2)

1. *Refunds to consumer.* * * * "Any amount" includes finance charges already accrued, as well as other charges such as ►*broker fees*,◄ application and commitment fees►,◄ or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third

party, or passed on from the creditor to the third party. * * *

* * * * *

8. In Supplement I to part 226, under *§ 226.16—Advertising*, under *16(d) Additional Requirements for Home Equity Plans*, a new paragraph 7. would be added to read as follows:

* * * * *

§ 226.16 Advertising.

* * * * *

16(d) Additional Requirements for Home Equity Plans

* * * * *

►7. *Balloon payment.* In programs where a balloon payment will occur if only the minimum payments under the plan are made, the advertisement must state that a balloon payment will result. (See comment 5b(d)(5)(ii)–3 regarding disclosure requirements for a balloon payment.)◄

* * * * *

9. In Supplement I to part 226, under *§ 226.17—General disclosure requirements*, the following amendments would be made:

a. Under *Paragraph 17(a)(1).*, paragraph 5. would be revised;

b. Under *Paragraph 17(c)(4).*, a new paragraph 4 would be added; and

c. Under *17(f) Early disclosures.*, paragraph 1. would be revised.

The revisions and additions would read as follows:

* * * * *

Subpart C—Closed-end Credit

§ 226.17 General disclosure requirements.

* * * * *

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly relation information includes, for example, the following:

►i.◄ A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."

►ii.◄ A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under § 226.18(m).

►iii.◄ The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that events will occur at a certain time.

►iv.◄ The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

►v.◄ An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'you' refers to the customer and 'we' refers to the creditor."

►vi.◄ Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."

►vii.◄ A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event to prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating, "You may be charged a minimum finance charge."

►viii.◄ A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal." (See the commentary to § 226.18(f)(1)(iii).)

►ix.◄ A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."

►x.◄ A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

►xi.◄ If a state or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure given under § 226.18(k) may state, for example, "If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month."

►xii.◄ More than one hypothetical example under § 226.18(f)(1)(iv) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects on the payment terms of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

►xiii.◄ The disclosures set forth under § 226.18(f)(1) for variable-rate transactions subject to § 226.18(f)(2).

►xiv.◄ A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

►xv. A late-payment fee disclosure under § 226.18(l) on a single payment loan.◄

* * * * *

Paragraph 17(c)(4)

* * * * *

►4. *Relation to prepaid finance charges.* Prepaid finance charges paid prior to or at closing may not be treated as the first payment period on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.◄

* * * * *

17(f) Early Disclosures

1. *Change in rate* ►or other terms◄. [No redisclosure] ►Redisclosure◄ is required for changes that occur between the time disclosures are made and consummation, [unless] ◄if► the annual percentage rate in the consummated transaction exceeds the limits prescribed in section 226. 22(a) (⅛ of 1 percentage point in regular transactions and ¼ of 1 percentage point in irregular transactions). ►Redisclosure is also required, even if the APR is within the permitted tolerance, if the disclosures were not based on estimates in accordance with section 226.17(c)(2) and labelled as such.◄ To illustrate:

►i.◄ If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such; and

►ii. If disclosures are made on January 15, the transaction is consummated on February 10, and the

finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms. (See § 226.18(d) and footnote 41 of this part.)◄

* * * * *

10. In Supplement I to part 226, under *§ 226.18—Content of disclosures*, the following amendments would be made:

a. Under *Paragraph 18(c)(1)(iv).*, a new paragraph 2. would be added; and

b. Under *18(d) Finance charge.*, paragraph 2 would be revised.

The additions and revisions would read as follows:

* * * * *

§ 226.18 Content of disclosures.

* * * * *

Paragraph 18(c)(1)(iv)

* * * * *

►2. *Prepaid mortgage insurance premiums.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance that is listed on the line for mortgage insurance on the settlement statement, without adjustment, even if the actual amount collected at settlement varies because of RESPA's escrow accounting rules.◄

18(d) Finance Charge

* * * * *

2. *Tolerance.* A tolerance for the finance charge is provided in footnote 41 ►of this part. When a miscalculation of the amount financed, or of some other numerical disclosure for which the regulation provides no specific tolerance, results from an error in a finance charge that constitutes a part of that amount, the miscalculated amount financed or other numerical disclosure does not violate the act or the regulation if the finance charge disclosed under § 226.18(d) is within the permissible tolerance under footnote 41 of this part◄.

* * * * *

11. In Supplement I to part 226, under *§ 226.19—Certain residential mortgage and variable-rate transactions*, under Paragraph 19(b)(2)(vii)., in paragraph 2., three new sentences are added following the second sentence to read as follows:

* * * * *

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

Paragraph 19(b)(2)(vii)

* * * * *

2. *Negative amortization and interest rate carryover.* * * * ►Loans that provide for more than one way to trigger negative amortization are separate variable-rate programs requiring separate disclosures. (See the commentary to § 226.19(b)(2) and 226.19(b)(3) for a discussion on the definition of variable-rate loan programs and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in § 226.19(b)(2)(viii) need not be provided.◄ * * *

* * * * *

12. In Supplement I to part 226, under *§ 226.22—Determination of the annual percentage rate*, under Paragraph 22(a)(1)., in paragraph 5., the reference to footnote "45a" is revised to read "45d".

13. In Supplement I to part 226, under *§ 226.23—Right of Rescission*, the following amendments would be made:

a. Under *Paragraph 23(a)(1).*, in paragraph 3., the fourth sentence is revised and two new sentences are added following the fourth sentence;

b. Under *Paragraph 23(a)(1).*, paragraph 4. is revised;

c. Under *Paragraph 23(d)(2).*, in paragraph 1., the third sentence is revised; and

d. Under *23(f) Exempt transactions.*, in paragraph 4., two new sentences are added following the first sentence, and a new sentence is added at the end of the paragraph.

The revisions and additions would read as follows:

* * * * *

§ 226.23 Right of rescission.

* * * * *

Paragraph 23(a)(1)

* * * * *

3. *Principal dwelling.* * * * When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling [when] ►if◄ it secures the acquisition or construction loan. ►In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an construction loan to finance B and secured by B is a residential mortgage transaction.◄

* * *

4. *Special rule for principal dwelling* When the consumer is acquiring or constructing a new principal dwelling, [any] ►a◄ loan ►(subject to Regulation Z)◄ secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is still subject to the right of rescission [regardless of the purpose of that loan] ►For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. But a credit transaction secured by both A and B is a residential mortgage transaction and is not rescindable.◄

* * * * *

Paragraph 23(d)(2)

1 *Refunds to consumer.* * * * "Any amount" includes finance charges already accrued, as well as other charges such as ►*broker fees,*◄ application and commitment fees►,◄ or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. * * *

* * * * *

23(f) Exempt Transactions

* * * * *

4. *New advances.* * * * ►The creditor to whom the obligation was initially made payable is the original creditor In a merger, consolidation, or acquisition, the successor institution is considered the original creditor for purposes of the exemption in § 226.23(f)(2).◄ * * * ►In refinancing transactions, any creditor that was not the original creditor for the obligation being refinanced must deliver the general rescission notice (model form H–8).◄

* * * * *

14. In Supplement I to part 226, under Appendix J, under the subheading References, under *1981 changes:*, the second sentence would be revised to read as follows:

* * * * *

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

* * * * *

References

* * * * *

1981 changes: * * * Paragraph (b)(5)(vi) has been revised to permit creditors ►in single-advance, single-payment transactions in which the term is less than a year and is equal to a whole number of months◄ [in all cases where the transaction term equals a whole number of months], to use either the 12-month method or the 365-day method to compute the number of unit-periods per year.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–30606 Filed 12–13–94; 8:45 am]

BILLING CODE 6210–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 35 and 36

Section 4(c) Contract Market Transactions; Swap Agreements

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On October 28, 1994, the Commission published in the **Federal Register** a notice proposing rules in a new Part 36 which would permit certain contract market transactions meeting specified criteria to trade pursuant to an exemption from certain requirements of the Commodity Exchange Act and Commission regulations. The notice also seeks comment on whether Part 35 (Exemption of Swap Agreements) should be amended to include stand-alone prohibitions of fraud and price manipulation similar to those being proposed in new Part 36, and whether the proposed requirements for eligible participants in new Part 36 should be applied to the Commission's previously-granted exemptions, including the exemption for swap agreements in Part 35. 59 FR 54139.

The applicable comment period expires on December 12, 1994. The Commission has received a number of requests for an extension of the comment period, particularly with regard to amendments to Part 35. In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to extend the period for public comment concerning only those issues involving swap agreements. This extension would not affect the closing date for commenting on proposed Part 36.

DATES: Written comments concerning swap agreements must be received by the Commission by the close of business on January 31, 1995.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to section 4(c) contract market transactions and/or swap agreements.

FOR FURTHER INFORMATION CONTACT: Ellyn S. Roth, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581. Telephone: (202) 254–9880.

Issued in Washington, DC, this 8th day of December, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–30690 Filed 12–13–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53 and 301

[EE–48–90]

RIN 1545–A077

Political Expenditures by Section 501(c)(3) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding excise taxes, accelerated tax assessments, and injunctions imposed for certain political expenditures made by organizations that (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a). These sanctions were enacted as part of the Revenue Act of 1987

DATES: Written comments and requests for a public hearing must be received by March 14, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–48–90), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–48–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Morton or Paul Accettura, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document provides proposed amendments to the Income Tax Regulations to supply rules under sections 4955, 6852, and 7409 of the Internal Revenue Code of 1986 (Code). Sections 4955, 6852, and 7409 were enacted by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Public Law 100–203.

In addition, proposed amendments were made to regulations under other sections in order to reflect the effects of sections 4955, 6852, and 7409. Proposed amendments were made to the following regulations sections: §§ 1.6091–2, 53.4963–1, 53.6011–1, 53.6071–1, 53.6091–1, 301.6211–1, 301.6212–1, 301.6213–1, 301.6861–1, 301.6863–1, 301.6863–2, 301.7422–1, and 301.7611–1.

These regulations will be effective upon publication of the final regulations in the **Federal Register**.

Explanation of Provisions

Section 501(a) exempts from income tax any organization described in section 501(c). Section 501(c)(3) describes organizations that are organized and operated exclusively for charitable purposes. An organization is not described in section 501(c)(3) if it participates or intervenes in any political campaign on behalf of (or in opposition to) any candidate for public office (political intervention).

Before sections 4955, 6852, and 7409 were enacted in 1987, revocation of the recognition of exemption was the sole sanction available against political intervention by public charities. In contrast, private foundations have been subject since 1969 to the section 4945 excise tax on taxable expenditures such as political expenditures. The sanctions in sections 4955, 6852, and 7409 apply to all organizations described in section 501(c)(3) (public charities and private foundations).

Congress enacted sections 4955, 6852 and 7409 because it determined that revocation of exemption was not a sufficient sanction to enforce effectively the prohibition on political intervention by section 501(c)(3) organizations. For example, if an organization engaged in significant, uncorrected political

intervention, revocation could be ineffective as a penalty or deterrent, particularly if the organization used all its assets for political intervention and then ceased operations. On the other hand, if an organization made a small, unintentional political expenditure and subsequently adopted procedures to assure no similar future expenditures (particularly if the responsible managers left the organization), the revocation was also ineffective because it was considered a disproportionate penalty and, therefore, not used.

Section 4955 was modeled on the section 4945 excise tax on political expenditures (taxable expenditures) according to the legislative history, while sections 6852 and 7409 provide new sanctions against flagrant political expenditures and flagrant political intervention, respectively. Section 4955 provides a two-tiered excise tax on the political expenditures of a section 501(c)(3) organization and on the agreement of its managers to make the expenditures. Section 6852 allows the immediate assessment of section 4955 taxes and income taxes against a section 501(c)(3) organization in the case of flagrant political expenditures by the organization. Section 7409 enables the Service to seek an injunction against further political expenditures by a 501(c)(3) organization after flagrant political intervention by the organization.

The proposed regulations address the following issues:

A. Political Intervention Prohibition for Section 501(c)(3) Organization Unaltered

Consistent with the legislative history, the proposed regulations under section 4955 provide that the excise taxes imposed by section 4955 do not affect the substantive standards for tax exemption under section 501(c)(3), under which an organization is described in section 501(c)(3) only if it does not participate or intervene in any political campaign on behalf of any candidate for public office. Revocation is generally a separate issue from the application of sections 4955, 6852, and 7409, and is not governed by the proposed regulations. Therefore, sections 4955, 6852, and 7409 may be employed independent of the presence or absence of revocation proceedings, except for the accelerated assessment of income tax under section 6852.

B. Amplification of Political Expenditure Definition

Section 4955(d) provides two definitions of political expenditures. One definition covers amounts paid or incurred by a section 501(c)(3) organization to participate or intervene in the political campaign of any candidate for public office. For purposes of this first definition, any expenditure that would cause an organization that makes the expenditure to be classified as an *action* organization by reason of § 1.501(c)(3)–1(c)(3)(iii) is a political expenditure. Section 1.501(c)(3)–1(c)(3)(iii) defines *candidate for public office* and provides that political intervention can be direct or indirect.

The other statutory definition of political expenditures includes certain expenditures of organizations that are formed primarily for the purpose of promoting a person's candidacy, or used primarily for that purpose and effectively controlled by the candidate. The proposed regulations follow the legislative history by providing that whether the primary purpose of an organization is promoting an individual's candidacy or prospective candidacy depends upon facts and circumstances such as whether the surveys, studies, and other materials prepared by the organization are made available only to one candidate or are made available to the general public, and whether the organization pays for speeches and travel expenses for only one individual or for several persons. The proposed regulations provide that an organization is considered as effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization.

C. Imposition of Initial Taxes on Organization Manager Under Section 4955

Consistent with the intention expressed in the legislative history that section 4955 be applied in a similar manner to section 4945 (regarding excise taxes for political expenditures), the proposed section 4955 regulations follow the section 4945 regulations in providing guidance on the first tier tax on organization managers. Under section 4955(a)(2), there is a first tier tax imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, unless such agreement is not willful and is due to reasonable cause. The proposed section 4955 regulations follow the section 4945 regulations in specifying the type of organization managers and the type of agreement covered by the statute. The proposed section 4955 regulations also explain how to determine when an organization manager *knows* an expenditure is a political expenditure and when the agreement is *willful and without reasonable cause.*

D. Abatement, Refund or No Assessment of Initial Section 4955 Taxes

The proposed section 4955 regulations follow the legislative history in providing that an initial tax under section 4955(a) will be abated, refunded, or not assessed if the organization or an organization manager establishes to the satisfaction of the IRS that the political expenditure was not willful and flagrant, and that the political expenditure was corrected.

E. Correction of Political Expenditures Under Section 4955

As noted above, the excise taxes provided in section 4955 follow the two-tiered approach of the taxes on taxable expenditures by private foundations provided in section 4945. Thus, section 4955 imposes initial taxes at moderate rates, to be followed by more severe taxes if the political expenditure in question is not *corrected* within a prescribed period. *Correction* of a political expenditure, as defined in section 4955(f)(3), requires recovery of the expenditure to the extent possible. The proposed regulations, following the regulations under section 4945, provide that an organization is not required to initiate legal action to recover an expenditure if the action would in all probability not result in the satisfaction of execution on a judgment.

F. Procedures for Taxation Under Section 6852

Section 6852 provides for accelerated assessment of income taxes and section 4955 excise taxes in cases in which a section 501(c)(3) organization makes political expenditures that constitute a flagrant violation of the prohibition against making such expenditures. The accelerated assessment provisions authorize the Secretary to make an immediate determination and assessment of taxes payable. Any income taxes assessed under section 6852 are computed as if the taxpayer's taxable year ended on the date of the determination.

The proposed regulations prescribe procedures to be followed in making an accelerated assessment under section 6852. The regulations provide that such an assessment must be authorized by the District Director. In addition, the regulations provide that an organization cannot be subject to an accelerated assessment of income taxes under section 6852 unless the organization makes political expenditures that result

in revocation of the organization's tax exemption under section 501(a).

The proposed regulations require a taxpayer subject to an assessment under section 6852 to pay the amount assessed within 10 days after the District Director sends the notice and demand for immediate payment. Finally, the regulations provide that cases involving assessments under section 6852 are not cases in which the collection of tax is in jeopardy. Therefore, an assessment under section 6852 does not suspend the normal collection procedures.

G. Procedures for Seeking an Injunction Under Section 7409

The proposed regulations under section 7409 provide procedures for the IRS to use in seeking an injunction against further political expenditures by a section 501(c)(3) organization that has flagrantly participated in, or intervened in any political campaign on behalf of (or in opposition to) any candidate for public office (flagrant political intervention). The procedural framework for seeking an injunction consists of a letter from the Assistant Commissioner (Employee Plans and Exempt Organizations) to the organization notifying it of the Service's intention to seek an injunction if the flagrant intervention does not stop or the charge is not refuted, a 10-day period for the organization to respond to the letter, and the personal determination by the Commissioner regarding whether to seek an injunction. The power given to the Commissioner cannot be delegated.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cynthia D. Morton, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6091–2 is amended by adding paragraph (g) to read as follows:

§ 1.6091–2 Place for filing income tax returns.

* * * * *

(g) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 53.4955–1 is added under subpart K to read as follows:

§ 53.4955–1 Tax on political expenditures.

(a) *Relationship between section 4955 excise taxes and substantive standards for exemption under section 501(c)(3).* The excise taxes imposed by section 4955 do not affect the substantive standards for tax exemption under section 501(c)(3), under which an organization is described in section 501(c)(3) only if it does not participate or intervene in any political campaign on behalf of any candidate for public office.

(b) *Imposition of initial taxes on organization managers*—(1) *In general.* The excise tax under section 4955(a)(2) of the Internal Revenue Code on the agreement of any organization manager to the making of a political expenditure by a section 501(c)(3) organization is imposed only in cases where—

(i) A tax is imposed by section 4955(a)(1);

(ii) The organization manager knows that the expenditure to which the manager agrees is a political expenditure; and

(iii) The agreement is willful and is not due to reasonable cause.

(2) *Type of organization managers covered*—(i) *In general.* The tax under section 4955(a)(2) is imposed only on those organization managers who are authorized to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization and on those organization managers who are members of a group (such as the organization's board of directors or trustees) which is so authorized.

(ii) *Officer.* For purposes of section 4955(f)(2)(A), a person is an officer of an organization if—

(A) That person is specifically so designated under the certificate of incorporation, bylaws, or other constitutive documents of the foundation; or

(B) That person regularly exercises general authority to make administrative or policy decisions on behalf of the organization. Independent contractors, acting in a capacity as attorneys, accountants, and investment managers and advisors, are not officers.

(iii) *Employee.* For purposes of section 4955(f)(2)(B), an individual rendering services to an organization is an employee of the organization only if that individual is an employee within the meaning of section 3121(d)(2).

(3) *Type of agreement required.* An organization manager agrees to the making of a political expenditure if the

manager manifests approval of the expenditure which is sufficient to constitute an exercise of the organization manager's authority to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization. The manifestation of approval need not be the final or decisive approval on behalf of the organization.

(4) *Knowing*—(i) *General rule.* For purposes of section 4955, an organization manager is considered to have agreed to an expenditure *knowing* that it is a political expenditure only if—

(A) The manager has actual knowledge of sufficient facts so that, based solely upon these facts, the expenditure would be a political expenditure;

(B) The manager is aware that such an expenditure under these circumstances may violate the provisions of federal tax law governing political expenditures; and

(C) The manager negligently fails to make reasonable attempts to ascertain whether the expenditure is a political expenditure, or the manager is aware that it is a political expenditure.

(ii) *Amplification of general rule.* For purposes of section 4955, *knowing* does not mean *having reason to know.* However, evidence tending to show that an organization manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of the fact or rule. Thus, for example, evidence tending to show that an organization manager has reason to know of sufficient facts so that, based solely upon those facts, an expenditure would be a political expenditure is relevant in determining whether the manager has actual knowledge of the facts.

(5) *Willful.* An organization manager's agreement to a political expenditure is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an agreement willful. However, an organization manager's agreement to a political expenditure is not willful if the manager does not know that it is a political expenditure.

(6) *Due to reasonable cause.* An organization manager's actions are due to reasonable cause if the manager has exercised his or her responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Advice of counsel.* An organization manager's agreement to an expenditure is ordinarily not considered knowing or willful and is ordinarily considered *due to reasonable cause* if the manager, after full disclosure of the factual situation to legal counsel (including house counsel), relies on the advice of counsel expressed in a reasoned written legal opinion that an expenditure is not a political expenditure under section 4955 (or that expenditures conforming to certain guidelines are not political expenditures). For this purpose, a written legal opinion is considered *reasoned* even if it reaches a conclusion which is subsequently determined to be incorrect, so long as the opinion addresses itself to the facts and applicable law. A written legal opinion is not considered *reasoned* if it does nothing more than recite the facts and express a conclusion. However, the absence of advice of counsel with respect to an expenditure does not, by itself, give rise to any inference that an organization manager agreed to the making of the expenditure knowingly, willfully, or without reasonable cause.

(8) *Cross reference.* For provisions relating to the burden of proof in cases involving the issue of whether an organization manager has knowingly agreed to the making of a political expenditure, see section 7454(b).

(c) *Amplification of political expenditure definition*—(1) *General rule.* Any expenditure that would cause an organization that makes the expenditure to be classified as an *action* organization by reason of § 1.501(c)(3)-1(c)(3)(iii) is a political expenditure within the meaning of section 4955(d)(1).

(2) *Other political expenditures*—(i) For purposes of section 4955(d)(2), an organization is effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization. An organization is not effectively controlled by a candidate or a prospective candidate merely because it is affiliated with the candidate, or merely because the candidate knows the directors, officers, or employees of the organization. The effectively controlled test is not met merely because the organization carries on its research, study, or other educational activities with respect to subject matter or issues in which the individual is interested or with which the individual is associated.

(ii) For purposes of section 4955(d)(2), a determination of whether the primary purpose of an organization is promoting the candidacy or prospective candidacy of an individual for public office is made on the basis of all the facts and circumstances. The factors to be considered include whether the surveys, studies, materials, etc. prepared by the organization are made available only to the candidate or are made available to the general public; and whether the organization pays for speeches and travel expenses for only one individual, or for speeches or travel expenses of several persons. The fact that a candidate or prospective candidate utilizes studies, papers, materials, etc., prepared by the organization (such as in a speech by the candidate) is not to be considered as a factor indicating that the organization has a purpose of promoting the candidacy or prospective candidacy of that individual where such studies, papers, materials, etc. are not made available only to that individual.

(iii) Expenditures for voter registration, voter turnout, or voter education constitute *other expenses,* treated as political expenditures by reason of section 4955(d)(2)(E), only if the expenditures violate the prohibition on political activity provided in section 501(c)(3).

(d) *Abatement, refund, or no assessment of initial tax.* No initial (first-tier) tax will be imposed under section 4955(a), or the initial tax will be abated or refunded, if the organization or an organization manager establishes to the satisfaction of the IRS that—

(1) The political expenditure was not willful and flagrant; and

(2) The political expenditure was corrected.

(e) *Correction*—(1) *Recovery of Expenditure.* For purposes of section 4955(f)(3) and this section, correction of a political expenditure is accomplished by recovering part or all of the expenditure to the extent recovery is possible, and, where full recovery cannot be accomplished, by any additional corrective action which the Commissioner may prescribe. The organization making the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.

(2) *Establishing safeguards.* Correction of a political expenditure must also involve the establishment of sufficient safeguards to prevent future political expenditures by the organization. The determination of whether safeguards are sufficient to prevent future political expenditures by the organization is made by the District Director.

(f) *Effective date.* This section is effective the date these regulations are published as final regulations in the **Federal Register.**

§ 53.4963–1 [Amended]

Par. 5. In § 53.4963–1, paragraphs (a), (b), and (c) are amended by adding the reference "4955," immediately after the reference "4952,".

§ 53.6011–1 [Amended]

Par. 6. In section § 53.6011–1, paragraph (b) is amended as follows: 1. In the first sentence, the language "or 4945(a)," is removed and ", 4945(a) or 4955(a)," is added in its place.

2. In the last sentence, the language "or 4955(a)" is added immediately following the language "section 4945(a)".

Par. 7. Section 53.6071–1(a) is amended by adding paragraph (e) to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(e) *Taxes related to political expenditures of organizations described in section 501(c)(3) of the Internal Revenue Code.* A Form 4720 required to be filed by § 53.6011–1(b) for an organization liable for tax imposed by section 4955(a) must be filed by the unextended due date for filing its annual information return under section 6033 or, if the organization is exempt from filing, the date the organization would be required to file an annual information return if it was not exempt from filing. The Form 4720 of a person whose taxable year ends on a date other than that on which the taxable year of the organization described in section 501(c)(3) ends must be filed on or before the 15th day of the fifth month following the close of the person's taxable year.

Par. 8. Section 53.6091–1 is amended by adding paragraph (d) to read as follows:

§ 53.6091–1 Place for filing chapter 42 tax returns.

* * * * *

(d) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom a chapter 42 tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6211–1 [Amended]

Par. 10. In § 301.6211–1, the last sentence of paragraph (b) is amended by adding "or 6852" immediately after "section 6851".

§ 301.6212–1 [Amended]

Par. 11. In § 301.6212–1, the second sentence of paragraph (c) is amended by adding "termination assessments in section 6851 or 6852," immediately after "section 6213(b)(1),".

§ 301.6213–1 [Amended]

Par. 12. Section 301.6213–1 is amended as follows:

1. Paragraph (a)(2), first sentence, is amended by adding ", 6852," immediately after "section 6851".

2. Paragraph (e), first sentence, is amended by adding "4955," immediately after "4952,".

Par. 13. Section 301.6852–1 is added immediately following § 301.6851–1 to read as follows:

§ 301.6852–1 Termination assessments of tax in the case of flagrant political expenditures of section 501(c)(3) organizations.

(a) *Authority for making.* Any assessment under section 6852 as a result of a flagrant violation by a section 501(c)(3) organization of the prohibition against making political expenditures must be authorized by the District Director.

(b) *Determination of income tax.* An organization shall be subject to an assessment of income tax under section 6852 only if the flagrant violation of the prohibition against making political expenditures results in revocation of the organization's tax exemption under section 501(a) because it is not described in section 501(c)(3). An organization subject to such an assessment is not liable for income taxes for any period prior to the effective date of the revocation of the organization's tax exemption.

(c) *Payment.* Where a District Director has made a determination of income tax under paragraph (b) of this section or of section 4955 excise tax, notwithstanding any other provision of law, any tax will become immediately due and payable. The taxpayer is required to pay the amount of the assessment within 10 days after the District Director sends the notice and demand for immediate payment regardless of the filing of an administrative appeal or of a court petition. Regardless of filing an administrative appeal or of petitioning a court, enforced collection action may proceed after the 10-day payment period unless the taxpayer posts the bond described in section 6863. For purposes of collection procedures such as section 6331 (regarding levy), assessments under the authority of paragraph (a) of this section do not constitute situations in which *the collection of such tax is in jeopardy* and, therefore, do not suspend normal collection procedures.

(d) *Effective date.* This section is effective the date these regulations are published as final regulations.

§ 301.6861–1 [Amended]

Par. 14. In § 301.6861–1, paragraph (g) is amended by:

1. Adding the language "4955(a)," immediately after "4952(a),".

2. Adding the language "4955(b)," immediately after "4952(b),".

§ 301.6863–1 [Amended]

Par. 15. Section 301.6863–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding the language ", or under section 6852 (referred to as a *political assessment* for purposes of this section)" immediately after "for purposes of this section)".

2. Paragraphs (a)(3), (a)(4), and (b) are amended by adding the language "or political assessment" immediately after "jeopardy assessment".

3. Paragraph (b) is further amended by adding the language "(or political assessment)" immediately after "jeopardy" in the last sentence.

§ 301.6863–2 [Amended]

Par. 16. In § 301.6863–2, paragraph (a), the first sentence is amended by adding the language "6852," immediately after "section 6851,".

Par. 17. Section 301.7409–1 is added immediately after § 301.7406–1 to read as follows:

§ 301.7409–1 Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.

(a) *Letter to organization.* When the Assistant Commissioner (Employee Plans and Exempt Organizations) concludes that a section 501(c)(3) organization has engaged in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures, the Assistant Commissioner (Employee Plans and Exempt Organizations) shall send a letter to the organization providing it with the facts based on which the Service believes that the organization has been engaging in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures. The organization will have 10 calendar days after the letter is sent to respond by establishing that it will immediately

cease engaging in political intervention, or by providing the Service with sufficient information to refute the Service's evidence that it has been engaged in flagrant political intervention. The Internal Revenue Service will not proceed to seek an injunction under section 7409 until after the close of this 10-day response period.

(b) *Determination by Commissioner.* If the organization does not respond within 10 calendar days to the letter under paragraph (a) of this section in a manner sufficient to dissuade the Assistant Commissioner (Employee Plans and Exempt Organizations) of the need for an injunction, the file will be forwarded to the Commissioner of Internal Revenue. The Commissioner of Internal Revenue will personally determine whether to forward to the Department of Justice a recommendation that it immediately bring an action to enjoin the organization from making further political expenditures. The Commissioner may also recommend that the court action include any other action that is appropriate in ensuring that the assets of the section 501(c)(3) organization are preserved for section 501(c)(3) purposes. The authority of the Commissioner to make the determinations described in this paragraph may not be delegated to any other persons.

(c) *Flagrant political intervention.* For purposes of this section, *flagrant political intervention* is defined as participation in, or intervention in (including the publication and distribution of statements), any political campaign by a section 501(c)(3) organization on behalf of (or in opposition to) any candidate for public office in violation of the prohibition on such participation or intervention in section 501(c)(3) and the regulations thereunder if the participation or intervention is flagrant.

(d) *Effective date.* This section is effective the date these regulations are published as final regulations.

§ 301.7422–1 [Amended]

Par. 18. In § 301.7422–1, paragraphs (a), (c) and (d) are amended by adding the language "4955," immediately after "4952,".

§ 301.7611–1 [Amended]

Par. 19. In § 301.7611–1, A–6, the first sentence is amended by adding the language "or 6852," immediately after "section 6851".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–30729 Filed 12–13–94; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–6–6615b; FRL–5115–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from gasoline transfer operations, and petroleum sumps, pits, ponds, and well cellars. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the 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 this 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 EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 13, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns the following rules from the Ventura County Air Pollution Control District: Rule 70, Storage and Transfer of Gasoline; Rule 71, Crude Oil and Reactive Organic Compound Liquids; and Rule 71.4, Petroleum Sumps, Pits, Ponds, and Well Cellars. These rules were submitted to EPA by the California Air Resources Board on November 18, 1993. For further information, please see the information provided in the direct final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 18, 1994

David P. Howekamp,

Acting Regional Administrator

[FR Doc. 94–30611 Filed 12–13–94; 8:45 am

BILLING CODE 6560–50–W

40 CFR Part 52

[CO36–4–6305b; FRL–5117–7]

Clean Air Act Approval and Promulgation of PM_{10} Contingency Measure Plans for Canon City and Lamar, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to fully approve the contingency measures submitted by the State of Colorado on December 9, 1993, for the nonattainment areas of Canon City and Lamar, for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) The submittal was made in accordance with the requirements specified under section 172(c)(9) of the Clean Air Act (Act). In the final rules section of this **Federal Register**, EPA is approving the State Implementation Plan (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 EPA does receive adverse comments, however, then the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based upon this proposed rule. EPA will not institute a second comment period on this document. Any parties interesting in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 13, 1995.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper (8ART–AP), Air Programs Branch, 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 VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado, 80202–2466, (303) 293–0966; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado, 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, U.S. Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado, 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: November 25, 1994.

Jack M. McGraw,

Acting Regional Administrator

[FR Doc. 94–30609 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 95–6–6691b; FRL–5118–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from paper treating operations using phenolic and melamine resins.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). 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 this 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 EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 13, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION: This document concerns Placer County Air Pollution Control District's (PCAPCD) Rule 230, "Plastic Products and Materials—Paper Treating Operations," submitted to EPA on July 13, 1994, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1994.

Nora L. McGee,

Acting Regional Administrator

[FR Doc. 94–30511 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50591F; FRL–4898–3]

RIN 2070–AB27

2-Propenoic Acid, 2-Methyl-, 2[3-(2*H*-Benzotriazol-2-yl)-4-hydroxyphenyl]ethyl Ester and 2-Substituted Benzotriazole; Proposed Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify the significant new use rules (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 2-propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazol-2-yl)-4-hydroxyphenyl] ethyl ester and 2-substituted benzotriazole based on a modification to the TSCA 5(e) consent order regulating the substances.

DATES: Written comments must be received by EPA on or before January 13, 1995.

ADDRESSES: All comments must be sent in triplicate, with additional sanitized copies if confidential business information (CBI) is involved, to: OPPT Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E–G99, Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substances in this SNUR is OPPTS–50591F. Nonconfidential versions of

comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19228), EPA issued a SNUR establishing significant new uses for 2-propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazol-2-yl)-4-hydroxyphenyl]ethyl ester and 2-substituted benzotriazole based on the section 5(e) consent order for the substances. Because of additional data EPA has received for these substances, EPA is proposing to modify the SNUR.

I. Background

EPA is proposing to modify the significant new use requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the modification of the section 5(e) consent order for the substance, and the CFR citation in the regulatory text section of this proposed rule. Further background information for the substances is contained in the rulemaking record referenced in Unit III. of this preamble.

PMN Number P-90-333

Chemical name: 2-Propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazol-2-yl)-4-hydroxyphenyl]ethyl ester.
CAS number: Not available.
Effective date of modification of section 5(e) consent order: June 9, 1994.
Basis for modification of section 5(e) consent order: The Company petitioned the Agency to modify the consent order and SNUR to permit use of air-purifying respirators equipped with high efficiency particulate air filter cartridges. EPA, through written correspondence, negotiations, and meetings with the Company, recalculated the risk assessment of the PMN based on information provided by the Company. Based on this risk assessment, the Agency determined that respirators which would provide an approved protection factor (APF) of 50 adequately protects the workers who may be exposed to the PMN substance via inhalation. The Agency has determined, therefore, that modifying the consent order and SNUR would not pose an unreasonable risk of injury to human health or the environment.
CFR citation: 40 CFR 721.8450.

PMN Number P-90-335

Chemical name: (generic) 2-Substituted benzotriazole.
CAS number: Not available.
Effective date of modification of section 5(e) consent order: June 9, 1994.
Basis for modification of section 5(e) consent order: The Company petitioned the Agency to modify the consent order and SNUR to permit use of air-purifying respirators equipped with high efficiency particulate air filter cartridges. EPA, through written correspondence, negotiations, and meetings with the Company, recalculated the risk assessment of the PMN based on information provided by the Company. Based on this risk assessment, the Agency determined that respirators which would provide an APF of 50 adequately protects the workers who may be exposed to the PMN substance via inhalation. The Agency has determined, therefore, that modifying the consent order and SNUR would not pose an unreasonable risk to human health or the environment.
CFR citation: 40 CFR 721.1765.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substances. EPA identified the tests considered necessary to evaluate the risks of the substances and identified the protective equipment necessary to protect any workers who may be exposed to the substances. The basis for such findings is in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of the petition to modify the consent order and SNUR and the recalculation of the risk assessment of the PMN substances based on information provided by the petitioner, the Agency determined air-purifying respirators equipped with high efficiency particulate air filter cartridges would adequately protect the workers who may be exposed to the PMN substances via inhalation. The Agency has determined, therefore, that modifying the consent order and SNUR would not pose an unreasonable risk to human health. The proposed modification of SNUR provisions for the substances designated herein is consistent with the provisions of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS-50591 This record includes information considered by the Agency in developing the rule and includes the modification to consent orders to which the Agency has responded with this proposal.

A public version of the record, without any CBI, is available in the OPPT Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE-B607, 401 M St., SW Washington, DC.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file

V. Regulatory Assessment Requirements

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

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

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

2. In § 721.1765 by revising paragraph (a)(2)(i) to read as follows:

§ 721.1765 2-Substituted benzotriazole.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

* * * * *

3. In § 721.8450 by revising paragraph (a)(2)(i) to read as follows:

§ 721.8450 2-Propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazol-2 yl)-4-hydroxyphenyl]ethyl ester.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b)(concentration set at 0.1 percent), and (c).

* * * * *

[FR Doc. 94–30734 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Substance Abuse and Mental Health Services Administration

42 CFR Part 51

RIN 0905–AD99

Requirements Applicable to Protection and Advocacy of Individuals With Mental Illness; Notice of Proposed Rulemaking

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The 1991 Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act reauthorization stipulated that the Secretary shall promulgate regulations for the implementation of authorized activities of the Protection and Advocacy (P&A) Systems. Thus, this rule proposes regulations to implement Titles I and III of the PAIMI Act of 1986, as amended and will govern the authorized activities carried out by the Protection and Advocacy Systems to protect and advocate the rights of individuals with mental illness. Authorized activities include investigation of incidents of abuse and neglect and the pursuit of legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with mental illness in facilities providing care or treatment. In accordance with the provisions set forth, the system must be given access to records, facilities and individuals with mental illness. Each designated system must have a governing authority or board whose members broadly represent and are knowledgeable about the needs of its clients. In addition, the system must establish an advisory council to the PAIMI program. PAIMI program priorities are developed by the governing authority jointly with the advisory council.

The proposed regulations are intended to provide basic definitions and to clarify the requirements of the PAIMI Act governing the authorized activities and provisions to be carried out by the P&A Systems to protect and advocate the rights of individuals with mental illness.

The proposed regulations are not intended to preempt further regulation in the field by States. Consistent with the established principles of Constitutional law, the proposed Federal regulations will supersede State law to the extent that there is a conflict.

DATES: To ensure consideration, comments must be submitted on or before February 13, 1995.

ADDRESSES: Please address comments to: Director, Center for Mental Health Services, 5600 Fishers Lane, Room 15–105, Rockville, Maryland 20857.

Two weeks after the close of the comment period, comments and letters addressing the proposed PAIMI program regulations, will be available for public inspection in the Office of Consumer, Family, and Public Information, 5600 Fishers Lane, Room 15–81, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Natalie Reatig, Chief, Protection and Advocacy for Individuals with Mental Illness Program, (301) 443–3667 (Voice). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print or computer disk) upon request.

SUPPLEMENTARY INFORMATION:

Program History

In 1975, the Department of Health and Human Services (the Department) established a program pursuant to Part C of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) [42 U.S.C. 6041, *et seq.*], providing formula grant support to the Protection and Advocacy System (system) designated by each State to protect and advocate the rights of persons with developmental disabilities. This program (PADD) is presently administered by the Administration on Developmental Disabilities (ADD).

Since 1986, the Department has provided additional formula grant funds to the same State-designated systems to protect and advocate the rights of individuals with mental illness pursuant to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act of 1986, as amended [42 U.S.C. 10801 *et seq.*]. This program is administered by the Center for Mental Health Service (CMHS) in the Substance Abuse and Mental Health Services Administration (SAMHSA).

These proposed regulations govern activities carried out by the P&A systems under the PAIMI Act to protect and advocate the rights of individuals with mental illness. ADD will also be proposing to amend its regulations governing system operations under the DD Act to implement recent amendments and clarify certain requirements.

Description of PAIMI Program

Formula grants are made to the system designated by the State under Part C of the DD Act to protect and advocate the rights of individuals with mental illness. The system must have the authority to investigate incidents of abuse and neglect and to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with mental illness in facilities providing care or treatment. In accordance with the provisions set forth, the system must be given access to records, facilities and individuals with mental illness.

Each designated system must have a governing authority or board whose members broadly represent and are knowledgeable about the needs of its clients. In addition, the system must establish an advisory council to the PAIMI program. PAIMI program priorities are developed by the

governing authority jointly with the advisory council.

A section-by-section discussion of the proposed rule follows:

Part 51—Requirements Applicable to the Protection and Advocacy for Individuals With Mental Illness Program

Applicability

Section 51.1, as proposed, indicates that requirements are applicable to State designated systems carrying out a protection and advocacy program for individuals with mental illness funded under the Act.

Definitions

Section 51.2 proposes definitions for terms not defined in the Act. Definitions of "ADD," "Department," and "Fiscal Year" are the same as the definitions in ADD regulations governing protection and advocacy systems. The definitions of "Governor" and "System" have the exact meaning as the definition in ADD regulations and differ only slightly in phrasing. "System" refers to the P&A agency designated by the Governor under the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6041, 6042] which administers both DD and PAIMPI programs. "Program," as used in the regulations, denotes activities involved with carrying out a protection and advocacy program for individuals with mental illness funded under the Act. "Act," "Center" and "Director" refer to the Protection and Advocacy for Individuals with Mental Illness Act, as amended, the Center for Mental Health Services and its Director, respectively.

In keeping with Congressional intent, Senate Report (S. Rept.) 102–114 on the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991 at 8, the regulations propose a definition of "care or treatment." The proposed definition of "care or treatment" of an individual with mental illness is based on the survey format *Mental Health Service System Reports*, "Data Standards for Mental Health Decision Support Systems," ("Data Standards") used by the National Institute of Mental Health and the MCHS. It was developed through consensus in the mental health field. The definition of "care or treatment," operating in conjunction with the term "facilities," which includes homeless shelters, jails and prisons, provides a broad range of access for P&A systems to individuals with mental illness. Facilities that render care or treatment under § 102(4) of the Act [42 U.S.C. 10802] are intended to mean those that provide overnight care accompanied by services to prevent, identify, reduce or stabilize mental illness or emotional impairment, ("Data Standards" at 16).

The proposed definitions of "public entity" and "private entity" distinguish between an organizational unit of a State or local government or a quasi-public organization exercising one or more governmental powers, and a nonprofit or for-profit corporation, partnership or other nongovernmental organization.

The proposed definition of "legal guardian, conservator, legal representative" to include individuals appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers is widely used throughout the program. It originated in House Report (H. Rept.) 99–401 at 7 (accompanying H.R. 3492 preliminary to passage of Pub.L. 99–319, Nov. 21, 1985). It is intended to include only those individuals who are given the legal authority to make all decisions on behalf of an individual with mental illness. Persons acting only as a representative payee or acting only to handle financial matters, attorneys or others acting on behalf of an individual with mental illness in individual legal matters, the State, or officials responsible for the provision of health or mental health services to the individual and other persons who are not legally appointed are not included.

Subpart A—Basic Requirements

Formula for Determining Allotments

Section 51.3, as proposed, states that funds shall be apportioned as prescribed by the Act.

Grants Administration Requirements

Section 51.4, as proposed, lists parts of Title 45 CFR which apply to PAIMI programs funded under the Act.

Eligibility for Allotment

Section 51.5, as proposed, requires systems designated by the Governor of a State under Part C of the DD Act [42 U.S.C. 6041, *et seq.*] to provide assurances of compliance with the PAIMI Act and regulations and to be operational in order to receive the State allotment for a PAIMI program. In addition, the Governor must give a written assurance that the allotment will be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness. If the Governor provides this assurance at the same time as he/she provides assurances to ADD under 45 CFR part 1386, the system shall submit a copy of the Governor's assurance as part of its application for PAIMI funds.

Use of Allotments

Section 51.6, as proposed, delineates certain impermissible uses of grant funds. Allotments may not be used: (1) supplant the level of non-Federal funds used for PAIMI activities; (2) support lobbying activities to influence proposed or pending Federal legislation or appropriations; or (3) produce or distribute written, audio or visual materials intended or designed to support or defeat any candidate for public office. However, program activities may include "monitoring, evaluating and commenting upon the development and implementation of Federal, State, and local laws, regulations, State plans, budgets, policies, programs, hearings, levies and community action which will affect mentally ill persons [individuals with mental illness]." [S. Rept. 99–109 on Protection and Advocacy for Mentally Ill Persons Act of 1985 at 9 (July 25, 1985); see also, H. Rept. 99–401 at 9].

Section 51.6(d), as proposed, also clarifies that the restriction in section 104(b)(1) of the Act [42 U.S.C. 10804(b)(1)], that a designated State system may use no more than five percent of the annual allotment for administrative expenses which includes State administrative and monitoring costs but does not include costs of training and technical assistance or the salaries, wages or benefits of program staff. This will assure that Federal funds for eligible systems will be used for protection and advocacy services, "to the greatest extent possible," in keeping with the legislative intent (S. Rept. 99–109 at 12). No funds may be used by the State for administrative costs where the eligible system is not a State agency (H. Rept. 99–401 at 9).

Section 51.6(e), as proposed, also implements restrictions found in section 104(b)(2) of the Act [42 U.S.C. 10804(b)]. Under section 104(b)(2) of the Act [42 U.S.C. 10804(b)(2)], no more than ten percent of an annual allotment may be used for providing technical assistance and training. This may include a portion of the salaries and administrative support of system or program staff who provide training or technical assistance to other staff, contractors, or members of the governing board or advisory council as a significant component of their responsibilities.

Eligibility for Services

Under section 51.7, as proposed, protection and advocacy services funded under the Act must be provided

in accordance with program priorities and policies established by the governing authority jointly with the mental health advisory council. Such protection and advocacy services may be provided to an individual with mental illness who is a resident or inpatient in a facility providing care or treatment; who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or, who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense. Federal funds may also be used to provide services to an otherwise eligible individual who is a resident in a Federal facility providing care or treatment, upon the request of that individual, or that individual's legal guardian, conservator, or other legal representative. Representatives of such individuals are accorded all the rights and authority accorded other representatives of residents of such activities pursuant to State and other Federal laws. Activities in federal facilities are subject to the system's appropriately established priorities and policies.

Protection and advocacy services may be provided to individuals with regard to incidents which occurred while they were eligible under the Act, even though the incident is reported to the P&A system after their discharge from the facilities or after the expiration of their 90-day post discharge eligibility. This reflects the legislative concern that appropriate discharge planning and placement take place in that attempts to withdraw mental health care or treatment services from individuals with mental illness without proper preparation can be as harmful as neglectful isolation or inappropriate treatment (H. Rept. 99–401 at 8–9). This also reflects the legislative intent that the Act's restriction on periods of coverage is not a limitation on the time at which remedies may be sought nor a limitation on the time during which actions may extend. Other laws respecting statutes of limitations and requirements for settlement and adjudication are not altered by the Act (H. Rept. 99–401 at 9).

In addition, allotments may be used to provide representation in civil commitment proceedings where this is the means used to appeal or otherwise challenge procedures which have subjected the individual to abuse or neglect or otherwise violated his or her rights.

Annual Reports

Section 51.8, as proposed, describes the content and other specifications of the annual report required by section 105(a)(7) of the Act [42 U.S.C. 10805(a)(7)].

Financial Status Reports

Section 51.9, as proposed, requires that a grantee shall submit a financial status report in accordance with 45 CFR 74.73

Remedial Actions

Section 51.10, as proposed, provides that noncompliance with the provisions of the Act, regulations or other established grant policies and procedures, including reporting requirements, may be considered a material breach of the terms and conditions of the grant award which can result in remedial actions.

Sections 51.11–51.20 Reserved

Subpart B—Program Administration and Priorities

Contracts for Program Operations

Section 51.21(a), as proposed, permits a system to contract with one or more public or private nonprofit organizations to carry out all or a portion of the program's protection and advocacy services as long as the system institutes oversight and monitoring procedures. The system and the provider must enter into a written agreement which specifies the protection and advocacy services to be performed and evidences that the provider can meet the terms and conditions of the grant.

Eligible systems are encouraged under section 104(a)(2) of the Act [42 U.S.C. 10804(a)(2)] to enter into program contracts with groups run by individuals who are receiving or have received mental health services or by family members of such individuals, as well as with other organizations with relevant expertise. Such arrangements build on the experience of these groups and foster cooperative efforts (S. Rept. 99–109 at 9–10).

Governing Authority

Section 51.22, as proposed, describes the composition of the governing authority and its program oversight responsibilities. Under section 105(c) of the Act [42 U.S.C. 10805(c)], a single governing authority oversees both PAIMI and DD activities. Members of any multi-member governing board which functions as the governing authority must "broadly represent or [be] * * * knowledgeable about the needs of the clients served by the system." To ensure this, the Act specifies that members who are broadly representative include individuals who have received or are receiving mental health services and family members of such individuals. [See section 105(c)(1)(B) of the Act [42 U.S.C. 10805(c)(1)(B)]].

Further, the proposed regulation specifies that an individual or family member who serves on a system's governing board in a representative capacity must have direct experience with the needs of clients served by the system. And, if the governing authority is a nonprofit entity, the chairperson of the program's advisory council must be a member. Other advisory council members are also eligible to serve on the governing board. In addition, each system is required to establish its own policies and procedures for the selection and service of governing board members. These requirements implement 1988 amendments, found in section 105(c)(1)(B) of the Act [42 U.S.C. 10805(c)(1)(B)]. They are intended to "ensure that protection and advocacy systems, which historically served persons with developmental disabilities, have added to their governing boards representatives of the mental health community who are knowledgeable about the special advocacy needs of mental ill individuals, including individuals who have received or are receiving mental health services and family members of such individuals." [S. Rept. 100–454 on Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988, at 8 (Aug. 5, 1988)]. Finally, continuing efforts should be made to increase the involvement of ethnic and racial minorities in program governance and administration to assure that the program addresses the needs of minority individuals with mental illness (H. Rept. 102–319 of the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991 at 8; S. Rept. 102–114 at 7).

Advisory Council

Section 51.23, as proposed, implements requirements, found in section 105(a)(6) of the Act [42 U.S.C. 10805(a)(6)], for an advisory council to advise the system on policies and priorities governing protection and advocacy activities for individuals with mental illness. The council membership should be broadly representative of persons and groups who are knowledgeable about mental illness and the needs of the clients served by the system (S. Rept. 99–109 at p. 10–11). At least 60 percent of the council members, including the chairperson, must be

individuals who have received or are receiving mental health services, or family members of such individuals. Such persons, have a "valuable perspective on the advocacy needs of individuals with mental illness, as well as on potential priority areas for the system" (S. Rept. 100–454 at 9).

The statutorily-based requirement that such persons constitute three/fifths of the council membership is designed to assure that their experience and knowledge will inform program priorities and policies. In addition, continuing efforts should be made to increase the involvement of ethnic and racial minorities in program governance and administration to assure that the program addresses the needs of minority individuals with mental illness (H. Rept. 102–319 at 8; S. Rept. 102–114 at 7).

Each system shall, at least annually, provide the advisory council with reports, materials and fiscal data to assist the members in carrying out their responsibilities. It shall also establish policies and procedures for reimbursing expenses incurred by council members, including travel costs and costs of caring for family members with mental illness or developmental disabilities during the activity period, so as to enable those with limited financial resources to participate fully in council activities.

Program Priorities

Section 51.24, as proposed, implements requirements, found in sections 105(a)(6)(A) and 105(c)(2)(B) of the Act [42 U.S.C. 10805(a)(6)(A) and 10805(c)(2)(B)], mandating that the policies and priorities which will govern the program be established by the governing authority jointly with the advisory council. The governing authority should engage the full and active participation of the advisory council in this process (S. Rept. 100–454 at 8).

The annual priorities must specify the short-term goals and objectives of the program and have measurable outcomes, as is done in setting priorities for DD programs. Case selection criteria and the availability of staff and monetary resources must be considered. Attention should also be focused on the special problems and cultural barriers that individuals with mental illness who have multiple handicaps or who are members of racial or ethnic minorities, face in obtaining mental health care and treatment.

Priorities are to be reviewed annually by the governing authority and the advisory council and revised as necessary. Public comment is an important part of this annual review. In each system, procedures should be established which afford persons with mental illness and family members or their representatives, as well as other interested persons, a chance to comment, in writing or in person, on existing and proposed priorities and policies prior to adoption or reconfirmation each year. The annual program performance report shall include a statement of the priorities and shall address any comments received from the public. These requirements are similar to those established for DD programs (S. Rept. 100–454 at 10).

Grievance Procedure

Section 51.25, as proposed, implements requirements, found in section 105(a)(9) of the Act [42 U.S.C. 10805(a)(9)], for grievance procedures that will address two classes of complaints: (1) complaints of clients or prospective clients directed to whether or not eligible individuals with mental illness in the State have full access to the services of the system; (2) complaints of individuals who have received or are receiving mental health services, their family members or representatives of such individuals or family members directed to whether or not the eligible system is operating in compliance with the Act.

Each system is responsible for structuring procedures which satisfy the statutory objectives of each class of complaint. Some systems have established a bifurcated process; others have a single process with some steps applying only to certain types of complaints. These or other procedures may be developed as long as the process includes for each class of complaint (1) an appeal to the governing authority from any final staff review or determination; (2) annual, or more frequent reports to the governing authority and the mental health advisory council describing the content of the complaints received, the grievances processed and the resolution; (3) identification of individuals responsible for review; (4) a timetable to assure prompt resolution; (5) a written response to the grievant; and (6) protection of client confidentiality. Measures designed to protect client confidentiality should ensure that a complaining client or family member will not be entitled to confidential information concerning any client without that client's consent, or, if the client is legally incompetent or a minor, without the consent of the legal guardian or representative.

Conflicts of Interest

Section 51.26, as proposed, recommends that each system establish policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the governing authority and advisory council. Those policies and procedures should prohibit the participation of employees and members of the governing authority or advisory council in matters affecting particular contracts and subcontracts, reimbursement and expenses and the employment or termination of staff if the covered person or a relative could benefit financially or suffer a financial loss. Public Health Service (PHS) Grants Policy Statement 8–18 lists additional matters that should be covered by such policies.

Training

Section 51.27, as proposed, requires each system to provide training for program staff and permits training of contractors, governing board and advisory council members to enhance the development and implementation of effective P&A services. A system may utilize individuals who have received or are receiving mental health services or family members to provide such training. Training should include advocacy techniques such as negotiation and mediation which, when appropriately used, avoid costly and time-consuming procedures (H. Rept. 99–401 at 11; S. Rept. 99–109 at 12).

At a minimum, program staff should be trained to work with family members of clients served by the program where the individual with mental illness is a minor, legally competent and chooses to involve the family member, or legally incompetent and the legal guardian, conservator or other legal representative is a family member. In addition, each system should also provide training to ensure that the program works effectively with individuals with mental illness who are members of racial and ethnic minorities. This training should enhance cultural sensitivity and understanding on the part of staff, governing authority and advisory council members (H. Rept. 102–319 at 8; Rept. 102–114 at 7).

A system may use its Federal allotment to support training, including related travel expenses, for individuals with mental illness, family members of such individuals, and other persons who are not program staff, contractors, or board or council members, to increase knowledge about protection and advocacy issues, to enhance

leadership capabilities, or to promote Federal-State and inter-State cooperation on matters related to mental health system improvements. Decisions concerning the selection of individuals to receive such training shall be made in accordance with established policies, procedures and priorities of the system. Expenditures for such training are subject to the 10 percent limitation cited in section 51.6(e).

Section 51.28–Section 51.30 Reserved

Subpart C—Protection and Advocacy Services

Conduct of Protection and Advocacy Activities

Section 51.31, as proposed, directs each system to establish its own policies and procedures to govern its advocacy activities. Many programs have already developed such procedures and policies following standards issued by the National Association of Protection and Advocacy Systems (NAPAS).

Program advocacy policies and procedures should encourage staff to maintain a presence in mental health care facilities. An on-site presence allows staff to interact with current or potential recipients of protection and advocacy services on a regular basis and enhances the ability to communicate with facility personnel providing mental health care and treatment as well as to obtain information and to review records. Program policies should also encourage system advocates to work with family members, social and community system workers and others who provide care and treatment for potential and present clients.

Resolving Disputes

Section 51.32, as proposed, clarifies that a system may pursue all appropriate remedies on behalf of its clients consistent with Federal and State law and the canons of professional ethics. Negotiation, mediation, conciliation, and other administrative procedures, should be developed and employed where such approaches offer the prospect of prompt and economical resolution of disputes. Disputes between individuals with mental illness and treatment professionals respecting a particular course of treatment may be singularly suitable for resolution through nonadversarial techniques—especially where these methods facilitate the appropriate involvement of family members (S. Rept. 102–114 at 6). However, although systems are encouraged to use nonadversarial methods where feasible, the Act does not restrict client rights to legal remedies otherwise available under Federal and State laws (S. Rept. 99–109 at 11).

Section 51.33–Section 51.40 Reserved

Subpart D—Access to Records, Facilities and Individuals Access to Records

Section 51.41, as proposed, implements section 105(a)(4) of the Act [42 U.S.C. 10805(a)(4)] which affords a system access to all records of an individual with mental illness when authorized by that individual or his or her representative. A system also has the right to records when it has probable cause to believe that an eligible individual has been subject to abuse or neglect, and is mentally or physically unable to provide authorization, and has no legal guardian, conservator or other legal representative or the individual's guardian is the State. Further, in accordance with section 105(a)(4)(C)(i) of the Act [42 U.S.C. 10805(a)(4)(C)(i)], the system also has the right to records if the system has probable cause to believe that the individual's health or safety is in serious and immediate jeopardy or with respect to whom a complaint has been received, provided the individual's representative has been contacted, offered assistance, and failed or refused to act. A facility must cooperate by promptly furnishing the system the records or the name and address of an individual's representative or otherwise comply with section 51.43.

Authority to access records is essential to enable systems to "effectively carry out their protection and advocacy and investigatory responsibilities" (S. Rept. 100–454 at 9); *Mississippi Protection & Advocacy System, Inc.* v. *Cotten*, 929 F.2d 1054 (5th Cir. 1991). A system must be given access to records based either on a complaint or based on information obtained "as a result of monitoring or other activities (either of which result from a complaint or other evidence)." Section 105(a)(4)(B)(iii) of the Act [42 U.S.C. 10805(a)(4)(B)(iii)]. Monitoring or other investigate activity may be initiated either based on a complaint from an allegedly abused or neglected individual or from other persons, or based on other evidence such as observations by system personnel, review of reports, newspaper accounts, or "hot-line" calls. The definition of "probable cause" is modeled on the California statute, implementing the Act, California Welfare & Institutions Code, Div. 4.7, section 4900(g). This prototype, enacted in January 1992, follows conventional legal principles measuring probable cause in terms of reasonable judgments made by system personnel drawing, where appropriate, upon their training and experience.

Section 51.41(c), as proposed, identifies some of the kinds of information and records which shall be made available to a system under this requirement. Such information includes: access to records obtained in the course of providing intake, assessment, evaluation, care or treatment services [paragraph (c)(1)]; to investigative reports of incidents of abuse, neglect or injury occurring at the facility [paragraph (c)(2)]; to discharge planning records [(c)(3)], as specifically mandated under section 106(b)(3)(A) of the Act [42 U.S.C. 10806(b)(3)(A)]; and to safety standards and demographic and statistical information [pargaraph (c)(5)].

In addition, both the Senate and House committee reports discussed access to records of medical care evaluation and peer review committees during their consideration of the 1991 amendments, and indicated that the Act was not intended to preempt State law regarding disclosure of peer review or medical review records (S. Rept. 102–114 at 5; H. Rept. 102–319 at 6). However, Congress recognizes that systems must have access to "supporting documents" in order to "carry out their protection and advocacy and investigatory responsibilities" (S. Rept. 100–454 at 9).

The proposed descriptions of information and records subject to access requirements are largely modeled on access agreements negotiated by various systems or imposed under court order. Provision for inspection and copying of records at reasonable times and places, subject to reimbursement of reasonable duplicating costs, [paragraph (d)], is an essential element of any access requirement.

Access to Facilities and Residents

Section 51.42, as proposed, implements section 105(a) of the Act [42 U.S.C. 10805(a)(3)] which affords systems access to facilities in the State rendering care and treatment for individuals with mental illness so that they can meet their investigatory, monitoring and advocacy responsiblities. It is modeled on section 4902(b) of the California statute referenced above. Provision is made for access at all times necessary to investigate incidents of abuse or neglect when an incident is reported to the system or when a system determines that there is probable cause to believe an incident occurred or that there is imminent danger of serious abuse or neglect.

Access to facilities and residents at reasonable times and circumstances for other protection and advocacy services, such as information and training (described in paragraph (b)) accords with the legislative intent (S. Rept. 100–454 at 11). It largely follows the California model and provisions in negotiated agreements and in court orders.

Denial of Access

Section 51.43, as proposed, facilitates the speedy resolution of disputes regarding access by requiring facilities to provide a written statement of the reasons for a denial as well as the name and address of any person whose authorization is allegedly required.

Access to Federal Facilities and Records

Section 51.44, as proposed, implements section 104(c) of the Act [42 U.S.C. 10804(c)] which requires that systems be accorded the same rights and authority accorded to other representatives of residents of Federal facilities pursuant to State and Federal law.

Confidentiality of P&A System Client Records

Section 51.45, as proposed, establishes procedures to ensure the protection of the system's client records and for access by authorized Federal officials. The requirements in paragraph (a) are similar to those in CMHS PAIMI policy guidelines implementing section 106(a) of the Act [42 U.S.C. 10806(a)] and ADD regulations. Paragraph (b), modeled on section 4903(d) of the California statute, makes it clear that confidentiality restrictions do not impede a system from issuing public reports that do not identify individuals or from reporting information to cognizant investigative and enforcement agencies.

Disclosing Information Obtained From a Provider of Mental Health Services

Section 51.46, as proposed, implements sections 106(b) (1) and (2) of the Act [42 U.S.C. 10806(b) (1) and (2)] which spells out the steps to be taken to resolve disputes about disclosure of material in records to which the system has access under the act to the individual who received the mental health services. The proposed regulation tracks the statutorily mandated procedures for resolution of such disputes by another mental health professional to be selected either by the individual, by the individual's legal guardian, conservator or other legal representative or by the system acting on behalf of an individual whose guardian is the State or whose legal representative has not selected a mental health professional to review the information within a reasonable period of time after the denial of access. The legislative objective is "to restrict informed consent of clients/patients as little as possible" (H. Rept. 99–401 at 10).

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that all regulations reflect consideration of the costs and benefits they may generate, and that they meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse impacts on the economy, inconsistency with other federal agency action, effects on the federal budget, or their raising of novel legal or policy issues, require special analysis. The Secretary has determined that this proposal does not meet the Order's significance criteria.

Regulatory Flexibility Act of 1980

The proposed regulations have been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 [5 U.S.C. Chapter 6]. The Department has determined that compliance with the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

Federal Supremacy

These proposed regulations are not intended to preempt further regulation in the field by States. However, we are aware of at least one State that has enacted legislation implementing the PAIMI Act. Consistent with the established principles of Constitutional law, the proposed Federal regulations will supersede State law to the extent that there is a conflict.

Paperwork Reduction Act

The proposed rule contains information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The form and manner of information collection specified in § 51.8 (Annual Reports) have been previously reported to and approved by OMB under OMB Approval No. 0930–0169. The title, description, and respondent description of the information collection requirements are presented below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Protection and Advocacy of Individuals with Mental Illness—42 CFR 51—NPRM

Description: Recipients of formula grants to provide protection and advocacy services to individuals with mental illness are required by law to report their activities and accomplishments annually, including the number and types of persons served, the types of facilities covered, and the manner in which the activities were undertaken. The Advisory Council is required to submit a description of activities and an assessment of the operations of the protection and advocacy system.

Description of Respondents: State or local governments, Non-profit institutions.

Estimated Annual Reporting Burden:

Section	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
51.8(2)&(4)	56—Program Performance Report	1	35 hours	1,960
51.8(3)	56—Advisory Council Report	1	10 hours	560
Total				2,520*

*Burden hours are approved under OMB Approval No. 0930–0169

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Individuals or organizations wishing to submit comments on the information requirements, estimated burden or any other aspect of this collection of information should direct such comments to the agency official

designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 10235), 725 17th Street N.W., Washington, DC 20503 ATTN: SAMHSA Desk Officer.

Smoke Free Workplace

Public Law 103–229 enacted on March 31, 1994 prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of the law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products.

List of Subjects in 42 CFR Part 51

Administrative practice and procedure, Grant programs—health programs, Grant programs—social programs, Health records, Mental health programs, Privacy, Reporting and recordkeeping requirements.

Catalogue of Federal Domestic Assistance

Catalogue of Federal Domestic Assistance (CFDA) number programs affected by this proposed rule are: 93.138 Protection and Advocacy for Individuals with Mental Illness.

Dated: September 16, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: December 5, 1994.

Donna E. Shalala,

Secretary.

Accordingly, it is proposed to add part 51 to title 42 of the Code of Federal Regulations to read as set forth below.

PART 51—REQUIREMENTS APPLICABLE TO THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS PROGRAM

Sec.
51.1 Applicability.
51.2 Definitions.

Subpart A—Basic Requirements

51.3 Formula for determining allotments.
51.4 Grants administration requirements.
51.5 Eligibility for allotment.
51.6 Use of allotments.
51.7 Eligibility for protection and advocacy services.
51.8 Annual reports.
51.9 Financial status reports.
51.10 Remedial actions.
51.11–51.20 [Reserved]

Subpart B—Program Administration and Priorities

51.21 Contracts for program operations.
51.22 Governing authority.
51.23 Advisory council.
51.24 Program priorities.
51.25 Grievance procedure.
51.26 Conflicts of interest.
51.27 Training.
51.28–51.30 [Reserved]

Subpart C—Protection and Advocacy Services

51.31 Conduct of protection and advocacy activities.
51.32 Resolving disputes.
51.33–51.40 [Reserved]

Subpart D—Access to Records, Facilities and Individuals

51.41 Access to records.
51.42 Access to facilities and residents.
51.43 Denial of access.
51.44 Access to Federal facilities and records.
51.45 Confidentiality of protection and advocacy system client records.
51.46 Disclosing information obtained from a provider of mental health services.

Authority: Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended 42 U.S.C. § 10801 *et seq.*

§ 51.1 Applicability.

The provisions of this part apply to recipients of Federal assistance under the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended [42 U.S.C. 10801 *et seq.*].

§ 51.2 Definitions.

In addition to the definitions in section 102 of the Act, as amended [42 U.S.C. 10802] the following definitions apply:

Act means the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended [42 U.S.C. 10801 *et seq.*].

ADD means the Administration on Developmental Disabilities within the Administration for Children and Families.

Care or Treatment means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation.

Center or *CMHS* means the Center for Mental Health Services in the Substance Abuse and Mental Health Services Administration.

Department or *HHS* means the U.S. Department of Health and Human Services.

Director means the Director of the Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, or his or her designee.

Fiscal Year means the Federal fiscal year (October 1—September 30) unless other specified.

Governor means the chief executive officer of the State or Territory, or his or her designee, who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

Legal guardian, conservator, and *legal representative* all mean individuals appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with mental illness only in individual legal matters, the State, or officials responsible for the provision of health or mental health services to an individual with mental illness.

Private Entity means a nonprofit or for-profit corporation, partnership or other non-governmental organization.

Program means a program for protection and advocacy for individuals with mental illness that meets the requirements of the Act.

Public Entity means an organizational unit of a State or local government or a quasi-governmental entity with one or more governmental powers.

System means the organization or agency designated in a State to administer and operate advocacy programs to protect and advocate the rights of persons with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6041, 6042] and thereby eligible to receive allotments from the Secretary under the Act to administer a program.

Subpart A—Basic Requirements

§ 51.3 Formula for determining allotments.

The Secretary shall make allotments to eligible systems from amounts apportioned each year under the Act on the basis of a formula prescribed by the Secretary in accordance with the requirements of sections 112 and 113 of the Act [42 U.S.C. 10822 and 10823].

§ 51.4 Grants administration requirements.

The following parts of title 45 CFR apply to grants funded under this part.

45 CFR part 16—Procedures of the Departmental Grant Appeal Board.

45 CFR part 74—Administration of Grants

45 CFR part 75—Informal Grant Appeals Procedures.

45 CFR part 76—Government-wide Debarment and Suspension (NonProcurement) and Government-wide Requirements for Drug-Free Workplace.

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 or Benefiting from Federal Financial Assistance.

45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.

45 CFR part 91—Nondiscrimination on the Basis of Age in Education Programs and Activities Receiving Federal Financial Assistance from HHS.

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.

45 CFR part 1386, Subpart A.

§ 51.5 Eligibility for allotment.

(a) Federal financial assistance for protection and advocacy activities for individuals with mental illness will be given only to a system that has been established under part C of the Development Disabilities Assistance and Bill of Rights [42 U.S.C. 6041, 6042] and designated in accordance with 45 CFR part 1386, subpart B.

(b) The system must meet the requirements of sections 105 and 111 of the Act [42 U.S.C. 10805 and 10821] and that system must be operational.

(c) Written assurances of compliance with sections 105 and 111 of the Act [42 U.S.C. 10805 and 10821] and other requirements of the Act and the regulations shall be submitted by the system in the format designated by the Director. These assurances will remain in effect for the period specified in the application for funds unless changes occur within the State which will affect the functioning of the system, in which case an amendment is required 30 days prior to the effective date of the change.

(d) The Governor's written assurance that the allotments made available under the Act will be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness shall be submitted by the system. The Governor may provide this assurance along with the assurances provided at ADD under 45 CFR part 1386.

§ 51.6 Use of allotments.

(a) Allotments must be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness.

(b) Allotments may not be used to support lobbying activities to influence proposed or pending Federal legislation or appropriations. This restriction does not affect the right of any system, organization or individual to petition Congress or any other government body or official using resources. A system may monitor, evaluate and comment on the development and implementation of Federal, State and local laws, regulations, plans, budgets, levies, projects, policies and hearings affecting individuals with mental illness as a part of federally-funded advocacy activities.

(c) Allotments may not be used to produce or distribute written, audio or visual materials or publicity intended or designed to support or defeat any candidate for public office.

(d) If an eligible system is a public entity, the system shall not be required by the State to obligate more than five percent of its annual allotment for administrative expenses such as costs of internal or external evaluations, monitoring or auditing. This restriction does not include:

(1) Salaries, wages and benefits of program staff;

(2) Costs associated with attending governing board or advisory council meetings; or

(3) Expenses associated with the provision of training or technical assistance for staff, contractors, members of the governing board or advisory council.

(e) No more than ten percent of each annual allotment may be used for providing technical assistance and training, including travel expenses, for staff, contractors, or members of the governing board or advisory council.

§ 51.7 Eligibility for protection and advocacy services.

In accordance with section 105(a)(1)(C) of the Act [42 U.S.C. 10805(a)(1)(C)] and the priorities established by the system's governing authority together with the mental health advisory council pursuant to section 105(c)(2)(B) of the Act [42 U.S.C. 10805(c)(2)(B)], allotments may be used:

(a) To provide protection and advocacy services for:

(1) Individuals with mental illness as defined in 42 U.S.C. 10802(4) and 10805(a)(C), including, persons who report matters which occurred while they were individuals with mental illness;

(2) Individuals with mental illness in Federal facilities rendering care or treatment who request representation by the eligible system. Representation may be requested by an individual with mental illness, or by a legal guardian, conservator or legal representative.

(b) To provide representation of clients in civil commitment proceedings if the system is acting on behalf of an eligible individual to obtain judicial review of his/her commitment in order to appeal or otherwise challenge procedures which have subjected the individual to abuse or neglect or otherwise violated his/her rights. This restriction does not prevent a system from representing clients in commitment or recommitment proceedings using other resources so long as this representation does not conflict with responsibilities under the Act.

§ 51.8 Annual reports.

By January 1 of each year, a report shall be submitted, pursuant to section 105(a)(7) of the Act [42 U.S.C. 10805(a)(7)], to the Secretary which:

(a) Is in the format designated by the Secretary;

(b) Describes the activities, accomplishments, and expenditures of the system on behalf of individuals with mental illness during the previous fiscal year;

(c) Includes a section prepared by the mental health advisory council describing its activities during the previous fiscal year and its assessment of the program's progress in addressing the priorities, goals and objectives established for the previous fiscal year; and

(d) Includes a statement of the program priorities established and shall also address any comments received through public comment.

§ 51.9 Financial status reports.

A grantee shall submit a Financial Status Report in accordance with 45 CFR 74.73.

§ 51.10 Remedial actions.

Failure to submit an annual report in the designated format on time or to satisfy any other requirement of the Act, the regulations, or other requirements may be considered a breach of the terms and conditions of the grant award and may require remedial action such as the suspension or termination of an active grant, withholding of payments or converting to a reimbursement method of payment.

§§ 51.11–51.20 [Reserved]

Subpart B—Program Administration and Priorities

§ 51.21 Contracts for program operations.

(a) An eligible system should work cooperatively with existing advocacy

agencies and groups and, where appropriate, should consider entering into contracts for protection and advocacy services with organizations already working on behalf of individuals with mental illness. Special consideration should be given to contracting for the services of groups run by individuals who have received or are receiving mental health services or by family members of such individuals.

(b) An eligible system may contract for the operation of all or part of its program with another pubic or private nonprofit organization provided that:

(1) Any organization that will operate the full program meets the requirements of sections 104(a)(1), 105 and 111 of the Act [42 U.S.C. 10804(a)(1), 10805 and 10821] and has the capacity to perform protection and advocacy activities throughout the State;

(2) The eligible system institutes oversight and monitoring procedures which ensure that all applicable terms, conditions and obligations of the Federal grant are met;

(3) The eligible system and the contractor organization enter into a written agreement that includes at least the following:

(i) A description of the protection and advocacy services to be provided;

(ii) The type of personnel, their qualifications and training;

(iii) The methods to be used;

(iv) A timetable for performance;

(v) A budget;

(vi) Assurances that the contractor will meet all applicable terms and conditions of the grant;

(vii) Assurances that the contractor has adequate management and fiscal systems in place, including insurance coverage, if appropriate;

(viii) Assurances that the contractor's staff is trained to provide advocacy services to individuals with mental illness; and

(ix) Assurances that the contractor staff is trained to work with family members of clients served by the system where the clients are:

(A) Minors;

(B) Legally competent and choose to involve the family member; or,

(C) Legally incompetent and the legal guardians, conservators or other legal representatives are family members.

§ 51.22 Governing authority.

(a) Each system shall have a governing authority responsible for planning, design, implementation and functioning.

(b) If the system is organized with a multi-member governing board:

(1) Each system shall establish policies and procedures for the selection of its governing board members, and their terms;

(2) The board shall be composed of members who broadly represent or are knowledgeable about the needs of the clients served by the system;

(3) If the governing authority is organized as a private nonprofit entity, the chairperson of the mental health advisory council shall be a member of the governing board.

(c) Continuing efforts shall be made to include members of racial and ethnic minority groups as board members.

(d) A member of the advisory council may also serve on the governing board.

§ 51.23 Advisory council.

(a) Each system shall establish an advisory council to advise on program policies and priorities.

(b) Members of the council shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services and family members of such individuals. Continuing efforts shall be made to include members of racial and ethnic minority groups on the advisory council.

(1) At least 60 percent of the membership (including the chair) of the advisory council shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals;

(2) The council shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(c) Each system shall provide its advisory council with reports, materials and fiscal data to enable review of existing program policies and priorities. Such submissions shall be made at least annually and shall report expenditures for the past two fiscal years, as well as projected expenses for the next fiscal year, identified by budget categories (e.g., salaries and wages, contracts for services, administrative expenses).

(d) *Reimbursement of expenses.* (1) Allotments may be used to pay for all or a part of the expenses incurred by members of the advisory council in order to participate in its activities. Expenses may include transportation costs, parking, meals, hotel costs, per diem expenses, stipends or subsistence allowances, and the cost of day care (or its equivalent for travel and subsistence expenses) for their dependents with mental illness or developmental disabilities.

(2) Each system shall establish its own policies and procedures for reimbursement of expenses of council members, taking into account the needs of individual council members, available resources, and applicable restrictions on use of grant funds, including the restrictions in sections 51.4, 51.6(e) and 51.27(b).

§ 51.24 Program priorities.

(a) Program priorities and policies shall be established annually by the governing authority, jointly with the advisory council. Priorities shall specify short-term program goals and objectives, with measurable outcomes, which implement established priorities. In developing priorities, consideration shall be given to, at a minimum, case selection criteria, the availability and monetary resources, and special problems and cultural barriers faced by individuals with mental illness who are multiply handicapped or who are members of racial or ethnic minorities in obtaining protection of their rights.

(b) Members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the system. Procedures for public comment must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and representatives of such individuals and to other individuals with disabilities. Procedures for public comment must provide for receipt of comments in writing or in person.

§ 51.25 Grievance procedure.

(a) The system shall establish grievance procedures to address complaints from:

(1) clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the program; and

(2) individuals who have received or are receiving mental health services in the State, family members of such individuals, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the Act.

(b) At a minimum, the grievance procedures shall provide for:

(1) an appeal to the governing authority for any final staff review and/or determination;

(2) reports, at least annually, to the governing authority and the mental health advisory council describing the complaints received, the grievances processed and the resolution;

(3) identification individuals responsible for review;

(4) a timetable to ensure prompt resolution;

(5) a written response to the grievant; and

(6) protection of client confidentiality.

§ 51.26 Conflicts of interest.

The system should develop appropriate policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the governing authority and advisory council, particularly with respect to matters affecting client services, particular contracts and subcontracts, grievance review procedures, reimbursements and expenses, and the employment or termination of staff.

§ 51.27 Training.

(a) A system shall provide training for program staff, and may also provide training for contractors, governing board and advisory council members to enhance the development and implementation of effective protection and advocacy services for individuals with mental illness, including at a minimum:

(1) Training of program staff to work with family members of clients served by the program where the individual with mental illness is:

(i) A minor,

(ii) Legally competent and chooses to involve the family member; or

(iii) Legally incompetent and the legal guardian, conservator or other legal representative is a family member.

This training may be provided by individuals who have received or are receiving mental health services and family members of such individuals.

(2) Training to enhance sensitivity to and understanding of individuals with mental illness who are members of racial or ethnic minorities and to develop strategies for outreach to those populations.

(b) A system may support or provide training, including related travel expenses, for individuals with mental illness, family members of such individuals, and other persons who are not program staff, contractors, board or council members, to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, or to promote Federal-State and inter-State cooperation on matters related to mental health system improvement. Decisions concerning the selection of individuals to receive such training shall be made in accordance with established policies, procedures and priorities of the system.

§ 51.28–51.30 [Reserved]

Subpart C—Protection and Advocacy Services

§ 51.31 Conduct of protection and advocacy activities.

(a) A system shall establish policies and procedures to guide and coordinate advocacy activities.

(b) Wherever possible, the program should establish an ongoing presence in residential mental health care or treatment facilities, and relevant hospital units.

(c) Program activities should be carried out in a manner which allows program staff to:

(1) Interact regularly with those individuals who are current or potential recipients of protection and advocacy services;

(2) Interact regularly with staff providing care or treatment;

(3) Obtain information and review records; and

(4) Communicate with family members, social and community service workers and others involved in providing care or treatment.

§ 51.32 Resolving disputes.

(a) Consistent with State and Federal law and the canons of professional ethics, a system may use any appropriate technique and pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness. However, each system is encouraged to develop and employ techniques such as those involving negotiation, conciliation and mediation to resolve disputes early in the protection and advocacy process.

(b) Disputes, including disputes between an individual with mental illness and treatment professionals as to a particular course of recommended treatment, should be resolved whenever possible through nonadversarial processes involving negotiation, mediation and conciliation. Consistent with State and Federal laws and canons of professional responsibility, family members should be involved in this process as appropriate where the individual with mental illness is:

(1) A minor,

(2) Legally competent and chooses to involve the family member, or

(3) Legally incompetent and the legal guardian, conservator or other legal representative is a family member.

(c) A system must exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action. However, if in pursuing administrative remedies, the system determines that any matter with respect to an individual with mental illness will not be resolved within a reasonable time, the system may pursue alternative remedies, including initiating legal action.

(d) Paragraph (c) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness.

(e) The Act imposes no additional burden respecting exhaustion of remedies.

§ 51.33–51.40 [Reserved]

Subpart D—Access to Records, Facilities and Individuals

§ 51.41 Access to records.

(a) A system shall have access to the records of any of the following individuals with mental illness:

(1) An individual who is a client of the system if authorized by that individual or the legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown, to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State; and

(iii) A complaint has been received by the system or, as a result of monitoring or other activities, the system has probable cause to believe that the individual has been subject to abuse or neglect.

(3)An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom the system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exist:

(i) The representative has been contacted by the system upon receipt of the representative's name and address;

(ii) The system has offered assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(b) "Probable Cause" to believe that an individual has been or is in danger of being subject to abuse and neglect exists when the system determines that

a reasonable person in a like position, drawing when appropriate upon his or her training and experience, would suspect abuse or neglect.

(c) Information and records which shall be available to the system under the Act shall include, but not be limited to:

(1) Information and records obtained in the course of providing intake, assessment, evaluation and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility or program rendering care or treatment.

(2) Reports prepared by an agency charged with investigating reports of abuse, neglect and injury occurring at a facility/hospital rendering care or treatment, or by or for the facility/hospital itself, that describe any or all of the following:

(i) Abuse, neglect, and injury occurring at the facility;

(ii) The steps taken to investigate the incidents; or,

(iii) Reports and records, including personnel records, prepared or maintained by the facility in connection with such reports of incidents.

(3) Discharge planning records.

(4) Reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protecting records produced by medical care evaluation or peer review committees.

(5) Professional, performance, building or other safety standards, demographic and statistical information relating to the facility.

(d) A system shall be permitted to inspect and copy records, subject to a reasonable charge to offset duplicating costs.

§ 51.42 Access to facilities and residents.

(a) A system shall have reasonable access to public and private facilities and programs in the State which render care or treatment for individuals with mental illness and reasonable access to residents/patients at all times necessary to investigate an incident of abuse or neglect. Such access shall be afforded upon request by the system when:

(1) An incident is reported to the system;

(2) The system determines there is probable cause to believe that an incident occurred; or

(3) The system determines that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness.

This authority shall include reasonable access and authority to examine all relevant records and interview any facility/hospital service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect.

(b) In addition to access as prescribed in paragraph (a) of this section, a system shall have access to facilities and programs and their residents/patients at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with mental illness, including information and training about individual rights and the protection and advocacy services available from the system;

(2) Monitoring compliance with respect to the rights and safety of residents/patients, and

(3) Inspecting, viewing and photographing all areas of the facility/hospital which are used by residents/patients or are accessible to residents/patients.

Such activities shall be conducted so as to minimize interference with facility/hospital programs, respect residents/patient's, privacy interests, and honor a resident's/patient's request to terminate an interview.

(c) Access shall be extended to all authorized agents of a system, including advocates, appropriately supervised trainees, health/mental health care providers, legal and accounting personnel, and program contractors.

(d) Access to residents/patients shall include the opportunity to meet and communicate with an individual regularly, both formally and informally, by telephone, mail and in person.

§ 51.43 Denial of access.

If a facility proposes to deny access to facilities/hospitals, residents/patients or records, it shall promptly provide the system with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with mental illness.

§ 51.44 Access to federal facilities and records.

A system providing representation to individuals with mental illness in Federal facilities shall be accorded all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

§ 51.45 Confidentiality of protection and advocacy system client records.

(a) Client records are the property of the system which must protect records from loss, damage, tampering or use by unauthorized individuals. The system must:

(1) To the same extent as is required by a provider of mental health services, keep confidential all information contained in client records, including information contained in an automated electronic data system, except as provided elsewhere in this section. This requirement does not restrict access by the Department or other authorized Federal officials to client records or other records of the system for audit purposes and for monitoring system compliance with applicable Federal law and regulations. Subject to the restrictions and procedures set out in this section, implementing section 106 (a) and (b) of the Act [42 U.S.C. 10806 (a) and (b)], this regulation does not limit access by a legal guardian, conservator, or other legal representative of an individual with mental illness, unless prohibited by State or Federal law, court order or the attorney-client privilege.

(2) Have written policies governing access to, duplication and release of information from client records; and

(3) Obtain written consent from the client, if competent, or from his or her legal representative before releasing information to individuals not otherwise authorized to receive it.

(b) Nothing in this subpart shall prevent the system from doing any of the following:

(1) Issuing a public report of the results of an investigation which maintains the confidentiality of individual service recipients; or,

(2) Reporting the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility/hospital, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

§ 51.46 Disclosing information obtained from a provider of mental health services.

(a) Except as provided in paragraph (b) of this section, if a system has access to records pursuant to section 105(a)(4) of the Act [42 U.S.C. 10805(a)(4)] which

under Federal or State law are required to be maintained in a confidential manner by a provider of mental health services, it may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to that individual has given the system a written determination that disclosure of such information to the individual would be detrimental to the individual's health. The provider shall be responsible for giving any such written determination to the system at the same time as access to the records containing the information is denied.

(b) If disclosure of information has been denied under paragraph (a) of this section to:

(1) An individual;

(2) The legal guardian, conservator, or other legal representative of the individual; or

(3) An eligible system, acting on behalf of an individual:

(i) Whose legal guardian is the State; or

(ii) Whose legal guardian, conservator, or other legal representative has not, within a reasonable time after the denial of access to information under paragraph (a) of this section, selected a mental health professional to review the information,

then such individuals or the system may select another mental health professional to review the information and to determine if disclosure of the information would be detrimental to the individual's health. If such mental health professional determines, based on professional judgment, that disclosure of the information would not be detrimental to the health of the individual, the system may disclose such information to the individual.

(c) This restriction does not affect the system's right to obtain access to the records.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–130; FCC 94–289]

Broadcast Station Operator Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its broadcast station rules primarily to waive the requirement that broadcast stations be supervised only by FCC-licensed duty operators. Also, a number of changes are proposed in the rules relating to station control to permit licensees to operate their stations in a completely automated, unattended mode if appropriate transmission equipment is used, thus allowing licensees significant operational cost savings. This action is necessary to update broadcast operational rules to more accurately reflect the capabilities of current transmitter monitoring and control technology.

DATES: Comments must be filed by January 20, 1995. Reply comments must be filed by February 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr. or Gordon W. Godfrey, Mass Media Bureau, Engineering Policy Branch, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

OMB Information Collection Notification

The following collections of information contained in these proposed rules have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of these submissions may be purchased from the Commission's copy contractor, as indicated above. Persons wishing to comment on these information collections should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, Room 10102 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Records Management Branch, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 418–0214.

OMB Number: None.

Title: Section 73.691 Visual Modulation Monitoring.

Form: None.

Action: Proposed New Collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 70 respondents, 1.0 hours per response.

Needs and Uses: Section 73.691 will require TV stations to send a notification to the Commission in the event that technical problems make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements and the operation at variance will exceed 10 consecutive days. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operations, this information is necessary to provide an accurate response.

OMB Number: None.

Title: Section 73.1300 Unattended station operation.

Form: None.

Action: Proposed New Collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 1,500 respondents, 0.5 hours per response.

Needs and Uses: Section 73.1300 will require licensees of broadcast stations to send a notification to the Commission of its intention to operate unattended. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation.

OMB Number: 3060–0320.

Title: Section 73.1350 Transmission System Operation.

Form: None.

Action: Revision to Existing Collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 300 respondents, 0.5 hours per response.

Needs and Uses: Section 73.1350 will require licensees of broadcast stations to send a notification to the Commission whenever a transmission system control point is established at a location other than at the main studio or transmitter. The data is used by FCC staff to maintain complete operating information regarding licensees to be used in the event that FCC field staff needs to contact the station about interference.

OMB Number. None.

Title: Section 73.1570 Modulation levels: AM, FM and TV Aural.

Form: None.

Action: Proposed New Collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 70 respondents, 1 hours per response.

Needs and Uses: Section 73.1570 will require licensees of broadcast stations to send a notification to the Commission whenever technical problems make it impossible to maintain the minimum modulation level for more than 10 days and upon restoration of normal

operations. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operations, this information is necessary to provide an accurate response.

OMB Number: None.

Title: Section 73.62 Directional Antenna System Tolerances.

Form: None.

Action: Proposed New Collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 750 respondents, 4.5 hours per response.

Needs and Uses: Section 73.62 will require an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of various operating parameters from allowed tolerances. This data is used by station engineers to correct the operating parameters of the directional antenna and by FCC staff in field investigations to ensure that stations are in compliance with the technical requirements of the Commission's Rules.

OMB Number: None.

Title: Station License.

Form: None.

Action: Existing collection in use without an OMB control number.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Response: 5,830 respondents, 0.083 hours per response.

Needs and Uses: Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965 and 74.1265 require licensees of broadcast stations to post, file or have available a copy of the instrument of authorization at the station and/or at the transmitter. The data is used by FCC staff in field investigations to ensure that a station is licensed and operating in the manner specified in the license. The information posted at the transmitter site would be used by the public and FCC staff to know by whom the transmitter is licensed.

This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 94–130 adopted November 10, 1994, and released on December 7, 1994. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., N.W., Washington, D.C., and may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Notice of Proposed Rule Making

1. This proceeding is initiated to determine, in light of the advancement of automated transmission equipment, whether and under what circumstances the Commission should waive the requirement that a broadcast station must have a licensed radio operator on duty in charge of the transmitter during all periods of broadcast operation. This action is taken in response to the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 ("Law"), which among other things amends the Communications Act of 1934 ("Act") to permit the Commission to consider this option.

2. Specifically, Section 205(1) of the Law amended Section 318 of the Act, which requires that each AM, FM or TV station must be operated by a licensed transmitter duty operator ("duty operator") holding a commercial radio operator license or permit of any class. Pursuant to Section 318, the Commission may waive or modify the operator requirement for all but specifically enumerated types of stations. The Law removed from the waiver/modification prohibition. "(3) stations engaged in broadcasting * * *." Thus, the Commission's proposes waiving its current requirement that broadcast station duty operators possess a license or restricted permit. It also proposes to permit unattended operation if appropriate equipment is used to operate the station. Secondarily, the Commission proposes to update various transmitter control requirements to make them more relevant to unattended operation and to be responsive to commonly asked questions concerning their interpretation.

3. Section 73.1860(c) of the Commission's Rules specifically requires a broadcast station licensee "to ensure that each transmitter operator is fully instructed and capable to perform all necessary observations and adjustments of the transmitting system and other associated operating duties to ensure compliance with the rules and station authorization." The Commission holds the broadcast station licensee responsible for rule violations or operation that is not in accord with the station authorization.

4. Because permitting unattended operation represents a significant change in the policies relating to transmitter control, the potential ramifications should be explored thoroughly. Thus the Commission solicits comment on whether waiving this requirement might encourage negligence or irresponsibility on the part of certain broadcast licensees, with the result that interference levels in the various broadcast services might be exacerbated.

5. As an alternative to the above, the Commission seeks comment on whether it should permit unattended operation of broadcast stations only if they are ATS-equipped, inasmuch as such stations are required to go off the air if operating parameters conducive to interference go out of tolerance. Comment also is requested on whether some types of stations (particularly directional AM stations without approved antenna sampling systems, which are believed to be potentially the most technically unstable type of broadcast station) should be excluded from unattended operation under the proposed rules. The Commission suggests that such licensees might be able to operate their stations properly in the unattended mode with monitoring equipment which would measure and record their directional antenna performance every three hours. However, comment is requested on the degree to which such a requirement is actually necessary; and if it is, to what degree these licensees can afford to install the appropriate equipment. The Commission also asks for comment on any other circumstances that may not lend themselves to effective unattended station operation.

6. The Commission emphasizes that in proposing to permit unattended operation at all or at some stations, licensees would not be precluded from operating their stations in the attended mode, which requires that some responsible person be in charge of the station. However, even if a person performing the function of a duty operator is employed optionally, the need to specify their duties in detail in our rules is questioned, as they could vary widely from station to station. Parties are asked to comment on the various proposals above and their underlying assumptions, and to bring to the Commission's attention any aspect of the proposal that may have been overlooked. Information is also sought on benefits potentially derived by licensees from any waiver or diminution of the operator requirements.

7. While the foregoing discussion has focused on AM, FM and TV stations licensed under part 73 of the rules, similar flexibility is proposed in the case of low power TV stations, which are authorized under part 74.

Additionally, comment is sought on whether it is appropriate to consider changes to the operator requirements for international broadcast stations authorized pursuant to subpart F of part 73 or experimental broadcast stations authorized pursuant to subpart A of part 74. Various rule sections concerning broadcast auxiliary, ITFS and FM translator services refer to operators and would need to be modified. Thus, comment is requested on whether circumstances exist that warrant different treatment for low power TV, international broadcasting or experimental broadcast station licensees. In this inquiry, the Commission is cognizant that Section 318 of the Act continues to prohibit waiver of the operator requirement where required by international agreement or where licensed operators are required for safety purposes. 47 U.S.C. § 318. Commenters are requested to address the implications of these statutory provisions.

8. The Commission also requests comment on the effect of its proposal on two important responsibilities imposed on broadcast licensees that may or may not be assigned to duty operators. Comment is first requested on the degree to which the task of verifying that the antenna tower lighting system is functioning properly has already been automated and to what degree such automation is possible in view of the goals of this proceeding. Second, comment is sought on responsibility for monitoring for Emergency Broadcast System (EBS) alerts, logging their receipt, and determining the appropriate response to be taken. The current EBS system is under review in FO Docket Nos. 91–301 and 91–171. Briefly, in a Report and Order and Further Notice of Proposed Rule Making adopted concurrently with this Notice, the current EBS alerting procedures will be phased out and replaced with a new Emergency Alert System (EAS) which may be completely automated at the discretion of each licensee. (See Report and Order and Further Notice of Proposed Rule Making in FO Docket Nos. 91–171 and 91–301, FCC 94–288, adopted November 10, 1994.) As new EAS equipment should be available by the time this proceeding is completed, comment is sought on whether the Commission needs to consider how licensees might automate the current EBS system.

9. If a commenting party supports retention of the operator requirement for certain functions or certain classes of stations, the Commission requests that it be provided with information which demonstrates that tangible benefits would derive from the retention.

10. Comment also is sought on the question of whether, for those stations that choose to retain duty operators, the duty operator should be required to hold an Restricted permit (R.P.) Also, several incidental benefits, such as potentially reducing the cost of complying with metering requirements, would result from the regulatory changes proposed above. This proposed change would make it appropriate to delete § 73.1550, which specifies the requirements for extension meters. This would eliminate any need for licensees to install cameras so as to be able to view transmitter meters at a remote location—an alternative currently permitted in lieu of using extension meters. In addition, references to extension meters would be eliminated from §§ 73.53, 73.57, 73.69, 73.1230, 73.1820, and 73.1860. The Commission additionally proposed several rule amendments aimed at improving the rules' clarity. In eliminating these "how to" kinds of requirements, licensees would still be free to employ the former traditional transmitter monitoring techniques; but again, such a decision should be consistent with the broader objective of monitoring and adjusting technical parameters to ensure that stations comply with the rules and conform to their authorizations.

11. Finally, the Commission proposes minor changes to a number of technical or operational requirements. For example, it asks whether the licensee should be required to provide the Commission with a name and telephone number in case the Commission or another government agency needs to contact the licensee promptly. The Commission also seeks comment on the maximum time period for allowing a licensee to correct certain out-of-tolerance conditions. Regarding, for instance, out-of-tolerance conditions that are capable of causing interference, the Commission proposes to apply the three-minute limit currently applicable to ATS stations to remote and directly controlled stations.

12. The Commission often receives inquiries asking which particular technical parameters should be monitored (and how often) in order for the licensee to comply with the rules. To help licensees meet their responsibility the Commission proposes that each licensee be able to monitor and adjust its station's transmitter power and modulation level. In addition, licensees responsible for broadcast towers that require lighting would need to monitor such lighting. Finally, each licensee of an AM station that changes its mode of operation during the broadcast day would need to monitor and control such changes. Licensees of AM stations employing directional arrays would need to be able to monitor and control the array parameters. In the context of unattended operation, the monitoring and control of these parameters must be performed by equipment that would take the station off the air (if a parameter variance capable of causing interference occurred) or else contact some person designated by the licensee (this would appear particularly appropriate in the case of a tower lighting failure).

13. The Commission also solicits information on carrier frequency measurement. Specifically, on whether frequency is a parameter that ATS systems typically control and monitor and on whether frequency measurement should be included in the list of parameters that are proposed to be monitored and controlled at an attended operation. The Commission further proposes to amend its rules concerning measurement and calibration requirements, adjustment of the transmitter, and permissible connection methods for remote control.

Administrative Matters

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 20, 1995, and reply comments on or before February 6, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554.

Ex Parte

15. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the

Commission's Rules, interested parties may file comments on or before January 20, 1995 and reply comments on or before February 6, 1995. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

17. Initial Regulatory Flexibility Act Analysis

I. Reason for Action

A revision in the Communications Act of 1934 has given the Commission authority to waive the requirement that broadcast stations be operated by licensed transmitter duty operators. A waiver of this requirement would permit such stations to be operated unattended for the first time. This proceeding explores the feasibility of such operation. In connection with the proposed changes in transmitter monitoring and control policy and in response to numerous inquiries that topic, a number of other rules need updating.

II. Objectives

The proposed action is intended to update the rules to provide for unattended broadcast station operation and to clarify the technical responsibilities of broadcast licensees, particularly those operating unattended stations.

III. Legal Basis

The action taken by this Notice is authorized by Sections 4(i) and (j), 302, 202 and 403 of the Communications Act of 1924, as amended.

IV. Description, Potential Impact, and Number of Small Entities Affected

The action proposed in this proceeding is expected to benefit smaller broadcast licensees by eliminating the need for a transmitter duty operator. This is expected to result in an operational cost savings. However, taking advantage of the flexibility provided by the proposed new rules would be entirely operational. Licensees may continue to operate as they currently do if they so desire.

V. Recording, Record Keeping, and Other Compliance Requirements

None.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objectives

None.

18. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act Public Law 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–30701 Filed 12–13–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–142, RM–8546]

Radio Broadcasting Services; Knoxville, Illinois

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John Pritchard, requesting the allotment of Channel 287A to Knoxville, Illinois, as that community's first local transmission service. Channel 287A can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 287A at Knoxville are North Latitude 40–54–30 and West Longitude 90–16–54.

DATES: Comments must be filed on or before January 30, 1995, and reply comments on or before February 14, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald E. Ward, 1201 Pennsylvania Avenue, NW, 5th Floor, Washington, D.C. 20004, (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–142, adopted November 29, 1994, and released December 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–30702 Filed 12–13–94, 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–141; RM–8544]

Radio Broadcasting Services; Dell Rapids, South Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Conway Broadcasting proposing the allotment of Channel 239C3 as the community's first local aural transmission service. Channel 239C3 can be allotted to Dells Rapids in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) southwest to avoid a short-spacing to Station KKOK-FM, Channel 239C1, Morris, Minnesota. The coordinates for Channel 239C3 at Dell Rapids are North Latitude 43–47–57 and West Longitude 96–43–01.

DATES: Comments must be filed on or before January 30, 1995, and reply comments on or before February 14, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Fremont Ave., South, Minneapolis, Minnesota 55409 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–141, adopted November 30, 1994, and released December 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–30703 Filed 12–13–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94-140; RM–8543]

Radio Broadcasting Services; Rapid City, South Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Conway Broadcasting proposing the allotment of Channel 292C as the community's sixth local FM transmission service. Channel 292C can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 292C at Rapids City are North Latitude 44–04–50 and West Longitude 103–13–50.

DATES: Comments must be filed on or before January 30, 1995, and reply comments on or before February 14, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Fremont Ave., South, Minneapolis, Minnesota 55409 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94-140, adopted November 30, 1994, and released December 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–30704 Filed 12–13–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–123, DA 94–1408]

Proposed Rule; Extension of Comment and Reply Comment Periods

AGENCY: Federal Communications Commission.

SUMMARY: The Commission granted a joint request by the Association of Independent Television Stations, Inc., Viacom, Inc. and King World Productions, Inc. for an extension of time for filing comments and reply comments in this proceeding. The Commission determined that the extension of time was warranted in light of the time necessary to compile information critical to resolution of the numerous and complex issues raised in this proceeding. This action will facilitate the development of a full and complete record on these issues.

DATES: Comments are now due on March 7, 1995. Reply comments are now due on April 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

[MM Docket No. 94–123]

Order Granting Extension of Time for Filing Comments and Reply Comments

In re: Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules.

Adopted: December 7, 1994;
Released: December 8, 1994

By the Chief, Mass Media Bureau.

1. On October 25, 1994, the Commission released a *Notice of Proposed Rule Making ("Notice")*, FCC 94–266, in this proceeding (59 FR 55402, November 7, 1994) soliciting comment on the legal and policy justifications, in light of current economic and technological conditions, for the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, and to consider the continued need for the rule in its current form. The deadline for filing comments is currently January 6, 1995, and the deadline for filing reply comments is currently February 6, 1995.

2. On November 29, 1994, a joint motion for extension of time for filing comments and reply comments was filed by the Association of Independent Television Stations, Inc., Viacom, Inc. and King World Productions, Inc. ("Joint Petitioners"). The motion requests that the deadline for filing comments be extended by sixty days, and the reply comment deadline to follow thirty days thereafter. Under this schedule, comments would be due on March 7, 1995, and reply comments due by April 6, 1995. On December 1, 1994, joint comments in support of the extension of time request were filed by CapCities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. ("Joint Commenters").

3. The Joint Petitioners contend that in order to respond to the comprehensive economic analysis called for in the *Notice*, they have retained a leading economic consulting group which, in an attached letter, states that the additional time is necessary not only to collect and tabulate the economic data (which generally does not now exist in computerized formats), but also to analyze that data using economic and statistical models. Similarly, the Joint Commenters report that each of the economists with whom they consulted advised them that it would be impossible to prepare an appropriately responsive economic study within the time frame established by the *Notice* because of the breadth and depth of the issues raised. These parties maintain that the grant of this request will serve the public interest by permitting them sufficient time to compile the information necessary for generating the comprehensive record that the Commission seeks in this proceeding.

4. As set forth in § 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, under the circumstances described above, we believe that the requested extension of time to file comments and reply comments is warranted in light of the number and complexity of the issues raised in this proceeding. This extension of time should facilitate the development of a full and complete record on the issues raised in the *Notice* and, thus, it appears reasonable to provide the commenting parties additional time to analyze and address these issues.

5. Accordingly, It Is Ordered, that the Joint Motion for Extension of Time filed by the joint petitioners Is Granted, the time for filing comments in this proceeding Is Extended to March 7, 1995, and the time for filing reply comments in this proceeding Is Extended to April 6, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.204(b), 0.283, and 1.45 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 94–30700 Filed 12–13–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941242–4342; I.D. 111494A]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Proposed 1995 initial specifications of groundfish and associated management measures and request for comments.

SUMMARY: NMFS proposes 1995 initial total allowable catches (TACs) for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to inform the public about proposed 1995 harvest specifications and associated management measures. The intended effect is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in this decisionmaking process.

DATES: Comments must be submitted by January 9, 1995

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. The preliminary 1995 Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907–586–7228

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI are governed by Federal regulations (50 CFR 611.93 and parts 675 and 676) that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify for each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to publish annually and solicit public comment on amounts of proposed annual TACs, apportionments of each TAC, prohibited species catch (PSC) allowances, and seasonal allowances of pollock. The specifications set forth in Tables 1–7 of this action satisfy these requirements. For 1995, the proposed sum of TACs is 2.0 million mt. Under § 675.20(a)(7)(ii), NMFS will publish the final annual TACs for 1995 and initial apportionments thereof, after considering: (1) Comments received within the comment period (see **DATES**), and (2) consultations with the Council at its December 1994 meeting.

The specified TACs for each species are based on the best available biological and socioeconomic information. At its September and December meetings, the Council, its Advisory Panel, and its Scientific and Statistical Committee (SSC), annually review biological information about the condition of groundfish stocks in the BSAI. This information is compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and is presented in the SAFE Report. The Plan Team annually produces such a report as the first step in the process of specifying TACs. The SAFE Report contains a review of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC) and other biological parameters, as well as summaries of the economic condition of groundfish fisheries off Alaska. A preliminary 1995 SAFE Report dated September 1994 provides an update on status of stocks. These preliminary assessments will be updated based on biological survey work done during the summer of 1994. Assessments will be made available by the Plan Team in November 1994, in the final edition of the 1995 SAFE Report. Final ABCs for the 1995 fishing year will be based on the most recent stock assessments. The proposed ABCs adopted by the Council for the 1995 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass.

Procedure for Estimating ABC

The Council bases its definition of ABC on the definition contained in 50 CFR part 602—Guidelines For Fishery Management Plans. These guidelines (§ 602.11(e)(1)) state,

ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery

Under these guidelines, the Council is provided with the flexibility needed to define overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Council and NMFS to evaluate the condition of the stock relative to the definition. Application of the overfishing definition requires some flexibility, because the amount of data for different stocks varies. The calculations used to derive preliminary overfishing levels for a given stock or stock complex are described in the preliminary 1995 SAFE Report dated September 1994.

Calculation of ABC varies among species, depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABCs. First, the exploitable biomass of a stock is estimated. Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality rates (F) may be used in this calculation, depending on the data available and the degree of risk the Plan Team is willing to accept. For example, the exploitation rate that would produce MSY (F_{MSY}) may be used when the stock is known to be in good condition, high in abundance, and not in danger of drastic decline. When more conservative stock management is desirable, a $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield-per-recruit due to an increase in F is 10 percent of the marginal yield-per-recruit in a newly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, $F_{0.1}$ is a more conservative exploitation rate than F_{MSY}. Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not affected adversely by such rates. A switch in harvest strategy from F_{35} to F = natural mortality rate (M) can be used when current maturity parameter estimates are unreliable. Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of overfishing, ABC, and other calculation procedures are discussed in the preliminary 1995 SAFE Report dated September 1994. This report is available from the Council (see **ADDRESSES**).

The Plan Team's recommendations for preliminary ABCs for each species for 1995 and other biological data are provided in the preliminary 1995 SAFE Report. At its September 1994 meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1995 ABCs. The SSC recommended revisions to the Plan Team's recommended ABCs for Aleutian Basin (Bogoslof) pollock, Atka mackerel, and Greenland turbot. The Council adopted the ABCs recommended by the SSC (Table 1).

The Council recommended changes to the management of two species' TAC amounts. First, the Pacific ocean perch TAC specified for the Aleutians Islands subarea is subdivided among the Aleutians Islands districts to avoid excessive depletions of the stock in localized areas. In addition, the Council, at its June 1994 meeting, recommended that flathead sole be separated from "other flatfish" to provide an additional target species for purposes of retaining allowable amounts of deep-water bycatch species, such as Greenland turbot.

TABLE 1.—PROPOSED 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1,2]

Species	ABC	TAC	ITAC=DAP [3]	Overfishing level
Pollock:				
BS	1,330,000	1,330,000	1,130,500	1,590,000
AI	56,600	56,600	48,110	60,400
Bogoslof District	20,000	1,000	850	147,000
Pacific cod	191,000	191,000	162,350	228,000
Sablefish:				
BS	540	540	446	.....
AI	2,800	2,800	2,275	.....
Total	3,340	3,340	2,721	4,160
Atka mackerel:				
Western AI	71,810	10,000	8,500	.....
Central AI	73,440	44,525	37,846	.....

TABLE 1.—PROPOSED 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1,2]—Continued

Species	ABC	TAC	ITAC=DAP [3]	Overfishing level
Eastern AI, BS	17,950	13,475	11,454	.....
Total	163,200	68,000	57,800	484,000
Yellowfin sole	230,000	150,325	127,776	269,000
Rock sole	313,000	75,000	63,750	363,000
Greenland turbot:				
BS		4,690	3,986	.....
AI		2,310	1,964	.....
Total	7,000	7,000	5,950	24,800
Arrowtooth flounder	93,400	10,000	8,500	130,000
Flathead sole	119,000	29,618	25,175	145,000
Other flatfish [4]	106,000	26,382	22,425	125,000
Pacific ocean perch:				
BS	1,910	1,910	1,623	2,920
AI	10,900	10,900	9,265	16,600
Western AI	6,104	6,104	5,188	.....
Central AI	3,052	3,052	2,594	.....
Eastern AI	1,744	1,744	1,483	.....
Other red rockfish: [5]				
BS	1,400	1,400	1,190	1,400
Sharpchin/Northern:				
AI	5,670	5,670	4,820	5,670
Shortraker/Rougheye:				
AI	1,220	1,220	1,037	1,220
Other rockfish: [6]				
BS	365	365	310	365
AI	770	770	655	770
Squid [7]	3,110	3,110	2,643	.....
Other Species [8]	27,500	26,390	22,432	141,000
Totals	2,685,385	2,000,000	1,699,882	.....

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Zero amounts of groundfish are specified for Joint Venture Processing and Total Allowable Level of Foreign Fishing.

[3] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 0.20 of the allocated TAC is reserved for use by CDQ participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[4] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

[6] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

[7] Squid may be combined with "other species" category in the final initial specifications of TAC. The Council will consider combining squid with the "other species" category at its December 1994 meeting.

[8] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. (The "other species" category may include squid in the final 1995 initial specifications of TAC.)

The SSC's revisions to the ABCs recommended by the Plan Team for Bogoslof pollock, Greenland turbot, and Atka mackerel are discussed below.

Bogoslof Pollock. The Plan Team indicated in the preliminary 1995 SAFE Report that the current estimate of biomass of Aleutian Basin pollock (490,000 mt) is the best estimate, assuming that no recruitment to the stock has occurred, and that the natural mortality rate (M) is 0.2. Reassessment of the Bogoslof area hydroacoustic survey with new threshold levels of abundance has not changed previous conclusions that this stock has declined since 1988. The Plan Team assumed that no recruitment occurred in 1994 or will occur in 1995, and projected a biomass for 1995 of 490,000 mt using M = 0.20. The Plan Team then calculated the $F_{0.35}$ exploitation rate of 0.26 to derive an ABC of 127,000 mt. However, the SSC adjusted the biomass downward to 400,000 mt, based on the 1993 hydroacoustic estimate of biomass decayed by natural mortality. The SSC then applied a natural mortality rate of M = 0.02 divided by 4 to the projected biomass. This leads to an ABC of 20,000 mt. Due to lack of recruitment predicted for 1994 and 1995, the Council recommended a TAC of 1,000 mt to provide for bycatch in other groundfish operations.

Greenland Turbot. In 1993, the Plan Team used a length-based stock synthesis model to estimate the ABC, which was updated with catch and survey data through October 1993. A more conservative exploitation rate of $F_{0.40}$ and an increased slope survey catchability coefficient of 0.75 was selected. These adjustments resulted in a conservative ABC of 17,200 mt. Continued poor recruitment and stock abundance levels since the early 1980s led the SSC to recommend a continuation of the present 7,000 mt ABC for this species, until the assessment analysis containing results from the 1994 bottom trawl survey is completed. The Council concurred with this recommendation and set the TAC at 7,000 mt for this species. The Council further recommended apportioning two-thirds of the Greenland turbot TAC (4,690 mt) to the eastern Bering Sea, and one-third of the TAC (2,310 mt) to the Aleutian Islands, in proportion to the biomass estimates in these areas. The Council's recommendation is intended to spread fishing effort over a larger area.

Atka Mackerel. The SSC accepted the Plan Team's 1995 estimate of ABC

(245,000 mt), although it expressed concern that the time series of trawl surveys is short and inconsistent in coverage. The SSC also was apprehensive about possible environmental problems that may result from an increased catch of the magnitude implied by the Plan Team's estimate of 1995 ABC. Atka mackerel is a prey species of northern fur seals and Steller sea lions. During their migrations, northern fur seals (a depleted species) feed heavily on Atka mackerel as they move through the Aleutian passes. Given these concerns, the SSC recommended to continue its 1992 through 1994 policy to phase in the Plan Team's estimate of ABC over a 6-year period by adopting the 1994 biomass estimate (816,000 mt) and raising the exploitation rate in steps. These incremental steps are as follows: (M)(1)/6 in 1992, (M)(2)/6 in 1993, (M)(3)/6 in 1994, (M)(4)/6 in 1995, (M)(5)/6 in 1996, and M in 1997. According to this schedule, the recommended ABC for 1995 is (.6/3)(816,000) = 163,200 mt. The main purpose of this approach is to postpone a large ABC increase until new survey estimates are available to evaluate the phase-in policy.

The Council recommended a 68,000 mt TAC for Atka mackerel in the BSAI in 1995. The Council recommended apportionment of the TAC for Atka mackerel among the AI management districts and the Bering Sea relative to survey biomass estimates: 10,000 mt in the western area; 44,525 mt in the central area; and 13,475 mt in the eastern area and Bering Sea combined.

Proposed TAC Specifications

The Council developed its TAC recommendations (Table 1) based on the preliminary ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4–2.0 million mt. Each of the Council's recommended TACs for 1995 is equal to or less than the final 1995 ABC for each species category. Therefore, NMFS finds that the recommended proposed TACs are consistent with the biological condition of groundfish stocks. The preliminary ABCs, TACs, initial TACs (ITACs), overfishing levels, and initial apportionments of groundfish in the BSAI area for 1995 are given in Table 1 of this action. The apportionment of TACs among fisheries and seasons is discussed below.

Apportionment of TAC

As required by § 675.20(a)(3) and (a)(7)(i), each species' TAC initially is reduced by 15 percent, except the hook-and-line and pot gear allocation for sablefish. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The ITAC for each target species and the "other species" category at the beginning of the year is apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF), if any. Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final notices of 1991–94 initial specifications, the Council recommended that 1995 DAP specifications be set equal to ITAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipated that 1995 DAP operations will harvest the full TAC specified for each BSAI groundfish species category. The proposed ABCs, TACs, ITACs, overfishing levels, and initial apportionments of groundfish in the BSAI area for 1995 are given in Table 1.

These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, and consultation with the Council at its meeting scheduled for December 7–11, 1994.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each PSC allowance, and the first seasonal allowance of pollock be in effect on January 1 on an interim basis, and remain in effect until superseded by publication of the final initial specifications in the **Federal Register** or until harvested. Proposed seasonal allowances of pollock and prohibited species bycatch allowances are discussed below. The interim ITAC specifications for the 1995 fishing year are 25 percent of the ITACs listed in Table 1. NMFS is publishing interim 1995 ITAC specifications as a separate document in the final rule section of today's **Federal Register**.

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season). On September 26, 1994, a proposed rule was published in the **Federal Register** (59 FR 49051) that would delay the opening of the pollock roe season for the offshore component fishery to January 26th. If approved by NMFS, this season delay would be effective for the 1995 fishing year.

In 1994 the seasonal allowance for the roe season was 45 percent and the non-roe season 55 percent for the BS pollock fisheries. The pollock TACs specified for the AI subarea and the Bogoslof District were not seasonally apportioned. For 1995, the Council is considering an alternative to the 1994 seasonal allowance that reduces the allowance for pollock fisheries in the BS during the roe season to 40 percent and increases the pollock non-roe allowance to 60 percent (Table 2). The Council declined to choose an alternative until its December 1994 meeting. Regulations at § 675.20(a)(7)(i) require that the first seasonal allowance of pollock be in effect on January 1 on an interim basis, and remain in effect until superseded by publication of the final initial specifications in the **Federal Register**. NMFS proposes seasonal allowances of 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season, but notes that these allowances are subject to change as a result of public comment and consultation with the Council at its December 1994 meeting.

When specifying seasonal allowances of the pollock TAC, the Council and NMFS consider the following nine factors as specified in section 14.4.10 of the FMP:

1. Estimated monthly pollock catch and effort in prior years;
2. Expected changes in harvesting and processing capacity and associated pollock catch;
3. Current estimates of, and expected changes in, pollock biomass and stock

conditions; conditions of marine mammal stocks; and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;

4. Potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;

5. The need to obtain fishery-related data during all or part of the fishing year;

6. Effects on operating costs and gross revenues;

7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;

8. Potential allocative effects among users and indirect effects on coastal communities; and

9. Other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

NMFS requests comments on the effects of the options for the seasonal allowances being considered by the Council with respect to these nine factors.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the proposed 1995 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component (Table 2). Definitions of these components are found at § 675.2.

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS[1,2]

Subarea	TAC	ITAC[3]	Roe season[4]		Non-roe season[5]	
			45%	40%	55%	60%
Bering Sea:						
Inshore		395,675	178,054	158,270	217,621	237,405
Offshore		734,825	330,671	293,930	404,154	440,895
Total	1,330,000	1,130,500	508,725	452,200	621,775	678,300
Aleutian Islands:						
Inshore		16,838		16,838		Remainder.
Offshore		31,272		31,272		Do.
Total	56,600	48,110		48,110		Do.
Bogoslof:						
Inshore		298		298		Do.
Offshore		552		552		Do.
Total	1,000	850		850		Do.

[1] TAC=total allowable catch.
[2] Based on an offshore component allocation of 0.65(TAC) and an inshore component allocation of 0.35(TAC).
[3] ITAC=initial TAC=0.85 of TAC.
[4] January 1 through April 15—based on a 45/55 or 40/60 split (roe=45 percent or 40 percent).
[5] August 15 through December 31—based on a 45/55 or 40/60 split (non-roe=55 percent or 60 percent).

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Regulations at § 675.20(a)(3)(ii) require one-half of the pollock TAC to be placed in the reserve for each subarea or district, or 7.5 percent of each TAC to be assigned to a Community Development Quota (CDQ) reserve for each subarea or district. Given the proposed pollock TACs specified in Table 1, the 1995 CDQ reserve amounts for each subarea are as follows:

BSAI subarea	Pollock CDQ
Bering Sea	99,750 mt.
Aleutian Islands	4,245 mt.
Bogoslof	75 mt.

Under regulations governing the CDQ program at § 675.27, NMFS may allocate the 1995 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved Community Development Plan (CDP). The State of Alaska received six CDP applications pursuant to § 675.27 and State of Alaska regulations at 6 AAC 93. All six applications were submitted in conformance with both sets of regulations and have been fully reviewed by the State. Pending approval by NMFS, 1995 allocations of the CDQ reserve to the successful CDP recipients will be published in the **Federal Register** prior to the 1995 fishing year.

Apportionment of Pollock TAC to the Nonpelagic Trawl Gear Fishery

Regulations at § 675.24(c)(2) authorize NMFS, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in nonpelagic trawl operations.

Regulations at § 675.7 were implemented to limit the bycatch of halibut and crab more effectively when directed fishing for pollock with nonpelagic trawl gear is closed. However, continued reports of high PSC have led the Council to consider an apportionment of the pollock TACs to nonpelagic and pelagic trawl gears, as authorized under § 675.24(c)(2). The Council deferred recommending an allocation of the pollock TACs to vessels using nonpelagic trawl gear until its December 1994 meeting, when NMFS will provide information concerning prohibited species bycatch amounts in the pelagic and nonpelagic trawl gear fisheries.

Proposed Allocation of the Pacific cod TAC

Under § 675.20(a)(2)(iv), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 44 percent to vessels using hook-and-line gear, and 54 percent to vessels using trawl gear. At its September 1994 meeting, the Council proposed a seasonal apportionment of the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal apportionments are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are set out in Table 3

and are unchanged from the seasonal apportionments specified for 1994 (59 FR 4009, January 28, 1994; 59 FR 21673, April 26, 1994). These seasonal apportionments are based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the year, and (3) economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries.

TABLE 3.—1995 GEAR SHARES OF THE BSAI PACIFIC COD INITIAL TAC

Gear	Percent of TAC	Share of ITAC (mt)	Seasonal apportionment		
			Date	Percent	Amount (mt)
Jig	2	3,247	Jan. 1–Dec. 31	100	3,247
Hook-and-line/pot gear	44	71,434	Jan. 1–Apr. 30	90	[1] 64,290
			May 1–Aug. 31	10	7,143
			Sep. 1–Dec. 31	(2)	(2)
Trawl Gear	54	87,669	Jan. 1–Dec. 31	100	87,669
Total	100	162,350			

[1] Any portion of the first seasonal apportionment that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.
[2] Remainder.

Sablefish Gear Allocation

Regulations under § 675.24(c)(1) allocate sablefish TACs for BSAI subareas between gear types. Regulations under § 676.24(b) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as a sablefish CDQ reserve. Gear allocations of sablefish TACs and CDQ reserve are specified in Table 4.

TABLE 4.—1995 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TAC

Subarea	Gear	Percent of TAC (mt)	Share of TAC (mt)	Initial TAC (mt)[1]	CDQ share
Bering Sea[2]	Trawl	50	270	230	N/A.
	Hook-and-line/pot gear	50	270	216	54.
Total				446	
Aleutian Islands	Trawl	25	700	595	N/A.
	Hook-and-line/pot gear	75	2,100	1,680	420.
Total				2,275	

[1] Except for the sablefish hook-and-line and pot gear allocation 0.15 of TAC is apportioned to reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 0.20 of the allocated TAC is reserved for use by CDQ participants, therefore, ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] Includes Bogoslof District.

Allocation of PSC Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the BS subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). At this time, the 1995 PSC limits are:

1. Zone 1 trawl fisheries, 200,000 red king crabs;
2. Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
3. Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
4. BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;
5. BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut, pending the implementation of the IFQ program; and
6. BSAI trawl fisheries, 1,962 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. At this time, the best estimate of 1995 herring biomass is 196,200 mt. This amount was derived using 1993 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 1994 is 1,962 mt. This value is subject to change, pending an updated forecast analysis of 1994 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1994 meeting.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 675.21(b)(1)(iii) specify seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2) authorize the apportionment of the nontrawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other nontrawl fisheries). The PSC allowances are listed in Table 5. In general, the fishery bycatch allowances listed in Table 5 reflect the recommendations made to the Council by its AP. These recommendations are unchanged from 1994 and were based on 1993 and 1994 bycatch amounts, anticipated 1995 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1991–1993 observer data. As in 1994, the Council proposed to exempt the 1995 pot gear fisheries from halibut bycatch restrictions.

At its September 1994 meeting, the Council also recommended that NMFS initiate rulemaking that would authorize exemption of the hook-and-line sablefish fishery from the halibut PSC limit established for the BSAI nontrawl fisheries. The Council recommended

this because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program, which would allow legal-sized halibut to be retained in the sablefish fishery. NMFS is preparing a proposed rule to implement the Council's recommendation and to authorize the exemption of the BSAI jig gear fisheries from the halibut PSC limit.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final initial specifications or until harvested. These interim PSC bycatch allowances are 25 percent of the annual allowances listed in Table 5.

TABLE 5.—PRELIMINARY 1995 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

	Zone 1	Zone 2	BSAI-wide
Trawl Fisheries			
Red king crab, number of animals:			
Yelllowfin sole	40,000		
Rocksol/other flat [1]	110,000		
Rockfish	0		
Turb/arrow/sab [2]/rockfish	0		
Pacific cod	10,000		
Plck/Atka/othr [3]	40,000		
Total	200,000		
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	175,000	1,275,000	
Rcksol/oth.flat	475,000	260,000	
Turb/arrow/sabl	0	5,000	
Rockfish	0	10,000	
Pacific cod	175,000	200,000	
Plck/Atka/othr	175,000	1,250,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
Yellowfin sole			592
Rcksol/oth.flat			688
Turb/arrow/sabl			137
Rockfish			201
Pacific cod			1,200
Plck/Atka/othr			957
Total			3,775
Pacific herring, mt:			
Midwater pollock			1,419
Yellowfin sole			332
Rcksol/oth.flat			0
Turb/arrow/sabl			0
Rockfish			8
Pacific cod			25
Plck/Atka/othr [4]			178
Total			1,962
Nontrawl Fisheries			
Pacific halibut, mortality (mt):			
Pacific cod Hook-and-line			725
Other nontrawl			175
Groundfish pot gear			([5])
Total			900

[1] Rock sole and other flatfish fishery category. A technical amendment to add flathead sole to this fishery category will be prepared by NMFS if the Council makes a final recommendation at its December 1994 meeting to break out flathead sole from the "other flatfish" species group (see Table 1).
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and "other species" fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category
[5] Exempt.

At its September 1994 meeting, the Council recommended that the proposed halibut bycatch allowances listed in Table 5 be apportioned seasonally as shown in Table 6. These seasonal bycatch apportionments are unchanged from 1994 and prohibited species bycatch allowances and the seasonal apportionment of those allowances will be subject to change at the December 1994 Council meeting, pending public comments, year-to-date

information on bycatch performance and updated information on anticipated fishing patterns in 1994.

For purposes of monitoring the fishery halibut bycatch mortality allowances specified in Table 6, the Regional Director will use observed halibut bycatch rates and reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance is reached. The Regional Director monitors the fishery bycatch mortality allowances using assumed mortality rates that are based on the best information available.

TABLE 6.—PROPOSED SEASONAL APPORTIONMENTS OF THE 1995 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Fishery	Seasonal bycatch allowances (mt halibut)
TRAWL GEAR	
Yellowfin sole:	
Jan. 20–July 31	230
Aug. 1–Dec. 31	362
Total	592
Rock sole/"other flatfish": [1]	
Jan. 20–Mar. 31	428
Apr. 1–June 30	180
July 1–Dec. 31	80
Total	688
Turbot/arrowtooth flounder/sablefish:	
Total	137
Rockfish:	
Jan. 20–Mar. 31	40
Apr. 1–June 30	120
July 1–Dec. 31	41
Total	201
Pacific cod:	
Jan. 20–Dec. 31	1,200
Total	1,200
Pollock/Atka mackerel/"other species":	
Jan. 20–Apr. 15	430
Apr. 16–Dec. 31	527
Total	957
Total Trawl Halibut Mortality.	3,775
NONTRAWL GEAR	
Pacific cod:	
Jan. 1–Apr. 30	685
May. 1–Aug. 31	40
Sep. 1–Dec. 31	Remainder
Total	725
Other nontrawl	175
Groundfish pot	Exempt
Total Nontrawl Halibut Mortality.	900

[1] Rock sole and other flatfish category. A technical amendment to add flathead sole to this fishery category will be prepared by NMFS if the Council makes a final recommendation at its December 1994 meeting to break out flathead sole from the "other flatfish" species group (see Table 1).

Assumed halibut mortality rates recommended by the International Pacific Halibut Commission (IPHC) for the 1995 BSAI groundfish fisheries are listed in Table 7. These mortality rates are based on an average of mortality rates determined from NMFS observer data collected during 1992 and 1993, except for the BSAI trawl arrowtooth flounder and Greenland turbot fisheries, which are based on data from 1990 and 1991 because 1992–93 rates were not available. The Council proposed that revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1995 groundfish fisheries.

The IPHC determined that the careful release measures implemented for vessels using hook-and-line gear did not show appreciable improvements in mortality rates and has recommended one rate for both observed and unobserved vessels in the hook-and-line fisheries. This action was approved by the Council.

For most fisheries, the 1992–93 averages, on which the 1995 recommendations are based, are somewhat higher than the actual rates used in 1994. This occurs because the rates used in 1994 were unchanged from the 1993 rates, which had been derived from data for 1990 and 1991. After the December 1994 Council meeting, NMFS will consider all available data and will publish preseason assumed halibut mortality rates in the **Federal Register** announcing the final 1995 initial specifications of groundfish TACs.

TABLE 7.—ASSUMED PACIFIC HALIBUT MORTALITY RATES PROPOSED FOR THE BSAI FISHERIES DURING 1995

	Assumed mortality (percent)
Hook-and-line gear fisheries:	
BSAI Pacific cod	18
BSAI sablefish	17
BSAI rockfish	24
BSAI Greenland turbot	19
Trawl gear fisheries:	
Midwater pollock	89
Rock sole/other flatfish [1]	75
Bottom pollock	77
Atka mackerel	59
Other species	60
Rockfish	69
Greenland turbot	48
Sablefish	49
Yellowfin sole	76
Pot gear fisheries: Pacific cod	8

[1] Rock sole and other flatfish fishery category. A technical amendment to add flathead sole to this fishery category will be prepared by NMFS if the Council makes a final recommendation at its December 1994 meeting to break out flathead sole from the "other flatfish" species group (see Table 1).

Groundfish PSC Limits

Section 675.20(a)(6) authorizes NMFS to specify PSC limits for groundfish species or species groups for which the TAC will be completely harvested by domestic fisheries. These PSC limits apply only to JVP or TALFF fisheries. At this time, no groundfish are allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Closures to Directed Fishing

If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8). The Regional Director has determined that interim TAC amounts of groundfish will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1995 fishing year, and will publish closures to directed fishing as part of the interim 1995 ITAC specifications in the final rule section of the **Federal Register**.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and 676; and is exempt from review under E.O. 12866.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1994 SAFE Report will be available for public review at the December 7–11, 1994, Council meeting. After the December meeting, a final EA will be prepared on the final 1995 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1995 BSAI initial specifications.

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

Dated: December 9, 1994

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

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50 CFR Part 655

[I.D. 120594D]

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public hearing on draft Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Bu[illegible]h Fishery (FMP) and the Draft Environmental Impact Statement (DEIS). The purpose of the hearing is to allow for public input on the Amendment and the DEIS.

DATES: Written comments will be accepted until January 17, 1995. Public hearings will be held on December 12–15 and December 20, 1994 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Send written comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904. Hearings will be held in VA, NY, MD, RI, MA, ME, and NJ (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: David R. Keifer; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: Amendments 2 through 4 to the FMP, as adopted by the Council and approved by NMFS, established procedures for setting annual catch specifications for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish, required that commercial vessels and party and charter boats obtain permits, established overfishing definitions for the four species, and established policies related to the foreign fishery and joint ventures. The fishery for the squids and butterfish has been developed by U.S. fishermen, and the fishery for the squids is reaching maximum biological catch limits. The purpose of Amendment 5 is to resolve these problems by possibly eliminating foreign fisheries for butterfish and the squids, implementing moratoria on entry of additional vessels into the squid and butterfish fisheries, allowing for a seasonal quota and implementing a minimum mesh net size in the *Loligo* fishery, and developing a dealer and vessel reporting system.

Public Hearings

The scheduled public hearings are as follows:

December 12 Quality Inn Lake Wright, 6280 Northampton Blvd., Norfolk, VA

December 12 Cornell Cooperative Extension Office of Suffolk County, 246 Griffing Ave., Riverhead, NY

December 13 Dunes Manor, 28th St. and the Ocean, Ocean City, MD

December 13 Dutch Inn, Great Island Rd., Galilee, RI

December 14 Cape May Extension Office, Dennisville Rd., Cape May, NJ

December 14 Massachusetts Maritime Academy, Academy Drive, Buzzards Bay, MA

December 14 Holiday Inn West, 81 Riverside St., Portland, ME

December 20 Ocean Place Hilton, Long Branch, NJ

All hearings begin at 7 p.m. except the New York hearing, which begins a 7:30 p.m., and will be tape-recorded, with the tapes filed as the official transcript of the hearing. The December 20 hearing will cover the DEIS as well as Amendment 5.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretational or other auxiliary aids should be directed to David R. Keifer at 302–674–2331 at least 5 days prior to the meeting date.

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

Dated: December 8, 1994.

David S. Crestin,

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

[FR Doc. 94–30720 Filed 12–13–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 239
Wednesday, December 14, 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

Forest Service

North Slope; Wasatch-Cache and Ashley National Forests, Summit and Daggett Counties, Utah, and Uinta County, Wyoming

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare a supplement to an environment impact statement.

SUMMARY: The Forest Service will prepare a Draft and Final Supplement to the North Slope Oil and Gas Leasing Environmental Impact Statement previously prepared for North Slope of the Uinta Mountains (April 1994). The supplement will focus on the specific issue of roadless areas along the North Slope.

The agency will accept written comments and suggestions concerning the supplemental analysis. The agency urges that any comments be concise and specific to the focus of the supplement as described below.

DATES: Comments on the analysis must be received by January 12, 1995.

ADDRESSES: Submit written comments and suggestions concerning the analysis to Liz Schuppert, Evanston District Ranger, Wasatch-Cache National Forest, P.O. Box 1880, Evanston, Wyoming 82931.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Liz Schuppert, Resource Assistant, Evanston Wyoming (307) 789–3194.

SUPPLEMENTARY INFORMATION: The Wasatch-Cache and Ashley National Forest Supervisors released the Final Environmental Impact Statement and Record of Decision for the proposal for oil and gas leasing on approximately 240,000 acres on the North Slope of the Uinta Mountains. Four appeals were filed on the decision. Negotiations with appellants led to a withdrawing of approximately 80,000 acres of roadless area from leasing consideration until further analysis can be completed. Two appellants withdrew their appeal, one became moot, and the Regional Forester affirmed the Forest Supervisors on all other appeal points in the 4th appeal.

The supplement will focus on a more detailed analysis of roadless characteristics in the major drainages across the North Slope of the Uinta Mountains. The Bureau of Land Management has been identified as a cooperating agency.

The Draft Supplement is expected to be filed with the Environmental Protection Agency and be available for public review in February, 1995. At that time the Environmental Protection Agency will publish a notice availability of the Draft Supplement in the Federal Register.

The comment period on the Draft Supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested participate at that time. To be most helpful, comments on the Draft Supplement should be as specific as possible and address the adequacy of the supplement.

Comments on the Draft Supplement will be analyzed and considered by the Forest Service in preparing the Final Supplement, which is scheduled to be completed in April 1995. The Forest Service is required to respond to the comments received (40 CFR 1503.4).

Peter W. Karp, Forest Supervisor of the Wasatch-Cache National Forest, Salt Lake City, Utah, and Brent McBeth, Acting Forest Supervisor of the Ashley National Forest, Vernal, Utah, are the responsible officials for this action.

Dated: December 6, 1994.

William Levere,

Deputy Forest Supervisor.

[FR Doc. 94–30516 Filed 12–13–94; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
LA–143 Kinder Livestock Auction, Kinder, Louisiana.	Sept. 14, 1994.
NY–172 The Box W Ranch & Sales, Shushan, New York.	Nov. 11, 1994.
OK–205 Red River Livestock Market, Inc., Ardmore, Oklahoma.	Oct. 1, 1992.

Done at Washington, D.C. this 8th day of December 1994.

Tommy Morris,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 94–30615 Filed 12–13–94; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 113094B]

Marine Mammals

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

ACTION: Modification No. 1 to scientific research permit No. 873 (P772#63).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit No. 873, submitted by the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

SUPPLEMENTARY INFORMATION: On November 7, 1994, notice was published in the **Federal Register** (59 FR 55445) that a modification of permit No. 873, issued August 4, 1993, (58 FR 41458), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 873 authorized the permit holder to biopsy several species of bow-riding cetaceans off the coasts of Washington, Oregon, California, and Mexico, and to import biopsy tissues collected outside of U.S. waters. The permit has been modified to add two additional species to the permit authority, (hourglass dolphin, *Lagenorhynchus cruciger*, and Southern right whale dolphin, *Lissodelphis peronii*), to import biopsy tissues from these additional species, to expand the study area to include the Southern Ocean, and to extend the effective date of the permit through December 31, 1997.

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: December 7, 1994.

P. A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–30675 Filed 12–13–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 120694A]

Marine Mammals

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

ACTION: Receipt of application to modify permit No. 716 (P466).

SUMMARY: Notice is hereby given that Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110–3309, has requested a modification to permit No. 716.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/570–5312); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 716, issued on October 9, 1990 (55 FR 46543), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 716 authorizes the permit holder for the inadvertent harassment of up to 350 right whales during the course of photo-identification and aerial survey activities. The permit holder is also authorized to biopsy up to 50 right whales, and to import/export right whale tissues for scientific research purposes. The permit holder now requests authorization to attach radio tags to up to 10 right whales in order to determine their whereabouts while outside of the present survey area.

Dated: December 7, 1994.

P. A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–30676 Filed 12–13–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Indonesia

December 9, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for the Group II Subgroup and Category 433 are being increased for special carryforward. Also, the limit for Category 433 is being increased for swing. Reduction to the donor category limits is being done in a separate directive.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 55834, published on November 9, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated September 23, 1994, but are designed to

assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the six-month period which began on July 1, 1994 and extends through December 31, 1994.

Effective on December 9, 1994 you are directed to amend the directive dated November 3, 1994 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated September 23, 1994 and the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted six-month limit [1]
Group II Subgroup 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	1,872,903 square meters equivalent.
In Group II Subgroup 433	8,415 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-30745 Filed 12-13-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Primary Market Maker Rule Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the Chicago Mercantile Exchange to establish a primary market maker system.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted proposed rule amendments and other materials which would establish a primary market maker system for certain CME futures and options contracts.[1] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the CME proposal for public comment. The Division believes that publication of the CME proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

By a letter dated September 14, 1994, the CME submitted proposed rule amendments pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b). The proposed amendments would establish a primary market maker ("PMM") system for certain CME futures and options contracts.

Under the CME proposal, application of the PMM system would be limited to new or low volume contracts. Initially, the CME would implement the PMM system on a pilot basis for new contracts based on equity securities. After completion of the pilot period, the PMM system could be extended to other new or low volume contracts.

Eligibility for appointment as a PMM would be limited to members of the CME. A member's appointment, and the related rights and duties of an appointee, would be confined to one or more designated contracts. Applicants for appointment would be required to have the greater of net capital of $250,000 or an amount sufficient to assume a position of twenty trading units in the designated contract(s). An appointee would be required (i) to maintain a two-sided market in the form of current bid and ask price quotations at a maximum spread difference and (ii) to satisfy bids or offers up to a specified quantity of contracts at the appointee's current bid and ask prices.

A PMM also would serve as a floor broker and custodian of an order book for customer limit orders. As custodian of the limit order book (LOB), the PMM would be required to accept customer limit orders, maintain those orders in the LOB, and effect their proper execution. The PMM would be required to display bid and ask quotations of orders placed in the LOB and to publicly disseminate market quotations. In so doing, the PMM would be required to provide equal access to LOB depth and size upon the request of a CME member. Although such disclosure is required under the proposal, the CME has not indicated how this information would be provided.

Customer orders placed with the PMM for inclusion in the LOB would have priority over, and would be executed in advance of, other competing orders. In executing transactions for his own account as market maker, a PMM would be required to accord priority to those customer orders or other member orders the PMM represents as a floor broker or as custodian of the LOB.

A PMM would have a right of participation in orders executed at his disseminated bid and ask quotations. The right of participation would take the form of a priority over competing bids or offers at prices equaling the PMM's bid or ask quotation. Although not expressly included in the proposal, it appears that the PMM would be able to exercise its market maker priority regardless of whether another member first bid or offered for its own account at a price.

The magnitude of a PMM's right of participation would vary with the level of trading in a designated contract. For a designated contract with average daily volume of 2500 contracts or less, the PMM would have a right to participate in 40 percent of the contracts transacted at the PMM's bid or ask quotation. For a designated contract with average daily volume of 2501 to 5000 contracts, the PMM's right of participation would decline to 30 percent. For a designated contract with average daily volume in excess of 5000 contracts, the PMM would not have any right of participation.

Given that a PMM would function as a market maker and at the same time conduct brokerage transactions, the proposal would permit the PMM to facilitate the execution of customer orders by serving as a counterparty on

[1] The CME proposal includes new Rule 556; amendments to existing Rules 531, 533, and 539; and amendments to existing interpretations and special notices under Rules 533 and 549.

such orders.[2] In this respect, the proposal includes procedures permitting the execution of "facilitation orders." Under the proposal, facilitation orders would be defined as orders for the account of the PMM or orders solicited by the PMM from members of the trading crowd that are executed as a cross transaction with a customer order.[3]

Procedures for the execution of facilitation orders would require the PMM to first request bids or offers for the execution of such customer orders from other market participants. The PMM would then be required on behalf of the customer order to bid at a price above the highest market bid or to offer at a price below the lowest market offer, to identify to the trading crowd that the customer order is being bid or offered subject to facilitation, and to disclose all terms and conditions of such order. After all other market participants were given an opportunity to meet the PMM's bid or offer made on behalf of the customer order, the PMM would be permitted to cross all or any remaining part of the customer order against the facilitation order by announcing in open outcry the quantity and price of the order being crossed. Once the PMM made this announcement, the customer order would have precedence over any other bid or offer in the trading crowd for execution against the facilitation order. The facilitation order would have priority for execution against the customer order subject to LOB priorities.[4]

A newly appointed PMM would serve continuously until trading activity in the designated contract reached a level of 5000 contracts per day. Thereafter, the term of a PMM appointment would continue to run for an additional five years, during which time the PMM would continue to serve as custodian of the LOB. A PMM appointment could be transferred only with the approval of the Board of Directors of the CME.

Except for the right of participation conferred on a PMM appointee, the PMM system would not limit the trading activities of other floor members in designated contracts. Other floor members would have access to designated contracts for purposes of conducting proprietary and brokerage transactions. With respect to brokerage transactions, other floor members would be permitted to accept for execution both market and limit orders of customers. Notwithstanding that the proposal would establish a LOB under the custodianship of a PMM appointee, and provide orders placed therein with a trade priority, the PMM system would not prohibit other floor members from accepting customers' limit orders for execution.

The proposal would prohibit any affiliate of a PMM from purchasing or selling any contract to which such PMM was appointed except to reduce or liquidate an existing position pursuant to notice to the CME. However, the proposal would permit the CME to grant an exemption from this prohibition subject to CME approval of procedures restricting the flow of material non-public information between the PMM and the affiliated person(s). The proposal also would revise an existing CME interpretation prohibiting "frontrunning" in connection with the CME Large Order Execution ("LOX") program. The CME interpretation applicable to the LOX program would be revised to include orders executed under the PMM program.

II. Request for Comments

The Commission requests comments on any aspect of the CME's proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations. In particular, the Commission requests comments regarding the suitability of the order disclosure provisions, the impact on competitive trading conditions, the priority afforded orders held in the LOB but not obtained by orders held by floor brokers, whether there would be adequate protection of customer trade executions, the implications for customer protection under the proposed facilitation procedures as compared to current order crossing procedures, and whether any other conditions or requirements should be imposed on the proposal.

Copies of the proposed rule amendments and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule amendments 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 December 8, 1994.

Alan L. Seifert,

Deputy Director.

[FR Doc. 94–30691 Filed 12–13–94; 8:45 am]

BILLING CODE 6351–01–P

[2] As part of the proposal, the existing CME rule prohibiting trading against customer orders would be amended to permit the PMM to engage in such transactions pursuant to the terms of the PMM program.

[3] As part of the proposal, the existing CME rules that prohibit pre-arranged trades and regulate the crossing of orders for different customers by the same floor broker would be revised to permit the PMM to engage in such transactions pursuant to the terms of the PMM program.

[4] The Commission notes that these procedures for facilitation orders appear to be materially different than those called for by Commission Regulation 1.39 and current CME rules. Specifically, Regulation 1.39 requires the presence of an Exchange official and CME rules require that crossed orders be pre-announced three times.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 5–6 January 1995 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: December 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–30597 Filed 12–13–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: January 19–20, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 8, 1994.

Patricia L. Topings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–30596 Filed 12–13–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact Proposed Tokamak Physics Experiment; Princeton Plasma Physics Laboratory

AGENCY: U.S. Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an Environmental Assessment (EA), DOE/EA–0813, evaluating the environmental effects of using the existing Tokamak Fusion Test Reactor (TFTR) systems and accessory facilities in the proposed construction and operation of the Tokamak Physics Experiment (TPX) at the Princeton Plasma Physics Laboratory, Princeton, New Jersey. The purpose of the TPX is to develop fusion energy to compensate for dwindling supplies of fossil fuels and the eventual depletion of fissionable uranium used in present-day nuclear reactors. Proceeding with the TPX is contingent on use of existing TFTR systems and appurtenant facilities. Decontamination and decommissioning of the TFTR is an integral part of the scope of the proposed TPX; therefore, both projects are evaluated in this EA.

Based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq. The preparation of an Environmental Impact Statement is not required. Thus, the DOE is issuing a FONSI pursuant to the Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR Part 1021).

PUBLIC AVAILABILITY: Copies of this EA (DOE/EA–0813) are available from: Milton D. Johnson, Manager, Princeton Area Office, U.S. Department of Energy, P.O. Box 102, Princeton, New Jersey 08542, (609) 243–3700.

For further information regarding the DOE NEPA review process, contact: Dr. W.S. White, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 252–2101.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action

The proposed action is to use the existing TFTR systems and accessory facilities in the construction and operation of TPX, which would be primarily located inside the existing TFTR Test Cell. The TPX would require dismantlement and removal of all TFTR activated systems within the TFTR Test Cell Complex. Dismantlement and removal of nonradioactive and low activation components in areas such as the Test Cell Basement and the Hot Cell, would start immediately after the conclusion of the TFTR deuterium-tritium experiment, which is expected to conclude in Fiscal Year 1995. Cool-down of the Tokamak in the test cell will commence at that time.

The TPX is being proposed as a national facility for fusion energy research at the Princeton Plasma Physics Laboratory (PPPL). Its primary mission is to develop the scientific basis for an economical, more compact, and continuously operating tokamak in support of the design of a feasible demonstration fusion power plant.

Waste from decontamination and decommissioning would include stainless steel and aluminum structures, piping, copper coils, graphite tiles, solidified radioactive liquids, anti-contamination materials, and concrete rubble. Waste would be packaged into Department of Transportation (DOT) approved containers and transported to the DOE Hanford site in Richland, Washington, as are current PPPL wastes. Approximately 950 m^3 (33,500 ft^3) of waste weighing approximately 2270 metric tonnes (2500 tons) would also be disposed. Construction of a radioactive waste storage building for temporary storage of radioactive waste and final preparation of some radioactive waste shipments would be required. The size of the facility would be approximately 560 m^2 (6000 ft^2), and would be constructed within the existing TFTR facility fence. A second storm water detention basin similar to and west of the existing detention basin would also be constructed.

Decontamination and decommissioning of the TFTR Test Cell could be completed in approximately 1.5 years, after a 2-year cool-down period. TPX construction would minimally overlap decontamination and decommissioning of TFTR facilities. The TFTR Test Cell Complex would then be available for the TPX approximately 3.5 years after termination of TFTR deuterium-tritium experiments. The total cost for the decontamination and decommissioning of the TFTR is estimated to be $86 million.

The construction and operation of the TPX would take place within the existing TFTR facility at Princeton Plasma Physics Laboratory (PPPL), with construction scheduled to begin in early FY–1998. The TPX conceptual design is based on the use of deuterium fuel, but does not preclude the potential upgrade and use of tritium fuel in the final year of operation. Existing TFTR facilities would be adapted and used by the TPX, including TFTR Test Cell Complex; ventilation exhaust vent and intake shafts; mockup building; tritium cleanup/waste handling area; field coil power conversion building; neutral beam power conversion building; radioactive waste systems space; office and technical support space; and miscellaneous PPPL support facilities. In addition to providing space for the TPX, the TFTR Test Cell Complex would provide shielding (via concrete walls, roof, and floor), and provide for confinement and handling of tritium-contaminated and/or radioactive components.

The cost for construction of the TPX is estimated at $500M (FY–93), with the construction period 1997 to 2000. New facilities to be constructed include TFTR Test Cell building modifications, a new Cryogenic Equipment building, tank yards for water cooling and cryogenic tanks, and a new electrical substation. The Test Cell building modifications would be internal and would not increase the existing external dimensions of the building. The

Cryogenic Equipment building would be constructed as a standard industrial single-story building, totaling about 1000 m^2 (10,800 ft^2). The tank yard construction would include approximately 2,130 m^2 (22,950 ft^2) of new tank yard areas for new gaseous helium tanks, liquid nitrogen storage tanks, water storage tanks, and truck-trailer access. This construction would take place on existing open space. The electrical substation construction would involve installation of a new 138 kV transmission line between the existing substation and the new substation. The new substation would be for transforming 138 kV power to 13.8 kV. A new electric power line would be constructed entirely on PPPL property.

Machine assembly would be scheduled for 1998, with the first operations during 2000. The TPX would be fueled with hydrogen and deuterium plasmas for 10 years; radiation generation would not be significant in terms of neutron activation of components or radiological doses. In deuterium operation, the peak fusion power would not exceed 140 kW. During long pulse deuterium operation, neutrons with energies of 2.45 mega electron volts (MeV) would be the primary neutrons produced, and annual production of these neutrons would be limited to 6.0×10^{21} neutrons. A smaller number of 14.1 MeV neutrons would be produced from deuterium-tritium fusion reactions with tritium produced from the deuterium-deuterium fusion reactions. The number of 14.1 MeV neutrons produced during deuterium operations would be approximately 2% of the number of 2.45 MeV neutrons produced.

The TPX facility would be capable of operating with deuterium-tritium plasmas during the last year of TPX operation. During deuterium-tritium operation, a fully-formed deuterium plasma would be developed (requiring up to roughly 1,000 seconds), into which tritium would be injected. Once tritium has been injected, the device would operate for 2 seconds with a peak fusion power of 15 MW, after which the plasma would be terminated. During the 2 seconds of deuterium-tritium operation, both 2.45 MeV neutrons and 14.1 MeV neutrons would be produced, from deuterium-deuterium and deuterium-tritium fusion reactions, respectively. Production of 2.45 MeV neutrons during deuterium-tritium operation would be approximately 1% of the 14.1 MeV neutron production rate. Operation of the tokamak would be controlled to limit annual neutron production so that the site boundary dose restriction adopted by the project would not be exceeded. The deuterium-tritium phase (if used) would be limited to the last year of TPX operation. Small amounts of tritium, and air activation products would be released, and minor amounts of direct radiation would result from fusion neutrons and activated structural components of TPX.

Low-level solid radioactive wastes generated during TPX operations would consist of contaminated items (e.g., protective clothing) and solidified liquid wastes (tritiated water absorbed on desiccant and solidified liquid waste from the decontamination area). The volume of waste would be similar to that generated by TFTR operations, which was approximately 7.4 m^3 per year for deuterium-deuterium operations, and is projected to increase during deuterium-tritium operations to 28.3 m^3 per year (1000 ft^3 per year). Wastes generated during TPX operations would be packaged to comply with applicable DOE and DOT requirements and is expected to be shipped to the DOE Hanford Reservation in Washington for disposal, as are current PPPL wastes.

Alternatives

Three alternatives were considered: (1) The proposed action, use of the TFTR facilities for the proposed construction and operation of the TPX at PPPL, (2) proposed construction and operation of the TPX at the Oak Ridge Reservation in Tennessee, and (3) no action. Location of the TPX at the Oak Ridge Gaseous Diffusion Plant, near Knoxville, Tennessee, would require construction of new support facilities including a new test cell, hot cell, waste handling and storage areas, field coil power conversion building, and cryogenic facilities. The additional cost and time would jeopardize the U.S. fusion program and make the TPX project infeasible. Under the no action alternative, decontamination and decommission of TFTR facilities would occur under current management practices, but may involve a longer delay between safe shutdown activities and commencement of decontamination and decommissioning activities. The longer delay would not fit within the current schedule to meet the construction of the TPX. This delay may in turn be followed by a 2–3 year period of delay, during which the TFTR facility would be in a state of protective custody. The TPX would not proceed under the no action alternative.

Environmental Impacts

The impacts of the TFTR decontamination and decommissioning and TPX construction and operation on the environment and on the health and safety of workers and the public were analyzed in the Environmental Assessment. Both routine operations and off-normal or accident scenarios were assessed. The Environmental Assessment considered impacts to air quality, noise, water quality and quantity, aquatic and terrestrial ecology, threatened and endangered species, the visual environment, land use, historical and archaeological resources, socioeconomic environment, radiological conditions, and impacts of potential accidents. No significant environmental impacts associated with the proposed action are anticipated.

Activities associated with decontamination and decommissioning of the TFTR would not present any long-term or adverse nonradiological impacts to the public or the environment. It would result in minor impacts, consisting primarily of commitment of a small area of onsite land for the radioactive waste storage building and the second storm water detention basin. Construction of the radioactive waste storage building and storm water detention basin may result in a temporary small increase of effluent to Bee Brook, but would not exceed PPPL New Jersey Pollutant Discharge Elimination System permit or other State or federal regulatory requirements.

Potential radiological impacts of TFTR decontamination and decommissioning would not represent potential impacts greater than those from current PPPL operations, which have had no significant consequences. Decontamination and decommissioning activities would result in a dose of less than the adopted design objective of 10 mrem per year to any member of the public from all project sources. It would result in minor releases of activated metal and tritium to the atmosphere and sewer system. The maximum calculated individual public dose would be 2.3 mrem per year, and the increased probability of incremental lifetime cancer risk associated with exposure from this dose would be 1.1 chances in 1,000,000. This very low calculated effect means insignificant risk to the public. Occupational doses would not exceed the PPPL administrative limit of 1 rem per year, which is less than the DOE limit of 5 rem per year.

Operational occurrences during decontamination and decommissioning that could result in the accidental release of tritium, activated gases, or solids consist primarily of component failures and human error, and any releases would be limited by inventories within the components. The largest calculated dose to the public from

decontamination and decommissioning accident scenarios, including beyond design basis accidents, is 390 mrem to a maximally exposed member of the public. The increased probability of incremental lifetime cancer risk associated with exposure from this dose would be 195 chances in 1,000,000.

The TPX would not present long-term or adverse nonradiological impacts to the public or the environment at the PPPL site. Other TPX nonradiological impacts would be temporary, except for the commitment of a small parcel of land for construction of new TPX facilities. Construction impacts due to test cell modifications and construction of the cryogenic equipment building, tank yards, and electric substation would be minor. All construction would be built on land already committed to DOE operations. This construction would all be within the current land use restrictions governing PPPL site agreements with the DOE. For a construction project of this scope, the potential exists for 2.5 lost workday cases (work related injuries that require time-off from work) over the construction period. Also there would be a 10% increase in the current amount of site traffic, which would increase the potential for on-site vehicular accidents slightly.

Radiological impacts from the TPX would not exceed current impacts from PPPL operations, which has not been shown to cause incremental lifetime cancer risk associated with exposure. Potential environmental, safety, and health radiological impacts were evaluated for both deuterium and possible future tritium operations. Atmospheric releases of tritium and activation products constitute the potential sources of radiological exposure to members of the public. Maximum projected atmospheric releases would result in annual effective dose equivalents of 1.2 mrem and 4.6 mrem to a hypothetical maximally-exposed individual at the site boundary during deuterium and tritium operations, respectively, with a maximum increased probability of incremental lifetime cancer risk associated with exposure of 2.3 chances in 1,000,000. These conservatively-calculated effective dose equivalents are less than the most restrictive limit for public doses caused by airborne releases (the EPA limit of 10 mrem per year). Direct radiation from the TPX would be mitigated with shielding to keep the total effective dose equivalent from all sources at the site boundary within the project design objective of less than or equal to 10 mrem per year. This design objective effective dose equivalent is well below the DOE limit of 100 mrem per year to members of the public from routine DOE operations.

Normal TPX deuterium-tritium operations would result in total estimated collective effective dose equivalents of 7.5 person-rem per year and 24 person-rem per year to the projected population within the 80 km (50 mi) radius area surrounding PPPL during deuterium and tritium operations, respectively. These doses amount to an average effective dose equivalent of less than 0.002 mrem per year to each individual in the assessment area and would result in less than 1 health effect in the exposed population. On the basis of the collective effective dose equivalent, incremental lifetime cancer risk associated with exposure attributable to TPX operations are not expected to occur. A collective effective dose equivalent of 24 person-rem per year represents approximately .002% of the collective effective dose equivalent from natural background radiation in the area (exclusive of radon). Occupational doses to workers during TPX operations would result from direct radiation and small releases of tritium and activated gases. Operational procedures, administrative controls and monitoring would ensure that occupational doses are kept below regulatory limits and as low as reasonably achievable.

Accidental releases of radioactive material could hypothetically result from (a) natural phenomena (e.g., earthquakes), (b) accidents with external origin (e.g., airplane crashes), (c) shipping accidents (i.e., accidents involving the transportation of radioactive material), and (d) operational occurrences (e.g., tritium leaks). All TPX confinement boundaries would be capable of maintaining integrity for design basis natural phenomenon, and therefore a release due to a natural phenomena event is extremely unlikely.

Accidents with external origins and transportation accidents involving small quantities of radioactive material would present little risk to the public and the environment. Transportation accidents involving larger quantities of radioactive material, for example tritium, could occur; however, the accidental release of significant quantities of radionuclides has a very low probability because of the demonstrated integrity of the approved containers that would be used.

TPX operational occurrences that could result in the accidental release of tritium, activated gases, or solids consist primarily of component failures and human error. Releases associated with these occurrences would be limited by component inventories. The maximum calculated individual dose from accident scenarios is 390 mrem, which is well below the DOE siting guideline limit of 25 rem. Incremental lifetime cancer risk associated with exposure resulting from the collective doses would represent a negligible increase in the total number of such health effects in the exposed population from all natural background radiation doses. The largest potential radiological impacts to the public from TPX accidents including beyond design basis accidents, are below regulatory limits.

After TPX operation has ended, a proper NEPA review would be conducted for the decontamination and decommissioning of the facility. It is expected that the waste material resulting from decontamination and decommissioning activities would qualify as low-level radioactive waste and would be disposed of at an appropriate DOE waste disposal facility

TFTR operations would be discontinued prior to TFTR decontamination and decommissioning. Cumulative effects would be minor and would represent a continuation of, rather than a change in, any impacts (negative and positive) associated with TFTR operations. Commitment of 560 m^2 (6,000 ft^2) of land for the construction of the radioactive waste storage building and 1,300 m^2 (14,000 ft^2) for construction of a second storm water detention basin would represent a long-term commitment of land use. Environmental releases of small amounts of residual tritium during decontamination and decommissioning would not add measurably to current low levels.

Cumulative and Long Term Impacts

There are currently no measurable cumulative impacts occurring between PPPL and other facilities in the region, and none would be expected for the proposed TPX. Releases of radionuclides to the atmosphere by commercial operations (such as hospitals and research laboratories) near PPPL are not detectable in environmental samples collected around PPPL; analyses show no radionuclide concentrations above background levels. No adverse long-term environmental effects are expected from normal operations of the TPX. Tritium releases during normal operations would not constitute a measurable contribution to background radiation levels, because of the small amount of tritium to be released, its relatively short half-life (12.3 years), and rapid dispersion in the environment.

Determination

Based on the analyses in the Environmental Assessment, the DOE has determined that the proposed action at the PPPL is not a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA, consequently, an environmental impact statement is not required.

Issued in Argonne, Illinois, this 5th day of December, 1994.

Cherri J. Langenfeld,

Manager, Chicago Operations Office

[FR Doc. 94–30744 Filed 12–13–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP89–661–028]

Algonquin Gas Transmission Co.; Notice of Changes in FERC Gas Tariff

December 8, 1994.

Take notice that on December 1, 1994, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, effective January 1, 1995, the following revised tariff sheets:

Fourth Revised Volume No. 1

Ninth Revised Sheet No. 21
Ninth Revised Sheet No. 22
Sixth Revised Sheet No. 33

Original Volume No 2

Third Revised Sheet No. 401

Algonquin states that the purpose of this filing is to implement the rates authorized in the Commission's orders of October 9, 1991, as amended May 20, 1992 and October 29, 1993 in Docket No. CP89–661–000, et al. Algonquin states that the effective date of these tariff sheets is January 1, 1995 to coincide with commencement of service for related upstream facilities of Columbia Gas Transmission Corporation.

Algonquin states that copies of its filing were mailed to all affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before December 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 94–30625 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–59–000]

Northern Natural Gas Co.; Notice of Proposed Changes in Rates

December 8, 1994.

Take notice that on December 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that filed 2 Revised Sixteenth Revised Sheet No. 53 is being filed to establish the November 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary

[FR Doc. 94–30626 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–84–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1994.

Take notice that on December 5, 1994, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 5, 1995:

3 Revised Sixteenth Revised Sheet No. 53
First Revised Sheet No. 267

Northern herein proposes to delete the Index Price from Tariff Sheet No. 53 and to delete the requirement on Tariff Sheet No. 267 that Northern make a monthly tariff filing to reflect changes to the Index Price. Northern further proposes to revise Tariff Sheet No. 267 to require that the Index Price be posted on the EBB.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (19 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before December 15, 1994. Protests will be considered by the Commission in determining the appropriate to be taken in this 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. 94–30627 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–81–000]

K N Interstate Gas Transmission Co.; Notice of Petition for Declaratory Order

December 8, 1994.

Take notice that on November 29, 1994, K N Interstate Gas Transmission Co., (KNI), tendered for filing a petition for declaratory order requesting that the Commission declare that:

(1) KNI lacks market power in the rendition of short-haul firm and interruptible transportation services that are provided on KNI's Buffalo Wallow System;

(2) To the extent KNI retains market power over the small number of customers which are solely-connected to the Buffalo Wallow System, KNI has sufficiently mitigated the potential exercise of that power through measures to ensure that these customers will receive service upon terms and conditions and at rates which are just and reasonable and free from potential affiliate abuse and

(3) KNI is authorized to negotiate and charge market-based rates for firm and interruptible transportation services on the Buffalo Wallow System under the terms and conditions set forth in Second Revised Volume Nos. 1–C and 1–D.

KNI states that it is filing this petition in response to the Commission's September 30, 1994 order in Docket No. RP94–328–000 (*K N Interstate Gas Transmission Co.*, 68 FERC ¶ 61,401 (1994)). In accordance with that order, KNI is incorporating by reference portions of its tariff filing in Docket No. RP94–328–000.

KNI states that it will also submit *pro forma* tariff sheets (Second Revised Volumes Nos. 1–C and 1–D), which set forth the terms and conditions under which KNI will provide firm and interruptible transportation at market-based rates.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before January 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken in this 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. 94–30628 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–221–000]

ANR Pipeline Co.; Notice of Cancellation of Settlement Conference

December 8, 1994.

Take notice that the informal settlement conference scheduled to convene December 13, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., has been canceled.

For additional information, please contact William J. Collins at (202) 208–0248.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30629 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–43–000]

ANR Pipeline Co.; Notice of Cancellation of Settlement Conferences

December 8, 1994.

Take notice that the informal settlement conferences scheduled to convene December 13, 1994 and January 12, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., have been canceled.

For additional information, please contact William J. Collins at (202) 208–0248.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30630 Filed 12–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–10–000]

Central Vermont Public Service Corporation v. Citizens Utilities Co.; Electric Rate and Corporate Regulation Filings

December 5, 1994.

Take notice that the following filings have been made with the Commission:

1. Central Vermont Public Service Corporation v. Citizens Utilities Company

[Docket No. EL95–10–000]

Take notice that on November 18, 1994, Central Vermont Public Service Corporation, filed an complaint against Citizens Utilities Company in connection with a contract between Citizens, Central Vermont, Franklin Electric Light Company, Vermont Marble Company, Village of Barton Electric Company, Village of Enosberg Water and Light Department and Village of Swanton Electric Company. Central Vermont is seeking refunds of amounts it asserts Citizens has collected in excess of amounts it was authorized to receive under the contract. Central Vermont also seeking an order requiring Citizens to tendered for filing a modification of the contract.

Comment date: January 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER93–920–003]

Take notice that on November 14, 1994, New England Power Company (NEP), tendered for filing its compliance refund report in the above-referenced docket. On November 23, 1994, NEP filed an amended compliance refund report and supporting documentation that effectuates the terms of an uncontested settlement agreement of NEP's Tariff No. 8 in the above-referenced docket. NEP states that refunds, including interest, were made on November 16, 1994.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER94–1151–001]

Take notice that on November 25, 1994, Florida Power & Light Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Indianapolis Power & Light Company

[Docket No. ER95–55–000]

Take notice that Indianapolis Power & Light Company (IPL), on November 23, 1994, tendered for filing an amendment to its previous filing in the above-referenced docket. The amendment consists of revised Service Schedules submitted in response to a staff request.

IPL has requested an effective date remain sixty (60) days from the original filing date of October 21, 1994.

Copies of this filing were sent to the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER95–193–000]

Take notice that on November 15, 1994, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with City of Vero Beach for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreement be permitted to become effective on December 1, 1994, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

Docket No. ER95–194–000

Take notice that on November 15, 1994, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Citizens Power & Light Company. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm

sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on November 15, 1994 and requests waiver of the Commission's regulations regarding filing.

Comment date: December 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Aquila Power Corporation

[Docket No. ER95-216-000]

Take notice that on November 18, 1994 Aquila Power Corporation (Aquila Power) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule No. 1.

Aquila Power intends to engage in electric power energy transactions as a marketer and a broker. In transactions where Aquila Power sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Aquila Power is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER95-225-000]

Take notice that on November 22, 1994, Florida Power Corporation (FPC) tendered for filing a service agreement for transmission service resale with AES Power, Inc. under Florida Power's existing T-1 Transmission Tariff. This involves transmission service to be provided to AES at all existing and future interconnections of FPC.

FPC requests a waiver of the commissions 60 day notice requirements to allow FPC and AES's Agreement to become effective December 1, 1994.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Power Systems Inc.

[Docket No. ER95-226-000]

Take notice that on November 23, 1994, Midwest Power Systems Inc. (MPSI), tendered for filing an Electric Transmission Facilities Agreement (Agreement) dated September 1, 1994, between City of Estherville, Iowa (Estherville) and MPSI. The agreement provides for the construction of 2.25 miles of transmission facilities for the purpose of providing a second transmission source to serve Estherville with full requirements wholesale service.

The Agreement is effective upon acceptance by the Commission.

MPSI states that copies of this filing were served on Estherville, Corn Belt Power Cooperative and the Iowa Utilities Board.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-30722 Filed 12-13-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER95-243-000]

Puget Sound Power & Light Co.; Electric Rate and Corporate Regulation Filings

December 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Power & Light Company

[Docket No. ER95-243-000]

Take notice that on November 30, 1994, Puget Sound Power & Light Company (Puget) tendered for filing, as a change in rate schedule, the General Transmission Agreement between the United States of America Department of Energy, acting by and through Bonneville Power Administration (Bonneville) and Puget, together with exhibits thereto (The "IR Agreement"). A copy of the filing was served upon Bonneville.

Puget states that the IR Agreement relates to integrated transmission service by Bonneville with respect to certain of Puget's resources and to certain other contractual arrangements between Bonneville and Puget affecting such transmission service.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. EL91-28-004]

Take notice that on November 22, 1994, Carolina Power & Light Company, tendered for filing copies of its refund summary report in the above-referenced docket.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Indeck-Olean Limited Partnership Olean Cogeneration Facility

[Docket Nos. EL95-11-000 QF90-154-004]

Take notice that on November 22, 1994, Indeck Olean Limited Partnership (Applicant), filed a petition with the Federal Energy Regulatory Commission for a temporary waiver of the operating and efficiency standards pursuant to Section 292.205(c) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 79.90 gross/77.5 net MW topping-cycle cogeneration facility located in Olean, New York consists of a combustion turbine generator, a supplementary fired heart recovery steam generator, a steam turbine generator, and associated equipment. Steam extracted from the steam turbine generator is sold to Dresser-Rand Company. The facility needs natural gas as its primary energy source.

Applicant states that the temporary waiver is required as a result of limited facility testing during calendar years 1993-1994.

Comment date: January 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Continental Power Exchange, Inc., on Behalf of Central Illinois Public Service Company

[Docket No. ER94-1156-001]

Take notice that on November 29, 1994, Central Illinois Public Service Company tendered for filing a revised compliance filing pursuant to the Commission's order of August 16, 1994 in the above-referenced proceeding.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. CINergy Services, Inc.

[Docket No. ER94-1637-000]

Take notice that on November 23, 1994, CINergy Services, Inc. tendered

for filing an amendment in the above-referenced docket.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Empire District Electric Company

[Docket No. ER95-230-000]

Take notice that on November 21, 1994, Empire District Electric Company (EDE), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving EDE's application for membership in the WSPP. EDE requests it be permitted to become a member of the WSPP. In order to receive the benefits of Pool membership, EDE requests waiver of the Commission's prior notice requirement to allow its WSPP membership to become effective as soon as possible, but in any event no later than 60 days from this filing.

Copies of the filing were served on WSPP and the Missouri Public Service Commission, Kansas Corporation Commission, Oklahoma Corporation Commission, and Arkansas Public Service Commission.

Comment date: December 19, 1994, in aocordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER95-231-000]

Take notice that on November 28, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Iowa-Illinois Gas and Electric Company (IIGE). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date coincident with the date of filing in order to take advantage of power supply economies in the bulk power market. Wisconsin Electric is authorized to state that IIGE joins in the requested effective date. Copies of the filing have been served on IIGE and the Public Service Commission of Wisconsin.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kimball Power, Inc.

[Docket No. ER95-232-000]

Take notice that on November 28, 1994, Kimball Power, Inc. (Kimball), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. to be effective on the earlier of January 27, 1995, or the date of the Commission's order accepting the Rate Schedule for filing.

Kimball intends to engage in electric power and energy transactions both as a broker and a marketer. In transactions where Kimball does not take title to the electric power and/or energy, Kimball will serve as a broker and charge a fee for its services. In transactions where Kimball does take title to the electric power and/or energy, it will function as a marketer. In marketing transactions, Kimball proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Atlantic City Electric Company

[Docket No. ER95-233-000]

Take notice that on November 28, 1994, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Electric Transactions between ACE and Louis Dreyfus Electric Power Inc. ACE requests that the Agreement be accepted to become effective November 29, 1994.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Atlantic City Electric Company

[Docket No. ER95-234-000]

Take notice that on November 28, 1994, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Catex Vitol Electric Inc. ACE requests that the Agreement be accepted to become effective November 29, 1994.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER95-235-000]

Take notice that on November 28, 1994, Wisconsin Public Service Corporation, tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 1995.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER95-236-000]

Take notice that on November 28, 1994, Central Vermont Public Service Corporation, tendered for filing a service agreement with Northeast Utilities under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on October 31, 1994.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95-237-000]

Take notice that on November 29, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a Second Amendment to System Power Sales Agreement (Amendment) with Bozrah Light and Power Company (BL&P) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction extends the System Power Sale from November 30, 1994 through January 31, 1995.

NUSCO requests that the rate schedule become effective on December 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Amendment.

Comment date: December 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. West Texas Utilities Company

[Docket No. ER95-245-000]

Take notice that on November 30, 1994, West Texas Utilities Company (WTU) tendered for filing a Coordination Sales Tariff. Under the Coordination Sales Tariff, WTU will

make Economy Energy, Short-Tern Power and Energy, General Purpose Energy and Emergency Service available to customers upon mutual agreement.

WTU has asked, if possible for expedited consideration and waiver of the Commission's notice requirements to the extent necessary to permit an effective date coincident with the date of the Commission's order accepting the filing. If expedited review is not possible, WTU seeks an effective date no later than January 31, 1995. Copies of this filing were served on the Public Utility Commission of Texas and are available for public inspection at WTU's offices in Abilene, Texas.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER95–247–000]

Take notice that on November 30, 1994, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1995 Cost Report required under Article 2.3 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to the following customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER95–248–000]

Take notice that on November 30, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1995 Cost Report in accordance with Article IB, Section A(2) of the North Hartland Transmission Service Contract (Contract) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&E) under which CVPS transmits the output of the VG&T's 4.0 Mw hydroelectric generating facility located in North Hartland, Vermont via a 12.5 Kv circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER84–676–000 and was designated as Rate Schedule FERC No. 121.

Article IV, Section A(2) of the Contract requires CVPS to submit the forecast cost report applicable to a service year by December 1 of the preceding year.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

[Docket No. ER95–249–000]

Take notice that on November 30, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1995 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Southwestern Electric Power Company

[Docket No. ER95–250–000]

Take notice that on November 30, 1995, Southwestern Electric Power Company (SWEPCO), tendered for filing a letter agreement between SWEPCO and East Texas Electric Cooperative, Inc. (ETEC). By the letter agreement, SWEPCO and ETEC agree to extend the deadlines for specific actions required under the Power Supply Agreement (ETEC PSA), dated February 10, 1993, between SWEPCO and ETEC, on file with the Commission.

SWEPCO requests that this letter agreement be accepted to become effective as of the date the Commission order is issued, but in no event later than sixty days from the date of this filing. To the extent such an effective date would require waiver of the Commission's notice requirements, SWEPCO requests such waiver.

A copy of this filing has been served on ETEC and the Public Utility Commission of Texas. A copy is also available for inspection at SWEPCO's office in Shreveport, Louisiana.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER95–251–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric), on December 1, 1994, tendered for filing an agreement among itself, Edison Sault Electric Company (Edison Sault) and Cloverland Electric Cooperative (Cloverland). Wisconsin Electric also submitted another agreement among Upper Peninsula Power Company (UPPCO), Edison Sault, Cloverland, and itself. Both agreements provide for reciprocal exchange of transmission services across a contemplated 138 Kv Arnold-Escanaba-Manistique intertie to be built by the parties in Michigan's Upper Peninsula.

Wisconsin Electric respectfully requests waiver of the 120 day advance notice requirement to permit an effective date coincident with the commercial service date of the new line, which is expected to be June 1997. Wisconsin Electric is authorized to state that Edison Sault, Cloverland and UPPCO join in the requested effective date.

Copies of the filing have been served on Edison Sault, Cloverland, UPPCO, and the Michigan Public Service Commission.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Company

[Docket No. FA93–50–001]

Take notice that on November 21, 1994, Wisconsin Public Service Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 94-30723 Filed 12-12-94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5121-5]

Notice of Transfer and Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation, and Liability Act to EPA Contractors and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for comment.

SUMMARY: EPA Region VII hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) and intends to authorize certain contractors and subcontractors access to Confidential Business Information ("CBI") which has been submitted to and collected by EPA Region VII under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and pertains to Superfund sites.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Region VII, Rebecca L. Himes, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7253.

SUPPLEMENTARY INFORMATION: On January 5, 1993, EPA published in the **Federal Register** (58 CFR 458) an amendment to the EPA regulations at 40 CFR 2.310 governing confidential business information, authorizing disclosure of confidential data submitted by EPA contractors and subcontractors, pursuant to Section 104 of CERCLA, to other Agency contractors.

Notice of Required Determinations, Contract Provisions, and Opportunity to Comment: CERCLA, commonly known as "Superfund," requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery and litigation support.

Pursuant to 40 CFR 2.301(h) and 40 CFR 2.310(h), EPA is authorized to disclose confidential data submitted by EPA contractors and subcontractors pursuant to Section 104 of CERCLA to other EPA contractors and subcontractors. Before such disclosure is made, the Agency must notify the submitter of the information to be disclosed, the identity of the contractor or subcontractor, the contractor or subcontractor number, and the purpose of the disclosure, and give the submitter an opportunity to comment on the disclosure.

EPA Region VII has determined that disclosure of Superfund contractor CBI to certain other EPA contractors and subcontractors listed below is necessary in order that they may carry out the work requested under those contracts or subcontracts with EPA, including (1) compilation, organization, and tracking of litigation support documents and information, (2) review and analysis of documents and information, and (3) providing computerized database systems and customized reports. The information to be disclosed includes and information submitted to EPA by contractors or subcontractors in connection with contracts whereby contractors provide goods or services in support of EPA actions under CERCLA, including information related to the scope, nature, and cost of work performed by such contractors. Prior to disclosure of any CBI, employees of the contractors and subcontractors listed below will be required to sign a written agreement that he/she: (1) will use the information only for the purpose of carrying out the work required by the contract; (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) upon completion of the contracts, (b) upon request of the EPA, or (c) whenever the information is no longer required by the contractor or subcontractor for performance of work requested under those contracts. These nondisclosure statements shall be maintained on file with the EPA Region VII Project Contact for CACI, Acumenics Research and Technology, Inc., and Aspen Systems Corporation. CACI, Acumenics, and Aspen Systems employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have five (5) working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(b). Comments should be sent to Environmental Protection Agency, Region VII, David Cozad, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101

Dennis Grams,

Regional Administrator

Contractor/Subcontractor	Contract No
CACI	3C-G-ENR-0051
Acumenics Research and Technology, Inc..	3C-G-ENR-0052
Aspen Systems Corporation.	3C-G-ENR-0053

[FR Doc. 94-30737 Filed 12-13-94, 8:45 am]

BILLING CODE 6560-50-M

[FRL-5121-1]

Science Advisory Board; Notification of Public Advisory Committee Meeting(s); Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

Toxics Reporting Subcommittee

The Toxics Reporting Subcommittee of the Ecological Processes and Effects Committee of the Science Advisory Board (SAB) will conduct a public meeting on January 4, 1995 at the Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA from 8:30 am until 12:00 noon. The Toxics Reporting Subcommittee will review technical information from the Environmental Protection Agency and public commenters related to the toxicity of ammonia and the criteria for listing compounds such as ammonium sulfate on the Toxics Release Inventory The SAB has been asked to address the following two questions: 1. What is the most appropriate way to report releases of aqueous ammonia under the Emergency Planning and Community Right-to Know Act (EPCRA) section 313 as unionized ammonia or as total ammonia, and 2. Does total ammonia meet the EPCRA section 313 listing criteria?

Written comments should be submitted to the Designated Federal Official listed below on or before December 19 in order to allow the Subcommittee an opportunity to review them prior to the meeting. Oral comments at the meeting will be limited to five minutes and should be focused on scientific information and data

related to the environmental risks of total ammonia, ionized ammonia, and the fate of ammonia compounds in water.

Sediment Criteria Subcommittee

The Sediment Criteria Subcommittee of the Ecological Processes and Effects Committee of the Science Advisory Board (SAB) will conduct a public meeting on January 4–6, 1995 at the Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA. The meeting will begin at 1:30 pm and end at 5:00 pm on January 4. On January 5, it will begin at 8:30 am until 5:00 pm. On January 6, the Subcommittee will conduct a public writing session that will end no later than 5:00 pm.

The Sediment Criteria Subcommittee will review the Agency's approach and its scientific basis for evaluating sediments for metal toxicity using Simultaneously Extracted Metals/Acid Volatile Sulfate (SEM/AVS) ratios and interstitial water concentrations. The Subcommittee will receive briefings on the results of field and laboratory research conducted in freshwater and marine environments. Experiments will include data on bioaccumulation, colonization and studies of the correlation between AVS and sediment organic carbon, the oxidation of metal sulfides and pore water sampling. Finally, the Agency staff will discuss proposed sediment quality criteria for several metals. Members of the public interested in copies of the briefing materials provided to the SAB should contact the Office of Water Resource Center at 202–260–7786 and request the "SAB Briefing Document for Metals Sediment Quality".

Written comments should be submitted to the Designated Federal Official listed below on or before December 19 in order to allow the Subcommittee an opportunity to review them prior to the meeting. Oral comments at the meeting will be limited to five minutes and should be focused on scientific information and data related to the validity of the SEM/AVS methodology for deriving sediment quality.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Opportunities for oral comment will be limited to no more than five minutes per speaker or longer at the discretion of the Chair. Written comments (at least 25 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Commenters are encouraged to bring copies of their comments for distribution to the audience at the meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Any member of the public wishing further information concerning the meetings or who wishes to submit oral or written comments (at least 25 copies) should contact Dr. Edward Bender, Designated Federal Official, Science Advisory Board (Mail Code 1400F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–2562; FAX (202) 260–7118, or via the Internet at BENDER.EDWARD.EPAMAIL.EPA.GOV. The meetings are open to the public, but seating is limited and available on a first come basis.

Dated: December 1, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–30736 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5122–3]

President's Commission on Risk Assessment and Risk Management

ACTION: Notice of Open Meetings.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the President's Commission on Risk Assessment and Risk Management, established as a Presidential Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will meet on February 12, 1995 from 4:00 p.m. until 7:00 p.m. and again on February 13 from 8:00 a.m. until 4:30 p.m. The location of the meeting is The Grand Hyatt, Union Square, 345 Stockton Street, San Francisco, California 94108. The phone number of the hotel is: 415–398–1234. As previously announced there is also a meeting of the Commission on January 11, 1995 from 8:30 a.m. until 7:30 p.m. The location of the January meeting is: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, N.W., Washington, DC 20004. The phone number for that hotel is: 202–393–2000. The specific topics of discussion at this meeting will focus on the Clean Water and Safe Drinking Water Acts as will as continuing the discussion on Superfund issues.

The meetings are open to the public. Seating at the meeting is limited; therefore, seating will be on a first come basis.

Background

The Risk Assessment and Management Commission held its first meeting on May 16, 1994, (59/FR22615/Vol. 59, No. 83, May 2, 1994). The Commission was established by Congress to make a full investigation of the policy implications and appropriate uses assessement and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

It is expected that the Commission members will continue their inquiries and discussions on the five topical areas mandated by Congress: review of the National Research Council's report *Science and Judgment in Risk Assessment* (1994); exposure scenarios; uncertainty and variability; risk management; and cross-agency consistency.

For additional information about the Commission and copies of the agenda, please call Joanna Foellmer at 703–308–8087.

Gail Charnley,

Executive Director, President's Commission on Risk Assessment and Risk Management.

[FR Doc. 94–30740 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–300373; FRL–4920–3]

Oxyfluorfen; Request for Comment on Petition To Revoke Certain Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt and Availability of Petition.

SUMMARY: This document announces the receipt of, and solicits comments on, a petition proposing the revocation of the section 409 food additive regulations established under the Federal Food, Drug and Cosmetic Act (FFDCA) for the herbicide oxyfluorfen and its metabolites containing the diphenyl ether linkage (hereinafter oxyfluorfen) This notice sets forth the basis for the petitioner's proposal and provides opportunity for public comment.

DATES: Written comments, identified by the document control number [OPP

300373], must be received on or before January 13, 1995.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Copies of the petition will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703-308-8028).

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 136 et seq.) authorizes under section 408 (21 U.S.C. 346a) the establishent of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RAC), and section 409 of the act authorizes promulgation of food additive regulations for pesticide residues in processed foods (21 U.S.C. 348).

Under section 408 of the act, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409. Section 409 food/feed additive regulations (FAR) are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 FAR is needed if any pesticide residue in a processed food resulting from use on a RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on that RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 FAR is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes into contact with a pesticide. Monitoring and enforcement are carried out by the Federal Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Section 409 also contains the Delaney clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(c)(5)).

In setting both section 408 tolerances and section 409 FAR, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 FAR is needed depends on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance.

II. Petition

Rohm and Haas Co. has submitted a petition requesting the revocation of the food additive regulations established under section 409 of the FFDCA for the herbicide oxyfluorfen in or on cottonseed oil, mint oil, and soybean oil. According to the petition, the oxyfluorfen FAR for cottonseed oil, mint oil, and soybean oil should be revoked because residues in the processed oils do not exceed the section 408 tolerance levels for raw commodities.

Rohm and Haas cites the method of application of oxyfluorfen as a key factor as to why no residues are expected to be present in the agricultural commodities. Particularly the petitioner claims that oxyfluorfen is a nonselective herbicide that destroys plant tissue. Therefore, oxyfluorfen is not applied to food crops, but is applied either directly to weeds shortly after they have emerged, or to soil in order to prevent emergence of weeds. Rohm and Haas has developed and submitted data to support the assertion that oxyfluorfen does not translate from the soil into growing plants (MRID Nos. 42913201, 42873301, 42865001, 160143 00040912, 00040911, 00039926, and 00039925).

The petitioner claims that all processed oil data from field studies show residue levels below the section 408 tolerance levels, even when applied at maximum level rates. The petition includes descriptions of previously submitted field residue data for cottonseed/cottonseed oil, mint/mint oil, soybean/soybean oil, and some additional data. These residue data from field trials are on file with the EPA (MRID Nos. 92136075, 9213081, 92136086).

The petitioner contends that there is further dilution of residues during processing and before the food containing these commodities is ready to eat.

Cotton: Although the residue levels in samples from the above studies are allegedly below the section 408 tolerance levels, Rohm and Haas claims that the actual processed food, when ready to eat, will have even lower residues. First, Rohm and Haas asserts that only 4 percent of the cotton grown in the U.S. is treated with oxyfluorfen. The processing of cottonseed oils occurs at centralized facilities where cottonseed from different producers is mixed. In addition, purification of the oil occurs during several stages in order to transform the crude oil into finished oil. This further processing would likely remove any oxyfluorfen residues. Finally, the petitioner contends that

further dilution will occur as the cottonseed oil is incorporated into processed foods before the oil is ready to eat.

Mint: In addition to the claim that residues in the processed mint oil fraction do not exceed the section 408 mint tolerance, the petitioner asserts that residue levels in processed food will be much lower. Rohm and Haas contends that the section 408 tolerance will not be exceeded.

Soybeans: The petitioner claims that soybean data show residue levels substantially below the section 408 tolerance. Specifically, 95 percent of the data points are below the detection limit.

Rohm and Haas Co. requests that EPA consider the foregoing arguments and revoke the section 409 FAR for oxyfluorfen in cottonseed oil, mint oil, and soybean oil.

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after the date of the publication of the order (40 CFR 178.20).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–30735 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5121–8]

Characterization of Municipal Solid Waste in the United States: 1994 Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In recent years, community officials and the general public have increased their attention to the waste generated by households, institutions, and commercial businesses. They have used information about municipal solid waste (MSW) to plan for programs to reduce and recycle this waste and to properly dispose of the remainder. The "Characterization of Municipal Solid Waste in the United States, 1960 to 2000" report was first prepared by EPA in 1986 in order to determine the amounts of waste generated, discarded, and recycled in the nation, and to project amounts of waste which will be managed in the future. The report was updated in 1990 using data available through 1988, and again in 1992 using data available through 1990. Planners nation-wide use this special study to estimate the amount and types of MSW that will be generated in their communities, and thus are more effectively able to plan for the management of the wastes generated, discarded, and/or recycled and determine the costs of waste management.

The Characterization of Municipal Solid Waste in the United States: 1994 Update is now available. The 1994 Update is similar to the 1992 Update, but it contains updated information on the types and amounts of municipal solid waste generated, discarded, and recycled in the United States through 1993. Some new informational categories are also included in the 1994 Update. These include an additional section on source reduction, additional breakouts for items such as "other durables," and a comparison of MSW generation to economic and population trends.

FOR FURTHER INFORMATION CONTACT: For a paper copy of the 1994 Update, please contact the National Technical Information Service (NTIS) at 1–703–487–4650. The document number is EPA530–R–94–042. Copies of the Report's Executive Summary (EPA530–S–94–042) are free, and may be obtained by calling the RCRA Hotline at 1–800–424–9346. The Characterization of Municipal Solid Waste in the United States: 1994 Update are available in electronic format on the Internet System through the EPA Public Access Server at gopher.epa.gov.

Accessing Internet

Through Gopher

Go to: gopher.epa.gov
From the main menu, choose "EPA Offices and Regions."
Next, choose "Office of Solid Waste and Emergency Response (OSWER)."
Finally, choose "Office of Solid Waste."

Through FTP

Go to: ftp.epa.gov
Login: anonymous
Password: Your Internet Address
Files are located in /pub. All OSW files are in directories beginning with "OSW."

Through Telnet

Go to: gopher.epa.gov
Choose the EPA Public Access Gopher
From the main (Gopher) menu, choose "EPA Offices and Regions."
Next, choose "Office of Solid Waste and Emergency Response (OSWER)."
Finally, choose "Office of Solid Waste."

Through Dial-Up Access

Dial 919–558–0335.
Choose EPA Public Access Gopher
From the main (Gopher) menu, choose "EPA Offices and Regions."
Next choose "Office of Solid Waste and Emergency Response (OSWER)."
Then choose "Office of Solid Waste."

Dated: December 6, 1994.

Loretta Marzetti,

Acting Director, Office of Solid Waste.

[FR Doc. 94–30738 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5121–6]

Poplar Drive Drum Dump Site Notice of Proposed Settlement

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9622(h)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Poplar Drive Drum Dump Site, Elizabeth City, Pasquotank County, North Carolina, with the United States Coast Guard. This proposed settlement reconciles all outstanding costs for this Site. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed Cost Recovery Agreement should such comments disclose facts or considerations which indicate the proposed Cost Recovery Agreement is inappropriate, improper, or inadequate. Copies of the proposed Cost Recovery Agreement are available from: Ms. Carolyn McCall, U.S. EPA, Region IV, Waste Management Division, Waste Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above within thirty days from the date of publication.

Dated: November 23, 1994.

Richard D. Green,

Deputy Director, Waste Management Division.

[FR Doc. 94-30741 Filed 12-31-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418-0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0616.

Title: FCC Cable Services Bureau (Competition Division) Informational Survey in Connection with Annual Report to Congress on the Status of Competition in the Delivery of Video Programming: Overbuilds, Direct and Effective Competition and Ownership of Competing Technologies.

Action: Revision of a currently approved collection.

Respondents: State or local governments and businesses or other for-profit.

Frequency of Response: Annual reporting requirement.

Estimated Annual Burden: 150 responses, 1.5 hours average burden per response, 225 hours total annual burden.

Needs and Uses: Section 628(g) of the Communications Act of 1934, as amended, requires the Federal Communications Commission to report to Congress on the status of competition in the market for the delivery of video programming. In furtherance of the Commission's ongoing statutory obligation to monitor competition, the Competition Division now wishes to revise the previously approved collection under OMB control number 3060-0616, so that it may carry out further work and research, of a more comprehensive, detailed and sophisticated nature, in connection with overbuilt and directly competitive cable markets. An "overbuild" situation is where true, direct competition exists in a local cable market—i.e., where consumers have a choice of two cable operators from whom they can purchase services. In the overwhelming majority of the cable industry, consumers do not have such a choice, because, for various reasons, local cable franchises have historically been awarded to operators on an exclusive basis and have therefore, been monopolistic in nature. Overbuilt markets represent a very small portion of the industry. FCC staff now wishes to gather further and more detailed information on forty to fifty overbuilt markets, contacting two or three information sources in each market, for a total of 80 to 150 respondents. From the assembled data collected pursuant to the revised collection, the staff hopes to prepare an overbuild "census" - an accurate and comprehensive listing of basic data on as many overbuild situations as possible.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-30705 Filed 12-13-94; 8:45 am]

BILLING CODE 6712-01-F

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353 for the Period Beginning April 1, 1994, Ending September 30, 1994; Summary Report

Reimbursement/In-kind payments in excess of $250:

Total Number of Sponsored Events: 36

Total Number of Sponsoring Organizations: 35

Total Number of Different Commissioners/Employees Attending: 58

Total Amount of Reimbursement Received:

	Check	In-kind
In excess of $250	$65,912.39	$15,439.91
Under $250 (detail not included)	522.70	.....
Total	66,435.09	15,439.91

1. *Agency:* Federal Communications Commission
2. *Employee:* John A. Chudovan
   Government position: Chief, Data Services Branch, Private Radio Bureau
3. *Event:* Meeting of the American National Standards Institute—ANSI
4. *Sponsor of Event:* American Petroleum Institute—API
5. *Sponsor Address:* Keller & Heckman Law Offices, American Petroleum Institute, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001
6. *Location of Event:* Scottsdale, Arizona
7. *Employee's Role:* Represent FCC at meeting for Transaction Set #195
8. *Dates of Event:* 12/9/93
9. *Travel Dates:* 12/8-9/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$448.00	.....
2. Hotel room	72.00	.....
3. Meals	59.50	.....
4. Parking and telephone	12.80	.....
5. Car rental and mileage	54.18	.....
Total	$646.48	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Judith A. Dunlap
   Government position: Chief, System Analysis Section, Private Radio Bureau
3. *Event:* Meeting of the American National Standards Institute—ANSI
4. *Sponsor of Event:* American Petroleum Institute—API
5. *Sponsor Address:* Keller & Heckman Law Offices, American Petroleum Institute, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001
6. *Location of Event:* Scottsdale, Arizona
7. *Employee's Role:* Represent FCC at meeting for Transaction Set #195
8. *Dates of Event:* 12/9/93
9. *Travel Dates:* 12/8-12/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$448.00	.....
2. Hotel room	72.00	.....
3. Meals	59.50	.....
4. Telephone and mileage	13.13	.....
Total	$592.63	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Linda B. Dubroof
   Government position: General Attorney, Common Carrier Bureau

3. *Event:* Meeting on Telecommunications Relay Services
4. *Sponsor of Event:* Bellcore
5. *Sponsor Address:* 2101 L Street, N.W., Suite 600, Washington, D.C. 20037
6. *Location of Event:* Atlanta, Georgia
7. *Employee's Role:* Speaker
8. *Dates of Event:* 10/27/93
9. *Travel Dates:* 10/26–27/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$260.00	.....
2. Hotel room	96.05	.....
3. Meals	66.50	.....
4. Taxi	58.00	.....
Total	480.55	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James R. Coltharp
Government position: Special Assistant to Commissioner, Andrew C. Barrett
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/1–3/93
9. *Travel Dates:* 12/1–4/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$381.00	.....
2. Hotel room	.....	$298.32
3. Meals	104.50	.....
4. Taxi[1]	.....	11.00
5. Telephone	11.00	.....
Total	496.50	309.32
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Maureen O'Connell
Government position: Attorney Advisor for Commissioner, James H. Quello
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/1–3/93
9. *Travel Dates:* 12/1–3/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$357.00	.....
2. Hotel room	.....	$198.88
3. Meals	64.50	40.00
4. Taxi	19.00	.....
5. Telephone	.....	23.00
Total	440.50	261.88
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Ronald Parver
Government position: Chief, Cable Television Branch, Mass Media Bureau
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/1–3/93
9. *Travel Dates:* 11/30–12/3/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$440.00	.....
2. Hotel room	$298.32	.....
3. Meals	142.50	.....
4. Taxi and telephone	60.56	.....
Total	941.38	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Alan R. Stillwell
Government position: Industry Economist, Office of Engineering and Technology
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/1–3/93
9. *Travel Dates:* 12/1–5/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$370.00	.....
2. Hotel room	198.88	.....
3. Meals	152.00	.....
4. Parking and mileage	14.50	.....
5. Taxi and telephone	5.60	.....
Total	740.98	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* John P. Wong
Government position: Assistant Chief, Cable Television Branch, Mass Media Bureau
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/1–3/93
9. *Travel Dates:* 11/30–12/4/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$437.00	.....
2. Hotel room	397.76	.....
3. Meals	180.50	.....
4. Parking and mileage	44.00	
5. Official luggage	4.00	.....
Total	1,063.26	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* John P. Wong
Government position: Assistant Chief, Cable Television Branch, Mass Media Bureau
3. *Event:* Western Cable Show
4. *Sponsor of Event:* California Cable Television Association—CCTVA
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist
8. *Dates of Event:* 12/01–03/93
9. *Travel Dates:* 11/30–12/04/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$437.00	.....
2. Hotel room	397.76	.....
3. Meals	180.50	.....
4. Parking and mileage	44.00	.....
5. Official luggage	4.00	.....
Total	1,063.26	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Diane J. Cornell
   Government position: Chief, International Policy Branch, Common Carrier Bureau
3. *Event:* Miami Conference on the Caribbean
4. *Sponsor of Event:* Caribbean Latin American Action Association—CLAA
5. *Sponsor Address:* 828 N Street, N.W., Suite 310, Washington, D.C. 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Speaker
8. *Dates of Event:* 11/28–12/2/93
9. *Travel Dates:* 11/29–30/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$309.00	.....
2. Hotel room	82.00	.....
3. Meals	.....	$10.65
4. Taxi and telephone	.....	.....
Total	391.00	10.65
Non-Fed source: Same as no. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Gerald P. Vaughan
   Government position: Deputy Bureau Chief, Common Carrier Bureau
3. *Event:* 1993 Frederick and Warinner, Annual Seminar
4. *Sponsor of Event:* Frederick and Warinner
5. *Sponsor Address:* 8400 West 110th Street, Overland, KS 66210
6. *Location of Event:* Kansas City, Missouri
7. *Employee's Role:* Make a Presentation at the seminar
8. *Dates of Event:* 12/2–3/93
9. *Travel Dates:* 12/1–2/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$461.00	
2. Hotel room	.....	$101.00
3. Meals	.....	32.50
Total	461.00	133.50
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Brian F. Fontes
   Government position: Chief of Staff to Commissioner James H. Quello
3. *Event:* ITA's 1993 Annual Meetings
4. *Sponsor of Event:* Industrial Telecommunciations Association—ITA
5. *Sponsor Address:* 1110 North Glebe Road, Suite 500, Arlington, VA 22201
6. *Location of Event:* La Quinta, California
7. *Employee's Role:* Speaker
8. *Dates of Event:* 11/3–6/93
9. *Travel Dates:* 11/3–7/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
Roundtrip airline ticket	$592.00	.....
2. Hotel room	281.96	.....
3. Meals	161.50	.....
4. Parking and mileage	56.56	.....
Total	1,092.02	
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communication Commission
2. *Employee:* William H. Grigsby
   Government position: Engineer in Charge for FCC San Diego Office
3. *Event:* ITA's 1993 Annual Meetings
4. *Sponsor of Event:* Industrial Telecommunications Association—ITA
5. *Sponsor Address:* 1110 North Glebe Road, Suite 500, Arlington, VA 22201
6. *Location of Event:* La Quinta, California
7. *Employee's Role:* Represent FCC FOB, San Francisco region
8. *Dates of Event:* 11/4–6/93
9. *Travel Dates:* 11/4–5/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	.....	.....
2. Hotel room	$70.49	.....
3. Meals	57.00	.....
4. Parking and mileage	.....	.....
Total	127.49	.....
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communication Commission
2. *Employee:* Ralph A. Haller
   Government position: Chief, Private Radio Bureau
3. *Event:* ITA's 1993 Annual Meetings
4. *Sponsor of Event:* Industrial Telecommunications Association—ITA
5. *Sponsor Address:* 1110 North Glebe Road, Suite 500, Arlington, VA 22201
6. *Location of Event:* La Quinta, California
7. *Employee's Role:* Speaker
8. *Dates of Event:* 11/3–6/93
9. *Travel Dates:* 11/3–7/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$437.00	.....
2. Hotel room	$140.98	.....
3. Meals	106.00	.....
4. Parking and mileage	39.90	.....
5. Gas and car rental	108.09	.....
Total	831.97	.....
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Mary Beth Richards
   Government position: Chief, Enforcement Division, Field Operations Bureau
3. *Event:* ITA's 1993 Annual Meetings
4. *Sponsor of Event:* Industrial Telecommunications Association—ITA
5. *Sponsor Address:* 1110 North Glebe Road, Suite 500, Arlington, VA 22201
6. *Location of Event:* La Quinta, California
7. *Employee's Role:* Speaker
8. *Dates of Event:* 11/3–6/93
9. *Travel Dates:* 11/4–7/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$665.00	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
2. Hotel room	140.98	.....
3. Meals	104.50	.....
4. Taxi and shuttle service	87.00	.....
Total	997.48	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Melanie A. Godschall
Government Position: Attorney Advisor, Mass Media Bureau
3. *Event:* Annual Convention of NBA
4. *Sponsor of Event:* Nevada Broadcasters Associaton—NBA
5. *Sponsor Address:* Hogan & Hatson, NBA, Columbia Square, 555 13th Street, N.W., Washington, D.C. 20004–1109
6. *Location of Event:* Lake Tahoe, Nevada
7. *Employee's Role:* Speaker
8. *Dates of Event:* 10/16–18/93
9. *Travel Dates:* 10/16–18/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$420.00	.....
2. Hotel room	104.00	.....
3. Meals	90.00	.....
4. Parking and mileage	131.83	.....
Total	745.83	.....
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* James J. Brown
Government position: Assistant Chief, Video Services Division, Mass Media Bureau
3. *Event:* Annual Conference
4. *Sponsor of Event:* NBACA—National Broadcast Association for Community Affairs
5. *Sponsor Address:* 4726 Park Road, Suite A, Charlotte, NC 28209
6. *Location of Event:* Chicago, Illinois
7. *Employee's Role:* Speaker
8. *Dates of Event: 10/7–9/93*
9. *Travel Dates: 10/7–9/93*
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$322.00	.....
2. Hotel room	103.41	.....
3. Meals	57.00	.....
4. Parking and mileage	28.00	.....
5. Shuttle service	16.25	.....
Total	526.66	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Lauren J. Belvin
Government position: Associate General Counsel, Office of General Counsel
3. *Event:* Eleventh Annual Private Cable Show
4. *Sponsor of Event:* National Satellite Publishing and Private Cable plus Wireless Cable
5. *Sponsor Address:* 1909 Avenue G, Rosenberg, TX 77471–1489
6. *Location of Event:* Reno, Nevada
7. *Employee's Role:* Speaker
8. *Dates of Event: 10/28/93*
9. *Travel Dates: 10/27–29/93*
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$516.00	.....
2. Hotel room	.....	$178.00
3. Meals	.....	.....
4. Parking and taxi	.....	.....
Total	516.00	178.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Barbara A. Kreisman
Government Position: Chief, Video Services Division, Mass Media Bureau
3. *Event:* TAB's Annual Convention
4. *Sponsor of Event:* TAB—Texas Association of Broadcasters
5. *Sponsor Address:* Fisher, Wayland, Cooper and Leader Law Offices, 1255 23rd Street, N.W., Suite 800, Washington, D.C. 20037–1170
6. *Location of Event:* Fort Worth, Texas
7. *Employee's Role:* Panelist
8. *Dates of Event:* 10/22/93
9. *Travel Dates:* 10/22/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$403.00	.....
2. Hotel room	.00	.....
3. Meals	28.50	.....
4. Taxi	23.75	.....
Total	555.25	
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Thomas P. Stanley
Government Position: Chief, Engineer, Office of Engineering and Technology
3. *Event:* PCS Conference
4. *Sponsor of Event:* TCS—Teknekron Communications Systems
5. *Sponsor Address:* 2121 Allston Way, Berkely, CA 94704–1301
6. *Location of Event:* San Francisco, California
7. *Employee's Role:* Speaker
8. *Dates of Event:* 12/8–9/93
9. *Travel Dates:* 12/7–9/93
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip airline ticket	$537.00	.....
2. Hotel room	166.88	$166.88
3. Meals	96.50	8.00
4. Taxi and telephone	60.25	.....
Total	860.63	174.88
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Gerald P. Vaughan
Goverment Position: Deputy Chief, Operations, Common Carrier Bureau
3. *Event:* "PCS" Conference
4. *Sponsor of Event:* AIC Conferences
5. *Sponsor Address:* 50 Broad Street, 19th Floor, New York, NY 10004
6. *Location of Event:* New York, New York
7. *Employee's Role:* Speaker
8. *Dates of Event:* 2/13–14/94
9. *Travel Dates:* 2/13–15/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	.....	$92.00
2. Hotel room	.....	338.00
3. Meals	$104.50	.....
4. Ground transportation	19.00	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
Total	123.50	430.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Kent D. Nakamura
Government Position: Attorney Advisor, Private Radio Bureau
3. *Event:* "PCS and Local Exchange Services" Conference
4. *Sponsor of Event:* Alexander Resources
5. *Sponsor Address:* 5222 E. Via Buena Vista, Scottsdale, AZ 85243
6. *Location of Event:* Scottsdale, Arizona
7. *Employee's Role:* Featured Speaker
8. *Dates of Event:* 3/24–25/94
9. *Travel Dates:* 3/23–27/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$383.00	.....
2. Hotel room	.....	$446.52
3. Meals	110.50	.....
4. Ground transportation	87.00	.....
5. Fax	10.00	.....
Total	590.50	446.52
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James D. Schlichting
Government Position: Chief, Plans & Program Planning Division, Common Carrier Bureau
3. *Event:* Telecommunications Conference
4. *Sponsor of Event:* Columbia Resource Group
5 *Sponsor Address:* 101 Stewart Street, Suite 830, Seattle, WA 98101
6. *Location of Event:* Tulsa, Oklahoma
7. *Employee's Role:* Panel Speaker
8. *Dates of Event:* 02/25/94
9. *Travel Dates:* 02/24–25/94
10.

Type and amount of payment	Nature of benefit	
	Check	In kind
1 Roundtrip transportation	$324.00	.....
2. Hotel room	.....	$66.38
3. Meals	.....	19.70
4. Ground transportation	32.00	.....
5. Telephone	.....	1.95
Total	356.00	88.03
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Andrew C. Barrett
Government Position: Commissioner
3. *Event:* Telecommunications Meeting
4. *Sponsor of Event:* Cosmopolitan Chamber of Commerce
5. *Sponsor Address:* 1326 South Michigan Avenue, Chicago, IL 60605
6. *Location of Event:* Chicago, Illinois
7 *Employee's Role:* Keynote Speaker
8. *Dates of Event:* 01/27/94
9. *Travel Dates:* 01/26–28/94
10.

Type and amount of payment	Nature of benefit	
	Check	In kind
1 Roundtrip transportation	$139.09	.....
2. Hotel room	202.00	.....
3. Meals	104.50	.....
4 Ground transportation	84.00	
Total	529.59	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Byron F. Merchant
Government Position: Senior Legal Advisor to Commissioner Andrew C. Barrett
3. *Event:* Annual Conference
4. *Sponsor of Event:* CCTA—Caribbean Cable TV Association
5. *Sponsor Address:* One Beltjen Place, St. Thomas, VI 00820
6. *Location of Event:* San Juan, Puerto Rico
7 *Employee's Role:* Panelist at conference
8. *Dates of Event:* 01/13–14/94
9. *Travel Dates:* 01/12–15/94
10.

Type and amount of payment	Nature of benefit	
	Check	In kind
1 Roundtrip transportation	$505.00	.....
2. Hotel room	254.25	.....
3. Meals	285.00	.....
4. Ground transportation	46.00	.....
5. Telephone	8.00	.....
Total.	1,089.25	
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* John Cimko, Jr.
Government position: Chief, Mobile Services Division, Common Carrier Bureau
3. *Event:* Mobile World Conference and Exposition
4. *Sponsor of Event:* DCI—Digital Consulting Inc.
5. *Sponsor Address:* 204 Andover Street, Andover, MA 01810
6. *Location of Event:* Dallas, Texas
7. *Employee's Role:* Keynote Presentation
8. *Dates of Event:* 02/15–17/94
9. *Travel Dates:* 02/15–16/94
10.

Type and amount of payment	Nature of benefit	
	Check	In kind
1. Roundtrip transportation	$467.00	.....
2. Hotel room	.....	$110.00
3. Meals	68.00	.....
4. Ground transportation	80.50	.....
5. Telephone	1.50	.....
Total.	617.00	110.00
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Richard B. Engelman
Government Position: Chief, Technical Standards Branch, Office of Engineering and Technology
3. *Event:* 1994 Winter International Consumer Electronics Show CES
4. *Sponsor of Event:* EIA—Electronic Industries Association
5. *Sponsor Address:* 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006–1813
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Participation at CES
8. *Dates of Event:* 01/07–09/94
9. *Travel Dates:* 01/06–11/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	.....	$373.00
2. Hotel room	.....	450.36
3. Meals	$11.35	150.00
4. Ground transportation	78.00	10.00
Total	89.35	983.36
Non-Fed source: Same as No. 4 Association		

1. *Agency:* Federal Communications Commission
2. *Employee:* William Hassinger
Government Position: Chief, Engineering Mass Media Bureau
3. *Event:* 1994 Winter International Consumer Electronics Show CES
4. *Sponsor of Event:* EIA—Electronic Industries Association
5. *Sponsor Address.* 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006–1813
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Participation at CES
8. *Dates of Event:* 01/07–09/94

9. *Travel Dates:* 01/07–09/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$399.00	.....
2. Hotel room	208.00	.....
3. Meals	116.35	.....
4. Ground transportation	18.00	.....
5. Telephone	9.18	.....
Total	750.53	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Richard M. Smith
   Government Position: Chief, Field Operations Bureau
3. *Event:* 1994 Winter International Consumer Electronics Show, CES
4. *Sponsor of Event:* EIA—Electronic Industries Association
5. *Sponsor Address:* 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006–1813
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Participation at CES
8. *Dates of Event:* 1/7–9/94
9. *Travel Dates:* 1/7–9/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$291.00	.....
2. Hotel room	300.24	.....
3. Meals	104.50	.....
4. Ground transportation	43.56	.....
5. Telephone	20.16	.....
Total	759.46	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Thomas P. Stanley
   Government Position: Chief Engineer Office of Engineering and Technology
3 *Event:* 1994 Winter International Consumer Electronics Show, CES
4. *Sponsor of Event:* EIA—Electronic Industries Association
5. *Sponsor Address:* 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006–1813
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Participation at CES
8. *Dates of Event:* 1/7–9/94
9 *Travel Dates:* 1/6–9/94
10

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$398.00	.....
2. Hotel room	450.36	.....
3. Meals	142.50	.....
4. Ground transportation	42.00	.....
5. Telephone	2.00	.....
Total	1,034.86	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Alan R. Stillwell
   Government Position: Economic Advisor, Office of Engineering and Technology
3. *Event:* 1994 Winter International Consumer Electronics Show, CES
4. *Sponsor of Event:* EIA—Electronic Industries Association
5. *Sponsor Address:* 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006–1813
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Participation at CES
8. *Dates of Event:* 1/7–9/94
9. *Travel Dates:* 1/6–1/94
10

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$316.00	.....
2. Hotel room	363.96	.....
3. Meals	152.00	.....
4. Ground transportation	15.40	.....
5. Telephone	6.00	.....
Total	853.36	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Brian E. Fontes
   Government Position: Senior Advisory to Commissioner James H. Quello
3. *Event:* Seminar on Personal Communications Services
4. *Sponsor of Event:* ENTEL–CHILE
5. *Sponsor Address:* Casilla 4254, Fono 0902121, Santiago, Chile
6. *Location of Event:* Santiago, Chile
7. *Employee's Role:* Attendance at Seminar
8. *Dates of Event:* 2/28–3/1/94
9. *Travel Dates:* 2/25–3/1/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	.....	$3,420.00
2. Hotel room	.....	375.00
3. Meals	.....	200.00
4. Ground transportation	.....	.....
Total	.....	3,995.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Edward Jacobs
   Government Position: Deputy Chief, Rules Branch, Private Radio Bureau
3. *Event:* Digital Mobile Networks '94
4. *Sponsor of Event:* IIR—Institute for International Research
5. *Sponsor Address:* 708 Third Avenue, New York, NY 10017
6. *Location of Event:* Phoenix, Arizona
7. *Employees' Role:* Speaker
8. *Dates of Event:* 03/21–22/94
9. *Travel Dates:* 03/20–22/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$383.00	.....
2. Hotel room	.00	$390.00
3. Meals	69.50	.....
4. Ground transportation	72.50	.....
Total	525.00	390.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Myron C. Peck
   Government Position: Deputy Chief, Legal Branch, Common Carrier Bureau
3. *Event:* Digital Mobile Networks '94
4. *Sponsor of Event:* IIR—Institute for International Research
5. *Sponsor Address:* 708 Third Avenue, New York, NY 10017
6. *Location of Event:* Phoenix, Arizona
7. *Employees' Role:* Speaker
8. *Dates of Event:* 03/21–22/94
9. *Travel Dates:* 03/20–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$383.00	.....
2. Hotel room	.00	$585.00
3. Meals	127.50	.....
4. Ground transportation	75.50	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
Total	586.00	585.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Fred L. Thomas
Government Position: Electronics Engineer, Office of Engineering & Technology
3. *Event:* Digital Mobile Networks '94
4. *Sponsor of Event:* IIR—Institute for International Research
5. *Sponsor Address:* 708 Third Avenue, New York, NY 10017
6 *Location of Event:* Phoenix, Arizona
7 *Employee's Role:* Speaker
8. *Dates of Event:* 03/21–22/94
9. *Travel Dates:* 03/2–22/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$383.00	.....
2. Hotel room	.00	$398.00
3. Meals	79.00	7.00
4. Ground transportation	65.50	.....
Total	527.50	405.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Andrew C. Barrett
Government Position: Commissioner
3 *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5 *Sponsor Address:* 1320 Nineteenth Street, NW, Suite 300, Washington, D.C. 20036
6 *Loeation of Event:* Miami, Florida
7 *Employee's Role:* Attend Convention
8. *Dates of Event:* 01/23–27/94
9. *Travel Dates:* 01/21–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$322.91	.....
2 Hotel room	545.00	.....
3. Meals	161.50	.....
4. Mail	126.48	.....
5. Ground transportation	.....	.....
Total	1,155.89	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Brian F. Fontes
Government Position: Senior Advisory to Commissioner James H. Quello
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, N.W., Suite 300, Washington, D.C. 20036
6. *Location* of Event: Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/21–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$356.00	.....
2. Hotel room	212.64	.....
3. Meals	110.50	.....
4. Ground transportation	65.52	.....
Total	744.66	.. ..
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Reed E. Hundt
Government Position: Chairman
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, N.W., Suite, 300, Washington, D.C. 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Speaker
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	.....
2. Hotel room	.00	$80.88
3. Meals	51.00	.....
4. Taxie and telephone	127.31	.....
Total	495.31	80.88
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communication Commission
2. *Employee:* Charles W. Kelley
Government Position: Chief, Enforcement Division, Mass Media Bureau
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1340 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	..
2. Hotel room	126.00	...
3. Meals	93.50	....
4. Ground transportation	58.66	.....
Total	595.16	
Non-Fed source. Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* William E. Kennard
Government Position. General Counsel
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event.* Independent Television Association
5. *Sponsor Address.* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role.* Attend Convention
8. *Dates of Event* 1/23–27–94
9. *Travel Dates.* 1/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$317.00	.....
2. Hotel room	70.88	.....
3. Meals	59.50	.....
4. Ground transportation	31.00	.....
5. Telephone	60.32	.....
Total	538.70	.....
Non-Fed source. Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Barbara A. Kreisman
Government Position: Chief, Video Services Division, Mass Media Bureau
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event.* Independent Television Association
5. *Sponsor Address.* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event.* Miami, Florida
7. *Employee's Role.* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates.* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	.....
2. Hotel room	141.76	.....
3. Meals	93.50	.....
4. Ground transportation	49.75	.....
Total	602.01	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Blair S. Levin
   Government Position: Chief, of Staff for the Chairman
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$320.00	.....
2. Hotel room	.....	$70.88
3. Meals	51.00	.....
4. Ground transportation	.....	.....
Total	371.00	70.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Maureen O'Connell
   Government Position: Legal Adviser to Commissioner James H. Quello
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NE., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/23–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	
2. Hotel room	141.76	
3. Meals	85.00	
4. Ground transportation	46.00	
5. Telephone calls	89.65	
Total	679.41	
Non-Fed source: Same as No. 4		

1. *Agency: Federal Communications Commission*
2. *Employee:* Robert M. Pepper
   Government Position: Chief, Office of Plans and Policy
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC. 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	
2. Hotel room	141.76	
3. Meals	85.00	
4. Ground transportation	30.00	
5. Telephone calls	3.20	
Total	576.96	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James H. Quello
   Government Position: Commissioner
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–27/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	.....
2. Hotel room	354.40	.....
3. Meals	178.50	.....
4. Ground transportation	34.00	.....
5. Telephone	164.14	.....
Total	1,048.04	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Lisa B. Smith
   Government Position: Legal Advisor to Commissioner Andrew C. Barrett
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washingotn, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/23–28/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	$442.31
2. Hotel room	.00	.....
3. Meals	195.50	.....
4. Ground transportation	87.00	.....
5. Telephone	97.80	.....
Total	697.30	442.31
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Merrill Spiegel
   Government Position: Special Assistant to Chairman, Reed E. Hundt
3. *Event:* INTV/NATPE Convention
4. *Sponsor of Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	.....
2. Hotel room	141.76	.....
3. Meals	76.50	.....
4. Ground transportation	34.87	.....
Total	570.13	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Thomas P. Stanley
   Government Position: Chief Engineer Office of Engineering and Technology
3. *Event:* INTV/NATPE Convention

4. *Sponsor of Event:* Independent Television Association
5 *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036
6. *Location of Event:* Miami, Florida
7 *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$317.00	.....
2. Hotel room	141.76	.....
3. Meals	85.00	.....
4. Ground transportation	28.00	.....
Total	571.76	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Roy J. Stewart
Government Position Chief, Mass Media Bureau
3 *Event:* INTV/NATPE Convention
4. *Sponsor Event:* Independent Television Association
5 *Sponsor Address:* 1320 Nineteenth Street, N.W., Suite 300, Washington, D.C. 20036
6. *Location of Event:* Miami, Florida
7 *Employee's Role:* Attend Convention
8. *Dates of Event:* 1/23–27/94
9 *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$317.00	.....
2. Hotel room	141.76	.....
3. Meals	93.50	.....
4. Ground transportation	37.50	.....
5. Telephone	6.46	.....
Total	596.22	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Alexandra M. Wilson
Government Position: Cief, Cable Services Division
3 *Event:* INTV/NATPE Convention
4. *Sponsor Event:* Independent Television Association
5. *Sponsor Address:* 1320 Nineteenth Street, N.W., Suite 300, Washington, D.C. 20036
6. *Location of Event:* Miami, Florida
7. *Employee's Role:* Attend Convention
8 *Dates of Event:* 1/23–27/94
9. *Travel Dates:* 1/22–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transporation	$317.00	.....
2. Hotel room	141.76	.....
3. Meals	93.50	.....
4 Telephone	63.31	.....
Total	615.57	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Charles W. Kelley
Government Position: Chief, Enforcement Division, Mass Media Bureau
3 *Event:* LAB's Annual Convention
4 *Sponsor of Event:* LAB—Louisiana Association of Broadcasters
5 *Sponsor Address:* 8762 Quarters Lake Road, Baton Rouge, LA 70809
6. *Location of Event:* Baton Rouge, Louisiana
7 *Employee's Role:* Speaker
8. *Dates of Event:* 2/3–5/94
9. *Travel Dates:* 2/3–4/94

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$240.00	.....
2. Hotel room	53.00	.....
3. Meals	52.50	.....
4. Ground transportation	17.00	.....
Total	362.50	
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* William Hassinger
Government Position: Assistant Chief, Engineering, Mass Media Bureau
3. *Event:* Great Lakes Broadcasting Conference and Expo
4. *Sponsor of Event:* MAB—Michigan Association of Broadcasters
5. *Sponsor Address:* 819 Washington Avenue, Lansing, MI 48906
6. *Location of Event:* Lansing, Michigan
7 *Employee's Role:* Participate on a Panel Discussion
8. *Dates of Event:* 2/22–23/94
9. *Travel Dates:* 2/21–22/94

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$522.00	.....
2. Hotel room	54.00	.....
3. Meals	39.00	.....
4. Ground transportation	23.50	.....
Total	638.50	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Robert L. Baker
Government Position: Attorney Advisor, Mass Media Bureau
3. *Event:* Midwest Broadcasters Conference
4 *Sponsor of Event:* MBA—Minnesota Broadcasters Association
5. *Sponsor Address:* 3517 Raleigh Avenue, P.O. Box 16030, St. Louis, MN 55416
6. *Location of Event:* St. Louis, Minnesota
7 *Employee's Role:* Government Participant on the Panel
8. *Dates of Event:* 02/21–22/94
9. *Travel Dates:* 02/20–21/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation.	$426.00	.....
2. Hotel room	.....	$57.00
3. Meals	59.50	.....
4. Ground transportation	66.50	.....
Total	552.00	57.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Andrew C. Barrett
Government Position: Commissioner
3. *Event:* NAB 94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 03/20–24/94
9. *Travel Dates:* 03/19–22/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$314.00	.....
2. Hotel room	207.00	.....
3. Meals	142.50	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
4. Ground transportation telephone	75.00	
Total	738.50	
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Robert F. Cleveland
Government Position: Scientist, Office of Engineering & Technology
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/20–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$316.00	
2. Hotel room	207.00	
3. Meals	142.50	
4 Ground transportation telephone	52.50	
Total	718.00	
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Larry D. Eads
Government Position: Chief, Audio Services Division, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9 *Travel Dates:* 3/21–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$290.00	
2. Hotel room	207.00	
3. Meals	133.50	
4. Ground transportation telephone	96.00	
Total	726.00	
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Brian F. Fontes
Government Position: Senior Advisor to Commissioner James H. Quello
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/18–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$354.00	
2. Hotel room	207.00	
3. Meals	171.00	
4. Ground transportation	10.00	
Total	742.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Milton O. Gross
Government Position: Chief, Fairness/Political Programming Branch, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$314.00	
2. Hotel room	276.00	
3. Meals	171.00	
4. Ground transportation	117.00	
Total	878.00	
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* William C. Hassinger
Government Position: Chief, Engineering, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/21–23–94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$291.00	
2. Hotel room	138.24	
3. Meals	104.50	
4. Ground transportation	41.00	
5. Telephone	4.17	
Total	578.91	
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Charles W. Kelley
Government Position: Chief, Enforcement Division, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$292.00	
2. Hotel room	345.00	
3. Meals	209.00	
4. Ground transportation	49.00	
Total	895.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* William E. Kennard
Government Position: General Counsel
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters

5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$291.00	.....
2. Hotel room	276.00	.....
3. Meals	143.00	$28.00
4. Ground transportation	166.25	.....
5. Telephone	15.25	.....
Total	891.50	28.00
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Barbara A. Kreisman
Government Position: Chief, Video Services Division, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5 *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/20–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$316.00	.....
2. Hotel room	207.02	.....
3. Meals	123.50	.....
4 Ground transportation	83.75	.....
5. Telephone	15.28	.....
Total	745.55	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Blair S. Levin
Government Position: Chief of Staff for Chairman Reed E. Hundt
3. *Event:* NAB '94
4 *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$316.00	.....
2. Hotel room	276.00	.....
3. Meals	180.50	.....
4. Ground transportation	38.00	.....
5. Telephone	53.84	.....
Total	864.34	.....
Non-Fed source Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Byron F Marchant
Government Position: Senior Legal Advisor to Commissioner Andrew C. Barrett
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broacasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/20–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$316.00	.....
2. Hotel room	.....	$280.00
3. Meals	161.50	.....
4. Ground transportation	78.50	.....
5. Telephone	61.93	.....
Total	617.93	280.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Maureen O'Connell
Government Position: Legal Advisor to Commissioner James H. Quello
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/20–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$290.00	.....
2. Hotel room	207.00	.....
3. Meals	113.50	.....
4. Ground transportation	73.00	.....
5. Telephone	34.41	.....
Total	717.91	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Robert M. Pepper
Government Position: Chief, Office Plans and Policy
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/20–22/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$302.00	.....
2. Hotel Room	138.00	.....
3. Meals	76.00	.....
4. Ground transportation	44.50	.....
Total	560.50	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James H. Quello
Government Position: Commissioner
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$314.00	.....
2. Hotel room	.00	372.60
3. Meals	209.00	.....
4. Ground transportation	89.00	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
Total	612.00	372.60
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Richard M. Smith
Government Position: Chief, Field Operations Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$526.00	.....
2. Hotel room	276.00	.....
3. Meals	190.00	.....
4. Ground transportation	23.00	.....
5. Telephone & Fax	43.46	.....
Total	1058.46	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Lisa B. Smith
Government Position: Legal Advisor to Commissioner Andrew C. Barrett
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7 *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–23/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip Transportation	$316.00	.....
2. Hotel Room	276.00	.....
3. Meals	190.00	.....
4. Ground Transportation	58.00	.....
5. Telephone	49.38	.....
Total	889.38	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Merrill Spiegel
Government Position: Special Assistant to Chairman Reed E. Hundt
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$316.00	.....
2. Hotel room	276.00	.....
3. Meals	190.00	.....
4. Ground transportation	46.00	.....
5. Telephone	62.61	
Total	890.61	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee: Roy J. Stewart*
Government Position: Chief, Mass Media Bureau
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$291.00	.....
2. Hotel room	276.00	.....
3. Meals	171.00	.....
4. Ground transportation	55.00	.....
5. Telephone	7.22	
Total	800.22	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Alexandra M. Wilson
Government Position: Chief, Cable Services Division
3. *Event:* NAB '94
4. *Sponsor of Event:* NAB—National Association of Broadcasters
5. *Sponsor Address:* 1717 N Street, NW., Washington, DC 20036
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Attending the Convention
8. *Dates of Event:* 3/20–24/94
9. *Travel Dates:* 3/19–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$314.00	.....
2. Hotel room	345.00	.....
3. Meals	209.00	.....
4. Ground transportation	12.00	.....
5. Telephone	166.43	.....
Total	1,046.43	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Roy J. Stewart
Government Position: Chief, Mass Media Bureau
3. *Event:* OAB Winter Convention
4. *Sponsor of Event:* OAB—Oklahoma Association of Broadcasters
5. *Sponsor Address:* 6520 N. Western, Suite 104, Oklahoma City, OK 73116
6. *Location of Event:* Oklahoma City, Oklahoma
7. *Employee's Role:* Speaker on FCC Rules and Regs
8. *Dates of Event:* 2/4–5/94
9. *Travel Dates:* 2/3–4/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$403.00	.....
2. Hotel room	51.00	.....
3. Meals	45.50	.....
4. Ground transportation	39.25	.....
Total	538.75	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Jonathan D. Levy
Government Position: Industry Economist Office of Plans and Policy
3. *Event:* SBCA Trade Show
4. *Sponsor of Event:* SBCA—Satellite Broadcasting and Communications Association
5. *Sponsor Address:* 225 Reinekers Lane, Suite 500, Alexandra, VA 22314

6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Address Board of Directors Meeting
8. *Dates of Event:* 2/9–12/94
9. *Travel Dates:* 2/8–12/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$400.00	.....
2. Hotel room	288.15	.....
3. Meals	142.50	.....
4. Ground transportation	109.00	.....
Total	939.65	.....
Non-Fed source: Same as No. 4. Association		

1. *Agency:* Federal Communications Commission
2. *Employee:* Thomas P. Stanley
Government Position: Chief Engineer, Office of Engineering and Technology
3. *Event:* "PCS and Local Exchange Services" Conference
4. *Sponsor of Event:* Alexander Resources
5. *Sponsor Address:* 5222 E. Via Buena Vista, Scottsdale, AZ 85253
6. *Location of Event:* Scottsdale, Arizona
7. *Employee's Role:* Speaker
8. *Dates of Event:* 3/24/94
9. *Travel Dates:* 3/24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$168.00	.....
2. Hotel room	132.30	.....
3. Meals	.....	$50.00
4. Ground transportation	48.00	.....
Total	348.30	50.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Jonathan D. Levy
Government Position. Industry Economist, Office of Plans and Policy
3. *Event:* SkyFORUM Business Conference
4. *Sponsor of Event:* SBCA—Satellite Broadcasting and Communications Association
5. *Sponsor Address:* 225 Reinekers Lane, Suite 600, Alexandria, VA 22314
6. *Location of Event:* New York City, New York
7 *Employee's Role:* Speaker at Symposium
8. *Dates of Event:* 3/15/94
9. *Travel Dates:* 3/14–15/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$146.00	.....
2. Hotel room	142.00	.....
3. Meals	57.00	.....
4. Ground transportation	87.00	.....
Total	432.00	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* JoAnn Lucanik
Government Position: Attorney Advisor for Cable Services Division
3. *Event:* 34th Annual Trade Show and Convention
4. *Sponsor of Event:* Texas Cable TV Association
5. *Sponsor Address:* P.O. Box 13518, Austin, TX 78711
6. *Location of Event.* San Antonio, Texas
7. *Employee's Role:* Participation on a Panel Regs
8. *Dates of Event:* 2/23–25/94
9. *Travel Dates:* 2/23–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$353.00	.....
2. Hotel room	301.50	.....
3. Meals	109.00	.....
4. Ground transportation	118.00	.....
5. Telephone	2.00	.....
Total	883.50	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee.* Marion R. Gordon
Government Position. Attorney, Common Carrier Bureau
3. *Event.* TIA Part 68/CS03, NAFTA, Conformity Assessment Seminar
4. *Sponsor of Event* TIA—Telecommunications Industry Association
5. *Sponsor Address.* 2001 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20006–1813
6. *Location of Event.* Clearwater, Florida
7. *Employee's Role.* Speaker
8. *Dates of Event:* 3/2–4/94
9. *Travel Dates:* 3/1–4/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$326.00	.....
2. Hotel room	258.00	.....
3. Meals	108.00	.....
4. Ground transportation	50.00	.....
Total	742.00	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Byron F. Marchant
Government Position: Senior Advisor to Commissioner Andrew C. Barrett
3. *Event:* Spring Investment Conference
4. *Sponsor of Event:* Duff & Phelps Investment Research Company
5. *Sponsor Address:* 55 East Monroe Street, Chicago, IL 60603
6. *Location of Event:* Chicago, Illinois
7. *Employee's Role:* Speaker
8. *Dates of Event:* 4/28–29/94
9. *Travel Dates:* 4/28–5/1/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$149.00	.....
2. Hotel room	312.00	.....
3. Meals	152.00	.....
4. Parking, mileage and taxi	88.00	.....
5. Telephone	29.63	.....
6. Car rental	172.67	.....
Total	$903.30	.....
Non-Fed source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* William E. Kennard
Government Position: General Counsel
3. *Event:* FCBA 1994 Annual Seminar
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA
5. *Sponsor Address:* 1722 Eye Street, N.W., Suite 300, Washington, D C. 20006
6. *Location of Event:* Farmington, Pennsylvania
7 *Employee's Role:* Panelist
8. *Dates of Event:* 5/13–15/94
9. *Travel Dates:* 5/13–15/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$95.00	.....

Nature of benefit	Type and amount of payment	
	Check	In kind
2. Hotel room	.....	$350.00
3. Meals	.....	78.00
4. Parking, mileage and taxi	.....	.....
Total	95.00	428.00
Non-Fed source: Same as No. 4		

1. *Agency*: Federal Communications Commission
2. *Employee*: Byron F. Marchant
   Government Position: Senior Advisor to Commissioner Andrew C. Barrett
3. Event: FCBA 1994 Annual Seminar
4. *Sponsor of Event*: Federal Communications Bar Association—FCBA
5. *Sponsor Address*: 1722 Eye Street, N.W., Suite 300, Washington, D.C. 20006
6. *Location of Event*: Farmington, Pennsylvania
7. *Employee's Role*: Panelist
8. *Dates of Event*: 5/13–15/94
9. Travel Dates: 5/13–15/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$90.00	.....
2. Hotel room	.....	$350.00
3. Meals	.....	60.00
4. Parking, mileage and taxi	.....	.....
5. Telephone	1.60	.....
Total	91.60	410.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Maureen O'Connell
   Government Position: Attorney Advisor to Commissioner James H. Quello
3. *Event:* FCBA 1994 Annual Seminar
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA
5. *Sponsor Address:* 1722 Eye Street, NW., Suite 300, Washington, DC 20006
6. *Location of Event:* Farmington, Pennsylvania
7. *Employee's Role:* Panelist
8. *Dates of Event:* 5/13–15/94
9. *Travel Dates:* 5/13–14/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	.....	.....
2. Hotel room	.....	$185.50
3. Meals	.....	35.00
4. Parking, mileage and taxi	.....	.....
5. Car rental and gas	$94.51	.....
Total	94.51	220.50
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Merrill Spiegel
   Government Position: Attorney Advisor to Chairman Reed E. Hundt
3. *Event:* FCBA 1994 Annual Seminar
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA
5. *Sponsor Address:* 1722 Eye Street, NW., Suite 300, Washington, DC 20006
6. *Location of Event:* Farmington, Pennsylvania
7. *Employee's Role:* Panelist
8. *Dates of Event:* 5/13–15/94
9. *Travel Dates:* 5/13–14/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$90.00	.....
2. Hotel room	.....	$185.50
3. Meals	.....	50.00
4. Parking, mileage and taxi	.....	.....
5. Telephone	4.00	.....
Total	94.00	235.50
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Thomas P. Stanley
   Government Position: Chief Engineer, Office of Engineering and Technology
3. *Event:* KMB Conference
4. *Sponsor of Event:* KMB Associates Inc.
5. *Sponsor Address.* 437 3rd Avenue N., Tierra Verde, FL 33715
6. *Location of Event*: St. Petersburg, Florida
7. *Employee's Role:* Participate in Conference
8. *Dates of Event:* 5/1–3/94
9. *Travel Dates:* 5/1–3/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$326.00	.....
2. Hotel room	.....	$297.00
3. Meals	.....	189.00
4. Parking, mileage and taxi	42.00	.....
Total	368.00	486.00
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Mary Ellen Burns
   Government Position: Chief, Consumer Protection Division, Cable Services Bureau
3. *Event:* NCTA 43RD Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC. 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/23–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	.....
2. Hotel room	132.00	.....
3. Meals	93.50	.....
4. Parking, mileage and taxi	10.00	.....
Total	651.50	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* James R. Coltharp
   Government Position. Special Assistant to Commissioner Andrew C. Barrett
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event* National Cable Television Association—NCTA
5 *Sponsor Address.* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event* New Orleans, Louisiana
7 *Employee's Role:* Panelist
8. *Dates of Event:* 05/22–25/94
9. *Travel Dates:* 05/22–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	
2. Hotel room	264.00	
3. Meals	153.00	
4. Parking, mileage and taxi	48.60	
5. Telephone	21.50	
Total	$903.10	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Reed E. Hundt
   Government Position: Chairman
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 05/22–25/94
9. *Travel Dates:* 05/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	
2. Hotel room	66.00	
3. Meals	51.00	
4. Parking, mileage and taxi	11.00	
Total	$544.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Patrick Donovan
   Government Position: Deputy Chief, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Panelist
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	
2. Hotel room	264.00	
3 Meals	153.00	
4. Parking, mileage and taxi	20.00	
5. Telephone	4.75	
Total	857 75	
Non-Fed source: Same as No. 4		

1. *Agency* Federal Communications Commission
2. *Employee:* William H. Johnson
   Government Position: Deputy Bureau Chief, Mass Media Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7 *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10.

Nature of benefit	Type and Amount of Payment	
	Check	In kind
1 Roundtrip transportation	$416.00	
2. Hotel room	198.00	
3. Meals	119.00	
4. Parking, mileage and taxi	44.50	
Total	777 750	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Meredith J. Jones
   Government Position. Chief, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Panelist
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	401.00	
2. Hotel room	198.00	
3. Meals	119.00	
4. Parking, mileage and taxi	38.90	
5. Telephone	4.69	
Total	761.59	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Michael L. Katz
   Government Position: Chief Economist, Office of Plans & Policy
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/23–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$422.00	
2. Hotel room	132.00	
3. Meals	93.50	
4. Parking, mileage and taxi	21.00	
Total	668.50	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Byron F. Marchant
   Government Position: Senior Advisor, to Commissioner Andrew C. Barrett
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/23–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$416.00	.....
2. Hotel room	198.00	.....
3. Meals	110.50	.....
4. Parking, mileage and taxi	70.00	.....
5. Telephone	83.55	.....
Total	878.05	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* A. Richard Metzger
Government Position: Attorney, General Counsel
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/24–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	.....
2. Hotel room	59.66	.....
3. Meals	51.00	.....
4. Parking, mileage and taxi	.....	.....
5 Telephone	17.98	.....
Total	544.64	.....
Non-Fed source: Same as No. 4		

1 *Agency:* Federal Communications Commission
2. *Employee:* Maureen O'Connell
Government Position: Attorney Advisor to Commissioner James H. Quello
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$401.00	.....
2. Hotel room	198.00	.....
3. Meals	119.00	.....
4. Parking, mileage and taxi	75.00	.....
5. Telephone	41.14	.....
Total	834.14	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James W. Olson
Government Position: Chief, Competition Division, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event.* New Orleans, Louisiana
7 *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$370.00	.....
2. Hotel room	198.00	.....
3. Meals	127.50	.....
4. Parking, mileage and taxi	88.75	.....
5. Telephone and Faxes	68.42	.....
Total	852.67	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Ronald Parver
Government Position: Attorney Advisor, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1 Roundtrip transportation	$416.00	.....
2. Hotel room	264.00	.....
3. Meals	144.50	.....
4. Parking, mileage and taxi	36.00	.....
5. Telephone	35.86	.....
Total	896.36	.....
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* James H. Quello
Government Position. Commissioner
3. *Event.* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036
6. *Location of Event:* New Orleans, Louisiana
7 *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10.

Nature of benefit	Type and amount	
	Check	In kind
1 Roundtrip transportation	$416.00	.....
2. Hotel room	.....	$219.78
3. Meals	102.68	7.82
4. Parking, mileage & taxi	49.00	.....
Total	567.68	227.60
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Merrill S. Spiegel
Government Position Attorney Advisor to Chairman Reed E. Hundt
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address.* 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–25/94
10

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$416.00	
2. Hotel room	198.00	
3. Meals	110.50	
4. Parking, mileage & taxi	28.00	
5. Telephone	9.11	
Total	761.61	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Kathleen M. H. Wallman
   Government Position: Deputy Chief, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/22–26/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$416.00	
2. Hotel room	198.00	
3. Meals	119.00	
4. Parking, mileage & taxi	28.00	
5. Telephone	29.82	
Total	762.82	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Karen E. Watson
   Government Position: Chief, Office of Public Affairs
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$416.00	
2. Hotel room	66.00	
3. Meals	51.00	
4. Parking, mileage & taxi	25.00	
5. Telephone		
Total	558.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* John P. Wong
   Government Position: Electronics Engineer, Cable Services Bureau
3. *Event:* NCTA 43rd Annual Convention and Exposition
4. *Sponsor of Event:* National Cable Television Association—NCTA
5. *Sponsor Address:* 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Panelist
8. *Dates of Event:* 5/22–25/94
9. *Travel Dates:* 5/23–24/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation	$416.00	
2. Hotel room	264.00	
3. Meals	153.00	
4. Parking, mileage & taxi	54.00	
Total	887.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Daniel F. Grosh
   Government Position: Attorney, Common Carrier Bureau
3. *Event:* OECD Conference
4. *Sponsor of Event:* Organization for Economic Co-Operation and Development—OECD
5. *Sponsor Address:* 2, rue Andre-Pascal, 75775 Paris, Oedex 16, France
6. *Location of Event:* Paris, France
7. *Employee's Role:* Speaker
8. *Dates of Event:* 5/4–7/94
9. *Travel Dates:* 5/05–6/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation		
2. Hotel room	$125.44	
3. Meals	216.00	
4. Parking, mileage & taxi	11.56	
Total	353.00	
Non-Fed source: Same as No. 4		

1. *Agency:* Federal Communications Commission
2. *Employee:* Donna N. Lampert
   Government Position: Attorney, Common Carrier Bureau
3. *Event:* "2nd Universite d'Ete: Concurrence et Interconnexion"
4. *Sponsor of Event:* Universite De Paris I Pantheon—Sorbonne
5. *Sponsor Address:* Centre De Mathematiques, Economiques, 12, Place Du Pantheon—75231 Paris Cedex 05
6. *Location of Event:* Brest, France
7. *Employee's Role:* Speaker
8. *Dates of Event:* 6/27–30/94
9. *Travel Dates:* 6/25–30/94
10.

Nature of benefit	Type and amount of payment	
	Check	In kind
1. Roundtrip transportation		$3,252.00
2. Hotel room		60.00
3. Meals		237.50
Total		3,549.50
Non-Fed Source: Same as No. 4		

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–30446 Filed 12–13–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's

implementing regulations at 46 CFR Part 540, as amended:

Kloster Cruise Ltd. (d/b/a Norwegian Cruise Line), Two Alhambra Plaza, 9th Floor, 95 Merrick Way, Coral Gables, Florida 33134

Vessel: LEEWARD

Dated: December 8, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–30680 Filed 12–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 392
Name: Kersten Shipping Agency, Inc.
Address: 2700 Westchester Ave., Purchase, NY 10577
Date Revoked: November 15, 1994
Reason: Surrendered license voluntarily.

License Number: 2091
Name: Edward J. Esposito dba Edward J. Esposito & Co.
Address: 136 Williams St., 4th FL., New York, NY 10038
Date Revoked: November 23, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1032
Name: Wehrli Shipping Co., Inc.
Address: 234 Antoinette Court, Brick, NJ 08723
Date Revoked: November 25, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3435
Name: Franz Kroll, Inc.
Address: 467 North Oak Street, Inglewood, CA 90302
Date Revoked: December 1, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–30682 Filed 12–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

JDF International Transport, 2605 Dublin Road, Street, MD 21154, Janet D. Frank, Sole Proprietor

Hyun Sun Park-Kim, 11220 West Road, #126, Houston, TX 77065, Sole Proprietor

Thor Air Freight Corp., 147–05 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Michael M. Ono, President, Andrew M. Ono, Vice President, Nunzio Mastromarino, Secretary

Golden Globe Transport, Inc., 2460 South 161st Street, Seattle, WA 98158, Officers: Peter B. Gaan, President, Marcus A. Gaan, CEO

Atlantic Pacific Shipping, 3514 Yuma St., N.W., Washington, DC 20016, Dulce Breya McCauley, Sole Proprietor

Dated: December 8, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–30681 Filed 12–13–94; 8:45 am]

BILLING CODE 6730–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Performance-Based Contracting for Services

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting information on training courses or programs with regard to the development of performance-based statements of work and quality assurance surveillance plans.

BACKGROUND: A major contract reform initiative of OFPP is to reform the manner by which the government contracts for services by introducing performance-based contracting methods. Performance-based contracting methods include statements of work comprised of objective, measureable performance standards; quality assurance plans and incentives based on the statement of work criteria; and selection procedures which include publishing draft solicitations for comment.

To stimulate the government's conversion to performance-based service contracting, OFPP developed a governmentwide project which relies on voluntary pledges by individual agencies to convert specified contracts for services to performance-based contracting methods. Twenty-six agencies have pledged to convert 87 contracts, with an estimated value of $1.2 billion, to this method of contracting. The services covered by these contracts range from such basic requirements as janitorial and guard services to computer maintenance and systems engineering. They will be converted to performance-based contracting as the current contracts expire over the next 14 months.

COMMENTS: OFPP recognizes that development of performance-based statements of work and quality assurance plans will require extensive training of program and procurement personnel. As a first step, the agencies must be made aware of training opportunities. We request that government agencies and commercial vendors provide us information on any training courses or programs that are currently available on development of performance work statements and quality assurance plans. Please provide us with the following information: (1) The name of the government agency or commercial vendor offering the training, (2) the name of the course of program, (3) a general description of the course which can include an outline or syllabus, (4) the name of a point of contact, (5) the point of contact's telephone number, and (6) names and phone numbers of several references.

OFPP will review and consolidate this information and provide it to the specific agency points of contact for the 26 agencies who are participating in this pilot effort for their information and potential use.

DATES: Comments in response to this **Federal Register** notice should be received at OFPP by close of business December 28, 1994.

ADDRESSES: Comments should be submitted to the OFPP, New Executive Office Building, Room 9001, 725 17th Street, NW., Washington, DC 20503, Attention: Stanley Kaufman or Linda Mesaros.

FOR FURTHER INFORMATION CONTACT: Stanley Kaufman at 202–395–6810 or Linda Mesaros at 202–395–4821.

Steven Kelman,

Administrator.

[FR Doc. 94–30749 Filed 12–13–94; 8:45 am]

BILLING CODE 3110–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83–I and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before December 29, 1994.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (OMB 83–I), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Implementation of The Following Report

Report title: Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036a (version for financial institutions) and FR 3036c (version for brokers).

OMB Docket number: 7100–0275.

Frequency: One-time survey.

Reporters: The Foreign exchange turnover portion of the survey would include all financial institutions and brokers that are principals in the foreign exchange market in the United States. The derivatives portion of the survey would cover a small subset of this panel.

Annual reporting hours: 19,760.

Estimated average hours per response: Foreign exchange portion: 40 hours; derivatives portion: 140 hours.

Number of respondents: Financial firms: 204 respondents to foreign exchange portion, 70 respondents to derivatives portion; Brokers: 17 respondents to foreign exchange portion; 8 respondents to derivatives portion.

Small businesses are not affected.

General description of report: This information collection is voluntary and is authorized by law [12 U.S.C. 248(a), 353–359, and 3105(b)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: This survey of the foreign exchange and financial derivatives markets will be conducted in April 1995. The data collected from the survey will provide information about the size and structure of the global markets for foreign exchange and financial derivatives products. The survey will be conducted in coordination with other central banks, and aggregate results from each central bank's survey will be provided to the BIS for the production of global market statistics.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–30683 Filed 12–13–94; 8:45 am]

BILLING CODE 6210–01–P

Bank of Boston Corp.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-29894) published on page 62730 of the issue for Tuesday, December 6, 1994.

Under the Federal Reserve Bank of Boston heading, the entry for Bank of Boston Corp., is revised to read as follows:

1. Bank of Boston Corp., Boston, Massachusetts; to acquire Ganis Credit Corporation, Newport Beach, California, and thereby indirectly acquire 50 percent of Thor Credit Corporation, Newport Beach, California, and engage in consumer finance activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Comments on this application must be received by December 19, 1994.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30684 Filed 12-13-94; 8:45 am]

BILLING CODE 6210-01-F

First Bank System, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of each of the following banks, First Bank Fergus Falls, National Association, Fergus Falls, Minnesota; First Bank Grand Rapids, National Association, Grand Rapids, Minnesota; First Bank Maple Grove, National Association, Maple Grove, Minnesota; First Bank Minneapolis South, National Association, Minneapolis, Minnesota; and First Bank Saint Cloud, National Association, Saint Cloud, Minnesota.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Bancshares, Inc., San Antonio, Texas; to acquire 100 percent of the voting shares of State Bank of La Vernia, La Vernia, Texas.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30685 Filed 12-13-94; 8:45 am]

BILLING CODE 6210-01-F

First State Bancorp of Monticello, Inc., Employee Stock Ownership Plan; 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 January 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Bancorp of Monticello, Inc., Employee Stock Ownership Plan, Monticello, Monticello, Illinois; to become a bank holding company by acquiring 26.6 percent of the voting shares of First State Bancorp of Monticello, Inc., Monticello, Illinois, and thereby indirectly acquire Atwood State Bank, Atwood, Illinois, First State Bank of Bloomington, Bloomington, Illinois, First State Bank of Heyworth, Heyworth, Illinois, First State Bank of Monticello, Monticello, Illinois, and State Bank of Hammond, Hammond, Illinois.

In connection with this application, First State Bancorp of Monticello, Inc., Employee Stock Ownership Plan, Monticello has also applied to acquire Eskridge Agency, Inc., Hammond, Illinois, and thereby engage in insurance agency activities in Hammond and Monticello, Illinois, towns that have populations not exceeding 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30686 Filed 12-13-94; 8:45 am]

BILLING CODE 6210-01-F

Thomas D. McGavran, 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Thomas D. McGavran, to acquire an additional .98 percent, for a total of 1.06 percent, Thomas D. McGavran IRA, to acquire an additional 4.70 for a total of 6.56, and Thomas D. and Emley A. McGavran, to acquire an additional 2.16 for a total of 14.19 percent of the voting shares of Delphos, Inc., Delphos, Kansas and thereby indirectly acquire The State Bank of Delphos, Delphos, Kansas. All notificants reside in Delphos, Kansas.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-30687 Filed 12-13-94; 8:45 am]

BILLING CODE 6210-01-F

State Street Boston Corporation, Boston, Massachusetts; Application to Engage in Nonbanking Activities

State Street Boston Corporation, Boston, Massachusetts (Applicant), has

applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to acquire IFTC Holdings, Inc., Kansas City, Missouri (IFTC), and IFTC's wholly owned subsidiary, Investors Fiduciary Trust Company, Kansas City, Missouri (Company), and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y and in related nonbanking activities. These activities will be conducted on a worldwide basis.

Company is currently exempt from the definition of bank by virtue of an exception applicable only to it in section 2 of the BHC Act. Company will lose this exemption upon its acquisition by Applicant. Accordingly, Applicant proposes to maintain Company's nonbank status by conforming Company's activities to the requirements of section 2(c)(2)(D) of the BHC Act (12 U.S.C. § 1841(c)(2)(D)), which excludes certain trust companies from the definition of bank. An institution qualifies for this exception only if:

(1) All or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(2) No deposits of such institution that are FDIC insured are offered or marketed by or through an affiliate;

(3)(A) The institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others and

(B) does not make commercial loans; and

(4) The institution does not obtain payment related services or exercise discount or borrowing privileges at any Federal Reserve Bank.

In particular, Company would provide five general types of services to various customers, including the following types of entities (although a single type of customer would not necessarily obtain more than one of the five categories of services that Company proposes to provide): mutual funds; insurance companies, banks and trust companies; limited partnerships; broker dealers; money managers; private accounts; general business corporations; private trusts; collective trusts; and unit investment trusts. Applicant proposes to engage in these activities throughout the United States. The five types of services that Company would provide are described below.

(1) *Trustee services.* Applicant states that Company would provide trustee services to various entities including retirement plans, employee benefit plans, charitable remainder trusts, unit investment trusts, and grantor trusts that are investment companies. In connection with these trust services, Company would make advances for the payment of distributions by unit investment trusts.

(2) *Custodial services.* Applicant states that custodial services include security settlement and safekeeping, cash monitoring, lock box services, wire transfer services, collateral agent services, and acting as agent to administer third-party repurchase transactions. Company would also maintain operational and clearing deposit accounts in connection with these custody functions and in connection with the National Securities Clearing Corporation settlements. In addition, Company would advance funds to cover securities settlement and disbursement.

(3) *Investment accounting services for various entities, including administrative services to closed-end investment companies and mutual funds.* Company's investment accounting services include providing inventories and data on foreign and domestic securities owned, including tax lot accounting, income accruals, corporate actions, and market valuation. Performance of those services entails general ledger accounting, compliance reporting, and daily valuation. Company also would provide administrative and compliance services to mutual funds listed in Appendix A to the Board's order in *Mellon Bank Corporation*, 79 Federal Reserve Bulletin 626 (1993)(*Mellon*).

(4) *Transfer agency and shareholder services.* Applicant states that these services would include providing transfer agency and shareholder servicing and systems on a full service or remote basis and acting as dividend reinvestment and cash purchase plan agent. In connection with the proposed transfer agency services, Company would maintain various (purchase, redemption, dividend, commission, and paying agent) deposit accounts and mutual fund draft writing privilege clearing accounts. Company also advances funds from time to time to cover securities settlements and disbursements.

(5) *Paying, clearing, and settlement agent services.* Applicant states that Company would provide these services to mutual funds, trusts, and corporate entities and that Company also would provide processing services for a debit card (the Moneycard) which is issued in connection with brokerage and mutual fund accounts. Company's services in connection with the Moneycard include daily receipt of customer account availability, transmission of that account information to a third party processor of debit card transactions (which third party authorizes and clears transactions initiated by using the Moneycard), followed by transmission of transactions and authorizations to Company, which then transmits the transactions to Company's clients for payment from the customer's assets. Applicant intends to transfer its activities with respect to the Moneycard to its wholly owned subsidiary, State Street Bank and Trust Company. In connection with these services. Company maintains related operational and clearing deposit accounts.

Company also offers certain other deposit accounts such as money market deposit accounts and certificates of deposit placed through brokerage networks and sold to employees and employees of Company's affiliates. Company also proposes to retain the following types of securities:

(1) Mortgage-backed securities;

(2) Corporate debt securities;

(3) U.S. Government securities;

(4) U.S. municipal securities; and

(5) Trading securities (consisting solely of U.S. Government and federal agency debt securities).

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto...." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association* v *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir 1975). These considerations are

(1) Whether banks generally have in fact provided the proposed services,

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to

banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant maintains that the Board has previously determined that the majority of the proposed activities are closely related to banking within the meaning of the BHC Act. Specifically, Applicant maintains that the Board has determined by regulation that the proposed trust and custody services as well as the proposed payment, dividend, and clearing agency services are closely related to banking. 12 C.F.R. 225.25(b)(3). Applicant maintains that national banks are authorized to engage in the proposed investment accounting activities. OCC Interpretive Letter No. 386 (January 19, 1987); OCC Interpretive Letter No. 332 (March 8, 1985). In addition, Applicant maintains that the Board has previously determined by order that the proposed administrative services to mutual funds are closely related to banking. *See Mellon*. In this regard, Applicant notes that the Board relied on a commitment by Mellon that it would provide administrative services only to investment companies 50 percent of whose board of directors are disinterested individuals for purposes of the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*)(1940 Act). *See Mellon* at 629. Applicant proposes to provide such services to investment companies 40 percent of whose boards of directors are disinterested individuals. Applicant maintains that its commitment reflects the requirements of the 1940 Act.

Applicant also maintains that the proposed transfer and settlement agency activities and shareholder services are closely related to banking because banks are authorized to perform such services. OCC Interpretive Letter No. 473 (January 13, 1989); OCC Interpretive Letter No. 132 (December 9, 1987). Applicant also maintains that these agency activities are similar to the types of agency activities specifically mentioned in § 225.25(b)(3) of Regulation Y (12 C.F.R. 225.25(b)(3)).

Applicant maintains that the Board has determined by order that accepting savings, time, and demand deposit accounts is closely related to banking. *Chemical New York Corporation*, 73 Federal Reserve Bulletin 609 (1987); *U.S Trust Corporation*, 70 Federal Reserve Bulletin 371 (1984). These cases preceded the enactment of the Competitive Equality in Banking Act of 1987, which closed the nonbank bank loophole in the BHC Act. Applicant also maintains that the Board has determined that Company's proposed investments in U.S. Government securities and municipal securities are authorized by § 225.25(b)(3) of Regulation Y. In addition, Applicant maintains that investing in mortgage-backed and corporate debt securities is closely related to banking because national banks may invest in these securities. 12 U.S.C. § 24(Seventh).

Proper Incident to Banking Standard

In order to approve the proposal, the Board also must determine that the proposed activities to be conducted by Company "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." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance customer convenience and efficiency. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 4, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, December 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-30688 Filed 12-13-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those information collections recently submitted to OMB.

1. Self-Evaluation and Recordkeeping Required by the Regulation Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 85.6(c))—Extension—0990–0124—Receipts of DHHS funds must conduct a single-time evaluation of their policies and practices for compliance with Section 504 of the Rehabilitation Act of 1973. Recipients with fifteen or more employees must maintain records of their self-evaluation for three years. Respondents: State or local governments, businesses or other for-profit, non-profit institutions; Annual Number of Respondents: 545; Frequency of Response: once; Burden per Response: 80 hours; Total Annual Burden: 43,600 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202 619–1053. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 6, 1994

Dennis P. Williams,

Deputy Assistant Secretary, Budget

[FR Doc. 94–30598 Filed 12–13–94, 8:45 am]

BILLING CODE 4150–04–M

Health Resources and Services Administration

Notice of filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on the National Health Service Corps.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Nada Schnabel, National Advisory Council on the National Health Service Corps, 4350 East West Highway, 8th Floor, Rockville, Maryland 20857, Telephone (301) 594–4137.

Dated: December 8, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–30693 Filed 12–13–94; 8:45 am]

BILLING CODE 4160–15–P

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Request for Nomination to the Board of Trustees

AGENCY: Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

ACTION: Request for nomination.

SUMMARY: The Board directs the Adminsitration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute, established under Public Law 99–498 (20 U.S.C. 4411 et seq.), provides scholarly study of and instruction in Indian art and culture, and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nomination to fill one appointment on the Board of Trustees.

DATES: Nominations will be accepted until January 13, 1995.

ADDRESSES: Nominations may be sent to the Chairman, Board of Trustees, Institute of American Indian Arts, Post Office Box 20007, Santa Fe, New Mexico 87504.

FOR FURTHER INFORMATION CONTACT: Kenneth Blankenship, Chairman of the Board of Trustees, Institute of American Indian Arts, Post Office Box 20007, Santa Fe, New Mexico 87504.

SUPPLEMENTARY INFORMATION: Public Law 99–498 (20 U.S.C. 4412(a)(2)(b), requires the President to publish in the **Federal Register** an announcement regarding nominations of the Presidentially appointed members of the Board of Trustees of the Institute. On February 22, 1991 (56 FR 8099, February 26, 1991), the President delegated to the Chairman of the Board of Trustees the responsibility to publish an announcement regarding these nominations in the **Federal Register**. All nominations submitted will be forward to the President for consideration.

Dated: December 6, 1994.

Kenneth Blankenship,

Chairman, Board of Trustees, Institute of American Indian and Alaska Culture and Arts Development.

[FR Doc. 94–30599 Filed 12–13–94; 8:45 am]

BILLING CODE 4320–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–5101–XDBJ]

Southwest Intertie Project Final Environmental Impact Statement Record of Decision and Approved Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Southwest Intertie Project Environmental Impact Statement Record of Decision and Approved Land Use Plan Amendment.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 (43 CFR 1601–1610) and the National Environmental Policy Act of 1969 (40 CFR 1500–1508), the BLM has completed the Record of Decision (ROD) for the Southwest Intertie Project (SWIP) Environmental Impact Statement and land use plan amendment. The Record of Decision identifies the location where the SWIP transmission line, including substation sites, series compensation station sites, and communication sites would be constructed. The Midpoint, Idaho to Dry Lake Valley, Nevada segment of the SWIP would follow the Agency Preferred Route as described in the SWIP Final Environmental Impact Statement and Proposed Plan Amendment. The Ely, Nevada to Delta, Utah segment would follow the 230kV Route as described in the same document. The ROD also identifies the various alternatives that were assessed, outlines the management considerations that were made in making the decision, summarizes the public involvement during the environmental impact statement process, and identifies the various mitigation measures that will be implemented to protect natural resource values.

As the right-of-way decision routes the SWIP in some locations that are outside of BLM designated or planning corridors, the Decision amends affected land use plans to show the new or modified transmission line corridors. No amendments are necessary in Idaho as the Proposed Action is in conformance with the present land use plans. In Nevada and Utah, the Record of Decision amends the appropriate land use plans.

FOR FURTHER INFORMATION CONTACT: Karl A. Simonson, SWIP Project Manager, Bureau of Land Management, Burley District, Route 3, Box 1, Burley, Idaho 83318.

SUPPLEMENTARY INFORMATION: The SWIP ROD permits the granting of a public land right-of-way (R/W) to Idaho Power Company for the construction, operation and maintenance of the Southwest Intertie 500kV electrical transmission line project. The entire R/W on public land includes a 200 foot wide by approximately 540 mile long linear R/W, three substation sites, each approximately 80 acres in size, two series compensation station sites, each approximately 20 acres in size, and 8 microwave communication sites, each approximately ¼ acre in size.

Jack W. Sept,

Acting State Director

[FR Doc. 94–30678 Filed 12–13–94; 8:45 am]

BILLING CODE 4310–GG–P

[UT–040–05–1430–01]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to do a plan amendment for the Virgin River Management Framework Plan (MFP) located in Washington County, Utah.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Dale Ross, Realty Specialist, Dixie Resource Area Office, 225 North Bluff Street, St. George, UT 84770. Existing planning documents and information are available at the above address or telephone (801) 673–4654. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Virgin River MFP which includes lands in Washington County, Utah. The proposed amendment would be to make certain public land available for lease/sale pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), to Washington County, a local government entity, for the purpose of constructing a fairgrounds with race track and associated facilities. It is the intent of Washington County to relocate the present facilities located in the Dixie Downs area on land formerly owned by Washington County because of land acquisition by the State of Utah.

The public land being considered for disposal, comprising 420.27 acres, is described as follows:

Salt Lake Meridian, Utah,

T 42 S., R. 14 W.,
Sec. 3, lots 5, 6, 7, 9, 10, 11, 12, 13, 14, 18, 20, 22, 24 and 26.
The areas described aggregate 420.27 acres.

A consistency review was conducted and while the request was found not consistent with current planning guidance, the Bureau of Land Management believes that it has merit and therefore proposes to conduct an environmental assessment to determine environmental consequences and impacts on the existing planning decisions and proposed amendments.

Mat Millenbach,

State Director

[FR Doc. 94–30616 Filed 12–13–94; 8:45 am]

BILLING CODE 4310–DQ–P

Fish and Wildlife Service

Notice of Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Gary Johnson, Perris, CA, PRT 797132.

The applicant requests a permit to export and reimport 3 female Asian elephants (*Elephas maximus*) to the African Game Farm Ltd., Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Glenn R. VanBlaricom, Seattle, WA, PRT–796124
Type of Permit: Incidental take by harassment of southern sea otter
Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), 5 or less
Summary of Activity to be Authorized: Applicant requests a permit to incidentally take by harassment up to 5 sea otters in the course of acoustic disturbances of grey whales
Period of Activity: Through May 1995

Applicant: Carle Foundation, Urbana, IL, PRT–691972
Type of Permit: Import
Name and Number of Animals: Polar Bear (*Ursus maritimus*), 200–300 annually
Summary of Activity to be Authorized: The applicant requests a permit to import samples of serum, urine, adipose tissue, liver, kidney, pituitary, muscle, adrenal, lung, heart, thyroid, medulla, femur, gonads for scientific research of the physiological and biochemical processes of feeding and fasting in polar bears.
Source of Marine Mammals for Research/Public Display: Samples will be collected from polar bear in Canada which are either taken and released in the course of scientific research or which are part of the native hunt.
Period of Activity: Through 1999

Applicant: Indianapolis Zoological Society, Indianapolis, IN, PRT–797101
Type of Permit: Take for Public Display
Name and Number of Animals: Pacific walrus (*Odobenus rosmarus divergens*), 6
Summary of Activity to be Authorized The applicant requests a permit to take (permanently remove) from the wild, up to six young walrus (2 males and 4 females two years old or younger) that are orphaned during Native Alaska subsistence hunting in Alaska. Animals will be flown to Indianapolis Zoo for public display purposes
Source of Marine Mammals for Research/Public Display: Orphaned calves in the Bering sea region and along the Alaskan coast.
Period of Activity: From 1995 through 2000

Applicant: California Dept. of Fish and Game, Sacramento, CA, PRT–782423
Type of Permit: Take for Scientific Research
Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), 30
Summary of Activity to be Authorized: Up to 30 sea otters will be taken. Dependent animals and those weighing less than 20 pounds will be implanted subdermally with a transponder chip and immediately released. Animals in excess of 20 pounds will be transported via kennel carrier to a clinic where they will be tranquilized, flipper tagged, implanted subdermally with a transponder chip, swabbed for pelt residue, and have 60 ml of blood withdrawn for the purpose of obtaining baseline data relating to potential contamination.
Source of Marine Mammals for Research/Public Display: Monterey Bay, California
Period of Activity: December 1994 to August 1995

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate.

The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 9, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority

[FR Doc. 94–30679 Filed 12–13–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Development Called Coconut Pointe II, in Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Coconut Pointe, Incorporated, (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of a 11.29 acre residential development consisting of 38 single family residences and associated infrastructure. The subdivision will be known as Coconute Pointe II (Project), and is located on the west side of State Road A1A, south of an existing development known as Outdoor Resorts and north of an existing development known as The Hamptons, in the city of Melbourne Beach, Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. The Service is soliciting data on *Aphelocoma coerulescens coerulescens* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before January 13, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–797088 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that one family of Florida scrub jays inhabits the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is the proposed Project with management of surrounding County-owned lands as mitigation for the Project's impacts. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of off-site habitat for the Florida scrub jay, the establishment of an endowment fund for the off-site acquired habitat, and the creation of an annual assessment on lot owners of the Project to fund future land management needs of the acquired off-site habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: December 5, 1994.

Jerome M. Butler,

Acting Regional Director

[FR Doc. 94–30677 Filed 12–13–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 3, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 29, 1994.

Carol D. Shull,

Chief of Registration, National Register

ARIZONA

Maricopa County

Adams, H.E. House [Nineteenth-Century Residential Buildings in Phoenix MPS], 1014 S. 1st Ave., Phoenix, 94001524

Anderson—Johannes House [Nineteenth Century Residential Buildings in Phoenix MPS], 127 N. 10th Ave., Phoenix, 94001525

Campbell, Clinton, House [Nineteenth Century Residential Buildings in Phoenix MPS], 361 N. 4th Ave., Phoenix, 94001526

Cisney, C.H., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 2011 W. Madison St., Phoenix, 94001527

Cisney, George E., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 916 E. McKinley St., Phoenix, 94001528

Coe, H.M., House [Nineteenth-Century Residential Buildings in Phoenix MPS] 365 N. 4th Ave., Phoenix, 94001529
DeMund, Lester D., House [Historical Residential Subdivisions and Architecture in Central Phoenix MPS], 363 E. Monte Vista, Phoenix, 94001520
Doughterty, J.B., and C.H. Peterson House [Nineteenth-Century Residential Buildings in Phoenix MPS], 2141—2143 W Washington, St., Phoenix, 94001540
Eyrich—Kohl House [Nineteenth-Century Residential Buildings in Phoenix MPS], 1015 Woodland Ave., Phoenix, 94001530
Hadsell, Burgess A., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 1001 E. Fillmore St., Phoenix, 94001531
Hidden, George, House [Nineteenth-Century Residential Buildings in Phoenix MPS], 763 E. Moreland St., Phoenix, 9400153
House at 818 South 1st Avenue [Nineteenth-Century Residential Buildings in Phoenix MPS], 818 S. 1st, Ave., Phoenix, 94001538
Larson, C.A., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 710 S. 1st Ave., Phoenix, 94001533
Phoenix Building and Loan House [Nineteenth-Century Residential Buildings in Phoenix MPS], 1138—1140 E. Taylor St., Phoenix, 94001534
Sharp, M.J., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 1012 S. 1st Ave., Phoenix, 94001535
Skiller, E.H., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 917 E. Roosevelt St., Phoenix, 94001536
Smurthwaite House [Nineteenth-Century Residential Buildings in Phoenix MPS], 602 N. 7th St., Phoenix, 94001539
Stillwell, Judge H.H., House [Nineteenth-Century Residential Buildings in Phoenix MPS], 2039 W Monroe St., Phoenix, 94001537

TEXAS

Harris County

Star Engraving Company Building, 3201 Allen Pkwy , Houston, 94001521

VERMONT

Addison County

Doolittle, Colonel Ephraim and Sarah, Farm [Agricultural Resources of Vermont MPS], 1 mi. E of VT 22–A on Doolittle Rd., Shoreham, 94001523
Fenn Farm [Agricultural Resources of Vermont MPS], VT 116 (Case St.), W side, Middlebury, 94001518

Caledonia County

West View Farm [Agricultural Resources of Vermont MPS], Along Waterford Hwy 34, Waterford, 94001522

[FR Doc. 94–30594 Filed 12–13–94, 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

In the Matter of Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Decision To Review and Remand an Initial Determination Granting a Motion for Summary Determination of Non-Infringement Filed by Respondent Print-Inform GmbH & Co. and Terminating the Investigation as to That Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand an initial determination (ID) (Order No. 15) issued on November 2, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID granted a motion of respondent Print-Inform GmbH & Co. (Print-Inform) for summary determination of non-infringement of the patent claims in controversy, and terminated the investigation as to Print-Inform.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3096.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, said to infringe eight claims of U.S. Letters Patent 4,166,152 (the '152 patent), on June 8, 1994 (59 F.R. 29620). The complaint was filed by Minnesota Mining and Manufacturing Co. (3M). Print-Inform is one of eight respondents in the investigation.

On August 18, 1994, respondent Print-Inform filed a submission with the presiding ALJ which she treated as a motion (Motion No. 366–1) for summary determination that Print-Inform was not infringing the claims in issue of the '152 patent. The motion was opposed by complainant 3M and by the Commission investigative attorney (IA).

On November 5, 1994, the ALJ issued an ID (Order No. 15) granting Print-Inform's motion for summary determination of non-infringement, and terminating the investigation as to that firm. A petition for review of the ID was filed by the IA. Complainant 3M filed a response in support of the IA's petition No agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–30724 Filed 12–13–94, 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 519 (Sub-No. 1)]

Establishment of National Grain Car Council and Request for Suggestion of Candidates for Membership

AGENCY: Interstate Commerce Commission.

ACTION: Notice correcting composition of membership on advisory council, extending time for submitting suggestions for membership, and adding corrected docket number.

SUMMARY: The ICC is hereby giving notice that the composition of the National Grain Car Council (NGCC), previously announced in 59 FR 60828, should include *10* representatives of grain shippers and receivers instead of *5* as contained in the original notice. In addition, the ICC is extending the time for submitting suggestions for membership on the NGCC 3 weeks, from December 19, 1994, to January 9, 1995. Finally, a new docket number for all NGCC matters is being added.

DATES: Suggestions of candidates for membership on the NGCC are due on January 9, 1995.

ADDRESSES: Send suggestions and supporting information (referring to the

National Grain Car Council) to: Richard S. Fitzsimmons, Designated Federal Official—National Grain Car Council, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard S. Fitzsimmons, telephone (202) 927–5340. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: By notice published November 28, 1994, in the **Federal Register**, 59 FR 60828, the ICC requested suggestions for membership on the National Grain Car Council (NGCC). Inadvertently, the notice stated that there would be 5 representatives of grain shippers and receivers. The Charter of the NGCC, Article III, Section 3.1, provides that there will be *10* representatives of grain shippers and receivers. The ICC will therefore require additional submissions of suggestions for representatives of this group of interested parties.

In addition, the Association of American Railroads (AAR) the Regional Railroads of America (RRA), and the American Short Line Railroad Association (ASLRA), have requested a 60-day extension for submitting their recommendations for NGCC membership. The December 19, 1994, due date for membership recommendations was set with the intention of quickly establishing the Council. Indeed, these groups have long been aware of the Commission's interest in establishing the NGCC. However, to give the railroads more time to select representatives for the important work of the NGCC and because of the correction we have made in the composition of the Council, a 3-week extension, to January 9, 1995, will be granted.

Finally, all NGCC matters should be referenced by the docket number Ex Parte No. 519 (Sub-No. 1), *National Grain Car Council*. The docket number was omitted from the prior **Federal Register** notice, and was misstated in the prior notice served by the Commission on December 1, 1994. Environmental Statement: This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: December 8, 1994.

By the Commission, Chairman Gail C. McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 94–30719 Filed 12–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32612]

Southern Pacific Transportation Company—Control—The Denver and Rio Grande Western Railroad Company

Southern Pacific Transportation Company (SPTC) filed a notice of exemption to acquire control of The Denver and Rio Grande Western Railroad Company (DRGW). DRGW and SPTC, both common carriers, are subsidiaries of Southern Pacific Rail Corporation (SPRC), a non-carrier holding company. SPTC is directly owned by SPRC and DRGW is directly owned by Rio Grande Holding, Inc. (RGH), a non-carrier holding company, which, in turn, is directly owned by SPRC.

After a dividend of the capital stock of DRGW by RGH to SPRC, RGH's parent corporation, SPRC proposes to transfer the capital stock of DRGW to its subsidiary, SPTC, the result of which will be to simplify corporate control by including DRGW as a subsidiary of SPTC. No change in the operations or the management personnel of any of the affiliated railroads will result from this change in control. After consummation, DRGW will be a directly-owned subsidiary of SPTC and be indirectly controlled by SPRC. The proposed transaction was to have been consummated on November 21, 1994.

Because the parties are members of the same corporate family, and the control will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3). The purpose to be accomplished by this transaction is the simplification of intercorporate control among railroad companies in the SPRC corporate family.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Louis P. Warchot, Southern Pacific Bldg., Room 815, One Market Plaza, San Francisco, CA 94105.

Decided: December 5, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–30718 Filed 12–13–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Opera-Musical Theater Advisory Panel (Professional Artists Development/ Services to the Field Section) to the National Council on the Arts will be held on December 12, 1994 from 9:00 a.m. to 7:00 p.m. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:45 a.m. for Orientation and Introductory Remarks and from 6:30 p.m. to 7:00 p.m. for a policy discussion and guidelines review.

The remaining portions of this meeting from 9:45 a.m. to 6:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4)(6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/ 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: December 8, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–30717 Filed 12–13–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a special meeting to advise the Presenting Program of the National Endowment for the Arts will be held on December 13, 1994 from 3:30 p.m. to 5:00 p.m. This meeting will be held at the Holiday Inn Crowne Plaza, 1605 Broadway, New York, New York 10019 in conjunction with the International Society of Performing Arts Administrators.

This meeting will be open to the public on a space available basis for the purpose of obtaining feedback from the field regarding draft program guidelines for the Presenting Program.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 7, 1994.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–30716 Filed 12–13–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a special meeting to advise the Presenting Program of the National Endowment for the Arts will be held on December 19, 1994 from 8:00 a.m. to 9:00 a.m. This meeting will be held at the New York Hilton, 1335 Avenue of the Americas, New York, New York 10019, in conjunction with the Association of Performing Arts Presenters Conference.

This meeting will be open to the public on a space available basis for the purpose of obtaining feedback from the field regarding draft program guidelines for the Presenting Program.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 7, 1994.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–30715 Filed 12–13–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Theater Advisory Panel (Fellowships for Playwrights Section) to the National Council on the Arts will be held on February 13–14, 1995. This meeting will be held from 10:00 a.m. to 6:30 p.m. on February 13, 1995 and from 9:30 a.m. to 6:00 p.m. on February 14, 1995, in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10:00 a.m. to 10:30 a.m. on February 13 for Introductory Remarks and a discussion of the Review Criteria for the category of Fellowships for Playwrights and from 5:00 p.m. to 6:00 p.m. on February 14 for a Guidelines and Policy Discussion.

The remaining portions of this meeting from 10:30 a.m. to 6:30 p.m. on February 13 and from 9:30 a.m. to 5:00 p.m. on February 14 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: December 8, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 94–30714 Filed 12–13–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Experimental Prescreening Section) to the National Council on the Arts will be held on January 10–12, 1995. This meeting will be held from 9:00 a.m. to 6:30 p.m. on January 10–11, 1995 and from 9:00 a.m. to 5:30 p.m. on January 12, 1995 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 8, 1994.

Yvonne M. Sabine,

Director Council & Panel Operations National Endowment for the Arts.

[FR Doc. 94–30713 Filed 12–13–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby

given that a meeting of the Challenge and Advancement Advisory Panel (Challenge Review Committee Section) to the National Council on the Arts will be held on January 9–11, 1995. This meeting will be held from 9:00 a.m. to 5:30 p.m. on January 9, 1995; from 9:00 a.m. to 4:30 p.m. on January 10, 1995; and from 9:00 a.m. to 5:30 p.m. on January 11, 1995 in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 10:00 a.m on January 9, 1995 for opening remarks and introductions.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on January 9, 1995; from 9:00 a.m. to 4:30 p.m. on January 10, 1995; and from 9:00 a.m. to 5:30 p.m. on January 11, 1995 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5496, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: December 8, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts

[FR Doc. 94–30712 Filed 12–13–94, 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Company; Delmarva Power and Light Company; Atlantic City Electric Company; Peach Bottom Atomic Power Station, Units 2 and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License 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–44 and DPR–56, issued to the Philadelphia Electric Company (PECO, the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom, PBAPS), located in York County, Pennsylvania.

The proposed amendment, requested by the licensee in a letter dated September 29, 1994, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," Revision O, September 1992. NUREG–1433 has been developed through working groups composed of both NRC staff members and the BWR–4 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Final NRC Policy Statement on Technical Specification Improvements of July 22, 1993 to the current Peach Bottom Technical Specifications, and, using NUREG–1433 as a basis, developed a proposed set of improved TS for BPAPS.

The licensee has categorized the proposed changes to the existing TS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve restructuring, interpretation and complex rearranging of requirements and other changes not substantially revising an existing requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and do not involve technical changes to the existing TS. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria of inclusion in TS. The licensees application of the screening criteria is described in that portion of their September 29, 1994 application titled "Application of Selection Criteria to the Peach Bottom Atomic Power Station TS." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59 and subject to the change control provision in the Administrative Controls section of the TS. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses.

Less restrictive changes are those where existing requirements are relaxed or eliminated, or new flexibility is provided.

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.

By January 13, 1995, 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 petitions 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, and at the local public

document room located at the State Library of Pennsylvania, (Regional Depository) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. 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 a 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 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.

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, 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 F. Stolz, Director, Project Directorate I–2: 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 James W. Durham, Senior Vice President and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filing 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 29, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the State Library of Pennsylvania, (Regional Depository) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 7th day of December 1994.

For the Nuclear Regulatory Commission

David H. Moran,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–30697 Filed 12–13–94; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued a draft report NUREG/CR–6270 entitled "Estimating Boiling Water Reactor Decommissioning Costs." This draft report, prepared for the NRC by Battelle Pacific Northwest Laboratory (PNL), is now available for review and comment.

The draft report discusses the software used to calculate the decommissioning cost estimates included in the NUREG/CR–6174 entitled "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station," recently released for comment.

NUREG/CR–6270 has been prepared in the form of a user's manual for use on a personal computer. This software was developed to assist in evaluating a licensee's submittal of its estimated cost to decommission a BWR. Comments are solicited on the draft report, particularly with regard to the usefulness and appropriateness of the approaches described.

Comments and suggestions on the draft NUREG/CR–6270 should be sent 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.

Comments may also be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or

later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC NUREG and Regulate Guide Comments subsystem can then be accessed by selecting the "Subsystems/Databases" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239/92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239/92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC sybsystem will be accessed from the main FedWorld menu by selecting the "U.S. Nuclear Regulatory Commission" option from FedWorld's "Sybsystems/Databases" menu or by entering the command "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's "Subsystems/Databases" menu, then you may return to FedWorld by selecting the "Return to FedWorld" option from the "NRC Main Menu." However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3nrc.gov.

Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. Comments and suggestions will be most helpful if they are received by February 13, 1995.

Copies of NUREG/CR–6270 may be purchased from the Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of draft NUREG/CR–6270 may also be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services, Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the software for NUREG/CR–6270 will be made available by request to George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 17th day of November, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–30695 Filed 12–13–94; 8:45 am]

BILLING CODE 7590–01–M

Generic Dose Assessment for Disposal of Incinerator Ash in a Landfill; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of generic dose assessment for disposal of incinerator ash in a landfill.

SUMMARY: The NRC is noticing the availability and soliciting comments on a Generic Dose Assessment for Disposal of Incinerator Ash in a Landfill. NRC has assessed potential doses associated with disposal of incinerator ash containing low concentrations of radioactive material in sanitary landfills. The NRC intends to use this assessment as the technical basis for developing guidance that would be applied in authorizing disposal of incinerator ash generated by licensed radioactive materials facilities.

DATES: Written comments on the Generic Dose Assessment received by February 13, 1995 will be considered in determining whether revisions to the dose assessment are appropriate and in developing regulatory guidance based on the dose assessment. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments on the Generic Dose Assessment should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Docketing and Services Branch. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Copies of the Generic Dose Assessment may be obtained by contacting Janette Copeland, U.S. Nuclear Regulatory Commission, Mail Stop T7F27, Washington, DC 20555–0001. Phone (301) 415–6617; Fax (301) 415-5397.

FOR FURTHER INFORMATION CONTACT: Boby Eid, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7F27, Washington, DC 20555–0001. Phone (301) 415–5811.

SUPPLEMENTARY INFORMATION: The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 assign to the U.S. Nuclear Regulatory Commission the responsibility for licensing and regulating commercial nuclear facilities. Over the past several decades, NRC has allowed licensees to dispose of incinerator ash containing low concentrations of radioactive materials in sanitary landfills. In the absence of specific criteria for determining acceptable concentrations of radionuclides in the ash, NRC applied the liquid effluent concentration values from Appendix B of 10 CFR Part 20. In this application, NRC assumed that the unit microCurie per milliliter of liquid was approximately equivalent to microCurie per gram of incinerator ash.

Public concerns about disposal of slightly radioactive wastes in unlicensed disposal facilities prompted the NRC staff to assess potential doses to the members of the public that may be associated with disposal of the incinerator ash. NRC staff initiated this generic dose assessment to determine whether continued application of the effluent concentration values in Appendix B of Part 20 ensure that the public doses from ash disposal remain a small fraction of the public dose limit in § 20.1301(a). Action has been delayed on several tens of license renewal and amendment requests pending completion of the assessment.

NRC staff recently documented the results of the assessment in a draft report entitled "Generic Dose Assessment for Disposal of Incinerator Ash in a Landfill." Based on the assessment, the staff concluded that continued disposal of incinerator ash at the Appendix B levels should be acceptable for most radionuclides, provided the sum of the fractions of the concentration of each radionuclide and its respective value in Appendix B does not exceed unity. For ash containing the radionuclides C–14, Cl–36, Tl–204, Ag–108m, Al–26, Tc–99, Nb–94, H–3, or I–129, the assessment shows the concentrations in the ash should generally be less than one-tenth of the Appendix B values. However, higher concentrations may be acceptable if site-specific radiological analysis demonstrates that ash with higher concentrations will not result in doses that are a significant fraction of the public dose limit in 10 CFR 20.1301. In addition, the assessment indicates that disposal of ash containing P–32, S–35, Tc–99m, Fe–59, or Ca–45 in solid waste landfills should only by authorized on the basis of site-specific analysis.

Based on these conclusions, NRC is developing guidance on acceptable approaches for demonstrating compliance with 10 CFR 20.2002 for disposal of incinerator ash containing low concentrations of radioactive material as ordinary municipal waste.

NRC will review the written comments provided in response to this notice in considering whether to revise the dose assessment and in developing the guidance based on the dose assessment.

Dated on Rockville, Maryland, this 2nd day of December 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–30696 Filed 12–13–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Notification of a New System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Add one new record system.

SUMMARY: OPM proposes to add one new system of records to its inventory of record systems subject to the Privacy Act of 1974 as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

DATES: OPM invites comments on the proposed system of records on or before January 13, 1995. The system notice will be effective January 23, 1995 unless OPM has received comments that would result in a contrary determination.

ADDRESSES: Send written comments to Steve Van Rees, Chief, Facilities Services Division, Office of Procurement and Administrative Services, Administrative Group, 1900 E Street NW., room 1330, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie Crawford at (703) 908–8565.

SUPPLEMENTARY INFORMATION: This notice is being published under the authority of 5 U.S.C. 552a(e)(4). OPM's Internal and Central system notices were previously published in the **Federal Register** in full on April 12, 1993 (58 FR 19154). OPM's Governmentwide system notices were last published in full on August 10, 1992 (57 FR 35698), with a correction published on November 30, 1992 (57 FR 56733).

The authority for maintaining parking records is derived from the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 301. OPM manages its parking facilities through a system designed to encourage the use of carpools. OPM personnel who participate in the program fill out an application for a parking permit that contains personal information. The applications and information from the application forms are maintained in both automated and paper format, with records retrievable by use of personal identifiers.

In accordance with 5 U.S.C. 552a(r), OPM has sent a Report of a New System of Records to the Congress and the Office of Management and Budget.

Lorraine A. Green,

Deputy Director.

OPM/INTERNAL–13

SYSTEM NAME:

Parking Program Records.

SYSTEM LOCATION:

Facilities Services Division, Office of Procurement and Administrative Services, Administrative Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OPM employees and others who use OPM parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the administration of the parking permit system for OPM's central office at the Theodore Roosevelt Office Building, 1900 E Street, NW., Washington, DC. The records include information such as name; Social Security Number; employing organization; assigned permit number; home and office telephone numbers; home address; vehicle information; and duty hours and location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 301.

PURPOSE:

These records are used to administer the parking program at OPM, collect information for tax purposes, and compare records with other Federal agencies to ensure parking privileges are not abused. These records may also may be used to locate individuals for personal research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

d. By the National Archives and Records Administration in records management inspections.

e. By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

g. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

h. To disclose information to the Internal Revenue Service and State and local tax authorities.

i. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

j. To disclose information in computer matching activities, including comparison of parking records with other Federal agencies, and for the purpose of assigning tax liabilities related to the fringe benefit accrual value of parking.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, , RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in an automated data base.

RETRIEVABILITY:

These records are retrieved by the names, Social Security Numbers, permit numbers, addresses, or vehicle information of the individuals on whom they are maintained.

SAFEGUARDS:

These records are stored in secure areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with NARA General Records Schedules 2 (pay) and 11 (parking permits). Disposal of manual records is by shredding or burning; electronic data is erased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Procurement and Administrative Services, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information on them should contact the system manager indicated. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about them should contact the system manager indicated. Individuals must provide the following information for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

Individuals requesting access must also follow the OPM's Privacy Act regulations regarding verification of identify and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

Individuals requesting amendment must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individuals to whom the records pertain.

b. Information taken from official OPM records.

c. Other Federal agency parking records.

[FR Doc. 94–30721 Filed 12–13–94; 8:45 am]

BILLING CODE 6325–O–M

PANAMA CANAL COMMISSION

Agency Information Collection Request Submitted to the Office of Management and Budget for Clearance

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended, the Panama Canal Commission hereby gives notice that it has submitted to the Office of Management and Budget for clearance a Standard Form-83 (SF–83 Request for OMB Review) for a currently approved collection of information designated Personnel Administration Forms.

ADDRESSES: Comments may be sent to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the collection of information or related information, contact Barbara Fuller, Office of the Secretary, Panama Canal Commission, telephone 202–634–6441.

SUPPLEMENTARY INFORMATION:

Title: Personnel Administration Forms.

Type of Request: Revision of a currently approved collection.

Form Number(s): Various.

Respondents: Individuals or households.

Estimated Number of Respondents. 8,299.

Estimated Total Burden Hours: 11,372.

Frequency of Response: When persons apply or update applications.

Needs and Uses: On January 20, 1982, OMB approved an information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207–0005. It is proposed to continue using this information collection. The information collected is needed to determine the qualifications, suitability and availability of applicants for Federal employment and temporary employment in the Panama Canal area so that U.S. Federal Government agencies can be supplied with eligibles to fill vacant positions. The information will be used by Central Examining Office employees performing examining and suitability duties; by subject-matter experts on rating panels; and by agency officials making selections to fill vacancies. Collections of information made by the Central Examining Office are related to the filing or updating of application forms. Of the 8,299 respondents who complete application forms annually, 4,815 complete full applications and 3,484 merely complete forms after 12 or 18 months have elapsed (depending on the position applied for) and to update an application already on file. The total time required for applicants for employment to respond to the information collection is estimated to vary from 40 to 300 minutes with an average of 120 minutes to complete a full application, including supplemental qualifications forms when required, and is estimated to vary from 5 to 60 minutes with an average of 30 minutes to complete forms to update an application already on file. In addition to the forms used for the basic application there are 9 forms which are used as notices or inquiries. These forms are issued separately and have burden times ranging from 5 to 60 minutes with an average of 30 minutes per response. The total time required annually for persons to respond to collections of information is estimated at 11,372 hours.

Dated: December 2, 1994.

James E. Ferrara,

Director, Office of Executive Administration and Transition Coordination, Senior Official for Information Resources Management.

[FR Doc. 94–30689 Filed 12–13–94; 8:45 am]

BILLING CODE 3640–04–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs. Notification to individuals who are beneficiaries used the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program. The required notice was first published at 54 FR 26282 (June 22, 1989). A second notice was published at 57 FR 23115 (June 1, 1992) covering the second cycle. New agreements are being negotiated for continuing the matching program beyond the second cycle's initial 18-month and additional 12-month periods; hence, the need for a new notice.

Name of Participating Agencies

Social Security Administration and Railroad Retirement Board.

Purpose of the Match

The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA from persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. That wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). This information is available from no other source.

In addition, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Finally, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. (b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

Authority for Conducting the Match

Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(h)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Categories of Records and Individuals Covered

All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of their wages and the amount of their social security benefits requested from the Social Security Administration.

Inclusive Dates of the Matching Program

It is estimated that these matches will commence on January 22, 1995, and will run for the full 18 months of the agreement.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress

and the Office of Management and Budget.

Dated: December 7, 1994.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94-30617 Filed 12-13-94; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clear Officer: Richard T. Redfearn, (202) 942-8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 15c3-3—File No. 270-87.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 34501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget approval for extension on the following previously approved rule:

Rule 15c3-3 requires broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession of and segregate customer funds and securities. Approximately 1,000 respondents incur an average burden of 110 hours per year to comply with this rule.

General comments regarding the estimated burden hours should be directed to the Clearance Officer of the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, (Project No. 3235-0078), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-30618 Filed 12-13-94; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Marcorp, Inc.; Order of Suspension of Securities Trading

December 8, 1994.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information about Marcorp, Inc., with respect to the company's financial condition, a material licensing agreement and assets and the status of certain previously disclosed merger discussions.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the aforementioned company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that the trading in the securities of Marcorp, Inc. be suspended for the period from 12:30 P.M. (EST) on December 8, 1994 through 12:00 P.M. midnight (EST) on December 21, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-30621 Filed 12-13-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 20758; 812-9214]

Alex. Brown Cash Reserve Fund, Inc., et al.; Notice of Application

December 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Alex. Brown Cash Reserve Fund, Inc.; Flag Investors Telephone Income Fund, Inc.; Flag Investors International Fund, Inc.; Total Return U.S. Treasury Fund, Inc.; Flag Investors Emerging Growth Fund, Inc.; Flag Investors Quality Growth Fund, Inc.; Managed Municipal Fund, Inc.; Flag Investors Intermediate-Term Income Fund, Inc.; Flag Investors Value Builder Fund, Inc.; Flag Investors Maryland Intermediate Tax Free Income Fund, Inc.; Flag Investors Real Estate Securities Fund, Inc. (collectively, the "Funds"); Alex. Brown & Sons Incorporated ("Alex. Brown"); and Armata Financial Corp. ("Armata"); on behalf of themselves and all investment companies (and portfolios thereof) that (a) are advised or distributed in the future by Alex. Brown or Armata, or entities controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with Alex. Brown or Armata, or (b) become a part of the same "group of investment companies" as that term is defined in rule 11a-3 under the Act.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 2(a)(32), (2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to amend prior orders under section 6(c) of the Act. The prior orders permit applicants to issue multiple classes of shares representing interests in the same investment portfolio, assess a contingent deferred sales load ("CDSL") on certain redemptions of shares, and waive or reduce the CDSL in certain instances. As amended, the order would permit applicants to assess a CDSL on certain additional redemptions of shares, waive or reduce the CDSL in certain instances, and offer a class of shares that converts into another class of shares.

FILING DATE: The application was filed on September 8, 1994, and amended on December 2, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of services. Hearing requests would state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 135 East Baltimore Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942-0583, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations and Legal Analysis

1. The Funds are open-end management investment companies, organized as Maryland corporations. Investment Company Capital Corp. ("ICC") and International Strategy and Investment Inc. ("ISI"), pursuant to separate advisory agreements, serve as investment advisers to the Funds, and supervise and manage the operations of the Funds. ICC is a wholly-owned subsidiary of Alex. Brown and an affiliate of Armata.

2. Alex. Brown Armata are each registered broker-dealers. Alex. Brown services as a distributor for all classes and series of the Funds, except for the ISI Total Return U.S. Treasury Fund Shares class of Total Return U.S. Treasury Fund, Inc. and the ISI Managed Municipal Fund Shares class of Managed Municipal Fund, Inc. (the "ISI Classes"), for which classes Armata serves as distributor.

3. Applicants have two prior orders (the "Multi-Class Orders"), which permit them to issue multiple classes of shares in the same portfolio (the "Multiple Distribution System").[1] Under the Multi-Class Orders, the Funds may offer classes of shares which differ in that certain classes would be offered in connection with (a) a 12b–1 plan adopted by the Fund involved pursuant to rule 12b–1 under the Act; (b) a shareholder services plan adopted by the Fund involved pursuant to all requirements of rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (c) no plan.

4. Each Fund has a class of shares designated as its Flag Investors class of shares (the "Flag Investors Classes"), which are offered with a front-end sales charge and bear a rule 12b–1 fee of .25%.[2] No front-end sales charge is imposed on sales of $1 million or more. Four of the Funds have issued additional classes of shares, the Flag Investors Class D Shares ("Class D Shares"), which are offered with a lower front-end sales charge on all sales of less than $1 million and have a rule 12b–1 fee of .60%.[3] Class D shares impose no sales charge or CDSL on purchases of $1 million or more. In addition to the Flag Investors Classes, Class D, and ISI classes described above, the Alex. Brown Cash Reserve Fund, Inc. offers Alex. Brown Cash Reserve Shares, Institutional Shares (which are offered only to institutional entities), and Quality Cash Reserve Prime Shares (which are offered only as a sweep vehicle for customers of broker-dealers who use Alex. Brown for clearance of securities transactions). Alex. Brown Cash Reserve Shares bear a rule 12b–1 fee of .25%, and Quality Cash Reserve Prime Shares bear a rule 12b–1 fee of .60%; Institutional Shares bear no rule 12b–1 fee.[4]

5. The Funds also have two prior orders that permit them to assess a CDSL on certain redemptions of shares.[5] Pursuant to the 1991 Order, the Funds impose a CDSL on purchases of $1 million or more of Flag Investors Classes in the event of redemption of such shares within 24 months of purchase. Pursuant to the 1993 Order, three of the Funds are permitted to assess a CDSL of 1% on the redemption of Class D shares for a period of four years. Both the 1991 Order and the 1993 Order permit the Funds to waive the CDSL in certain instances, as set forth in the prospectus of each Fund at the time of purchase.

6. Applicants proposed to create an additional class of shares ("Class B shares"), which at first would be offered by only three of the Funds: Flag Investors Value Builder Fund, Inc., Flag Investors Telephone Income Fund, Inc., and Flag Investors Real Estate Securities Fund, Inc.[6] Class B shares would be offered at net asset value without the imposition of a sales load at the time of purchase, although they would be subject to an asset-based sales charge (not to exceed .75%) pursuant to rule 12b–1, based upon the average daily net asset value of the Class B shares. Class B shareholders also would pay a service fee, as defined in Article III, Section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"), that will not exceed .25% of the average daily net asset value of the Class B shares.[7] In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of the purchase of such shares may be subject to a CDSL. The amount of any applicable CDSL will be calculated by multiplying the applicable percentage charge (currently expected to be 4% for redemptions made during the first year after initial purchase, although such percentages may vary) by the lesser of the relative net asset value of the shares redeemed or the total cost of such shares. The amount of the CDSL to be imposed would depend on the number of years since the purchase of the shares being redeemed.

7. No CDSL would be imposed on redemptions of: (a) Class B shares representing amounts attributable to increases in the value of an account above the net cost of the shares due to increases in the net asset value per share; (b) Class B shares acquired through reinvestment of income dividends or capital gain distributions, or (c) Class B shares held beyond the time when the CDSL is no longer charged ("CDSL Period"). In determining whether a CDSL were payable, it would be assumed that shares, or amounts representing shares, that were not subject to a CDSL were redeemed first, and that other shares or amounts were then redeemed in the order purchased.

8. Under the proposed arrangement the CDSL may be waived in certain instances, as described in each Fund's prospectus at the time of purchase All CDSL waivers will comply with the conditions set forth in paragraphs (a) through (d) of rule 22d–1 of the Act

9. All exchanges of shares of any class would be effected in compliance with Rule 11a–3 under the Act.

10. Under the proposed CDSL arrangement, Class B shares automatically would convert after the end of the CDSL Period to Flag Investors Class shares, as set forth in the prospectus of the Fund at the time of purchase. All such conversions would be effected in accordance with condition 15 below Class B shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares would be issued as Class B shares, but would be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account convert to Flag Investors Class shares, a *pro rata* portion of the Class B shares then in the sub-account also would convert to Flag Investors Class shares The portion would be determined by the ratio that the shareholder's shares converting to Flag Investors Class shares bears to the shareholder's total Class B

[1] Investment Company Act Release Nos. 14656 (Aug. 2, 1985) (notice) and 14695 (Aug. 27, 1985); as amended by Investment Company Act Release Nos. 15570 (Feb. 6, 1987) (notice) and 15592 (Feb. 27, 1987).

[2] The ISI Classes differ from the Flag Investors Classes in that they are distributed by Armata and impose a lower initial sales load.

[3] In the prior applications, this class was called Class B, but will be redesignated as Class D.

[4] The Institutional Shares and the Quality Cash Reserve Prime Shares together are referred to herein as the "Institutional Classes."

[5] Investment Company Act Release No 18228 (July 8, 1991) (notice) and 18261 (Aug. 7 1991) (the "1991 Order"); as amended by Investment Company Act Release No. 19707 (Sept 13, 1993) (notice) and 19776 (Oct. 12, 1993) (order) (the "1993 Order").

[6] Although the Funds initially propose to offer only Class B shares, they may issue other classes of shares with different CDSL arrangements in the future.

[7] All payments made in connection with the rule 12b–1 and non-rule 12b–1 plans will comply with the applicable provisions of Article III, Section 26 of the Rules of Fair Practice.

shares not acquired through dividends and distributions.

11. The conversion of one class of shares to another class of shares is subject to the availability of a ruling of the Internal Revenue Service or an opinion of counsel that payment of different dividends on different classes of shares does not result in the dividends or distributions of the Fund constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended, and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under Federal income tax law. The conversion of one class of shares to another class of shares would be suspended if such an opinion or ruling were no longer available.

12. For the foregoing reasons, applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder to the extent necessary to permit them to implement the proposed CDSL arrangement described above and corresponding waiver categories. Applicants also request an exemption from the provisions of sections 18(f), 18(g), and 18(i) to the extent necessary to amend the Multi-Class Orders and permit the Funds to implement a conversion feature.

Applicants' Conditions

If the requested order is granted, applicants expressly agree that they will comply with the following conditions:[8]

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund, and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the fund will relate solely to: (a) The amount of fees permitted by different rule 12b–1 plans; (b) the shareholder servicing expenses permitted by non-rule 12b–1 shareholder services plans; (c) voting rights with respect to a class's rule 12b–1 plan; (d) different designations; (e) Class Expenses, which shall be limited to any or all of the following: (i) transfer agent fees identified as being attributable to a specific class of shares; (ii) stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) directors' fees or expenses incurred as a result of issues relating to one class of shares; (vii) account expenses relating solely to one class of shares; (viii) auditors' fees, litigation expenses, and legal fees and expenses relating to a class of shares, and (ix) expenses incurred in connection with shareholder meetings as a result of issues relating to one class of shares; and (f) different exchange privileges among Funds or conversion features. Any other incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the SEC pursuant to an amended order.

2. The board of directors of each Fund, including a majority of the independent directors, will approve the Multiple Distribution System. The minutes of the meetings of the directors regarding the deliberations with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the directors' determination that the proposed Multiple Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the boards of directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor of the Funds will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the adviser and the distributor, at their own costs, will take steps to remedy such conflict, up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors of the Funds, including a majority of the directors who are not interested persons of the Funds. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet Class Expenses shall provide to the board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (i) distribution and shareholder servicing payments associated with any plans relating to each respective class of shares (including any costs relating to implementing such plans or any amendment thereto) will be borne exclusively by that class; and (ii) Class Expenses relating to a particular class will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert"), who has rendered a report to the applicants, a copy of which is attached as Exhibit D to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed

[8] Applicants have agreed that, in the event the order requested herein is granted, the conditions upon which the order is granted will supersede the conditions under which the Funds are currently operating, as set forth in the Multi-Class Orders.

as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The workpapers of the Expert with respect to such reports, following a request by the Funds (which the Funds agree to provide) will be available for inspection by the SEC staff upon the written request to the Funds for such workpapers by a senior member of the Division of Investment Management, or of a regional office of the SEC, limited to the Director, and Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any regional Administrators, or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares, and this representation will be concurred with by the Expert in the initial report referred to in condition (8) above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if the Expert, or appropriate substitute Expert, does not concur in the ongoing reports.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The distributors will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. The distributors will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive relief is granted and the duties and responsibilities of the directors of the Funds with respect to the Multiple Distribution System will be set forth in guidelines that will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the directors.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, contingent deferred sales loads, and exchange privileges applicable to each class of shares, other than the Institutional Classes, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Institutional Classes will be offered solely pursuant to separate prospectuses. The prospectuses for the Institutional Classes will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of the Institutional Classes and will identify the persons eligible to purchase shares of such classes. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares except the Institutional Classes. Advertising materials reflecting the expenses or performance data for the Institutional Classes will be available only to those persons eligible to purchase shares of the Institutional Classes. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares, except the Institutional Classes, separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that each Fund may make pursuant to its rule 12b–1 plan or shareholder servicing plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 or the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 plan (or if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), indentical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Tartget Class. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversdion of the New Target Class or the New Purchase Class shall be borne solely by the adviser and the distributor of the Fund. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed, and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94-30622 Filed 12-13-94, 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Media Logic, Inc., Common Stock, $.01 Par Value) File No. 1-9605

December 8, 1994.

Media Logic, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

Media Logic requests such withdrawal from listing as its Common Stock presently is listed on the American Stock Exchange ("Amex") and substantially all of the trading in its Common Stock takes place on the Amex.

Any interested person may, on or before December 27, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-30708 Filed 12-13-94, 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20759; 813-134]

Employee Incentive Partnership, L.P. et al.; Notice of Application

December 8, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Employee Incentive Partnership, L.P. (the "Incentive Partnership"), a New York limited partnership, and Tiger Management Corporation, the general partner of the Incentive Partnership (the "General Partner").

RELEVANT ACT SECTIONS: Order requested under sections 6(b) and 6(e) granting an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would exempt the Incentive Partnership from most provisions of the Act and would permit certain affiliated and joint transactions. Applicants also request that the order apply to (1) other partnerships that will be identical in all material respects to the Incentive Partnership and that may be formed from time to time (the "Subsequent Incentive Partnerships") on the terms and conditions applicable to the Incentive Partnership, and (2) other entities directly or indirectly controlled by the General Partner that may serve as general partner of the Subsequent Incentive Partnerships. The Incentive Partnership and the Subsequent Incentive Partnerships are collectively referred to as the "Partnerships." Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATE: The application was filed on September 8, 1994 and amended on December 5, 1994. By supplemental letter dated December 7, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes to the application. This notice reflects the changes that will be made in the amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Robert E. Fink, 101 Park Avenue, 47th Floor, New York, New York 10178.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942-0582, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Incentive Partnership is a limited partnership newly formed under the laws of the State of New York. The General Partner believes that the best way to motivate its staff is to provide them with a means to share in some of the gains that they reap for the General Partner's clients. The General Partner will provide this financial incentive to key personnel through the Incentive Partnership and any Subsequent Incentive Partnerships established in the future. Each Partnership will be formed for the benefit of present and former employees, officers, and directors of the General Partner and any entity that is directly or indirectly controlled by it who meet certain income and sophistication standards described below ("Eligible employees"). Eligible Employees and any trusts established by such Eligible Employees for the benefit of their immediate family that will be admitted to any or all of the Partnerships as limited partners are referred to as the "Limited Partners."

2. The General Partner currently is expected to serve as general partner for the Subsequent Incentive Partnerships. In the future, however, one or more separate entities directly or indirectly controlled by the General Partner may serve as general partner of one or more of the Subsequent incentive Partnerships. The general partner of each Partnership, including the Incentive Partnership, will make the

investment decisions for that Partnership.

3. The General Partner is a corporation that is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").[1] It is a global asset manager providing advisory services to large institutional clients and wealthy individuals. The business and affairs of the General Partner are managed by or under the direction of its management committee (the "Committee"), members of which qualify as Eligible Employees.

4. In recent years the General Partner has organized certain private investment funds with institutional and individual investors (the "Private Funds") that are excluded from the definition of investment company under the Act by virtue of section 3(c)(1). In its capacity as a general partner of the Private Funds, the General Partner receives a performance allocation equal to a percentage of the Private Funds' net profits. Such allocation is not paid to the General Partner directly in cash. Instead, a portion of the Private Fund's income, gain, and unrealized appreciation is credited to the General Partner's capital accounts in an amount equal to the performance allocation.

5. Upon receipt of the order (or such earlier date, if any, as applicants determine to rely on rule 6b–1 under the Act), the General Partner will cause the Incentive Partnership to be admitted as a partner of one of the Private Funds and, pursuant to its authority as a general partner of the Private Fund, the General Partner expects to cause part of the performance allocation to which it otherwise would be entitled in a given year to be allocated to the capital accounts of the Incentive Partnership. The performance allocation will be sub-allocated by the General Partner among the capital accounts of the individual Limited Partners of the Incentive Partnership.[2] At the discretion of the General Partner, eligible Employees also may be permitted to make capital contributions to the Incentive Partnership.

6. The General Partner will have all powers necessary, proper, suitable, or advisable to carry out the purposes and business of the Incentive Partnership. No compensation will be paid to the General Partner by the Incentive Partnership for its services.[3] The General Partner will bear all normal operating expenses incurred, including but not limited to office rent, supplies, secretarial services, travel and entertainment, telephone (local and long distance), printing, and stationery. Certain expenses designated as "investment expenses," including commissions, the accounting and legal fees and disbursements related to any actual or threatened legal action or proceeding in connection with purchasing, selling, or holding any investment, borrowing charges on any securities sold short, custodial fees, bank service fees, organizational expenses of the Incentive Partnership, and any other reasonable expenses related to the purchase, sale, or transmittal of the Incentive Partnership assets, will be taken into account in determining net increases or net decreases in net worth of the Incentive Partnership.

7. Limited partner interests in the Partnerships (the "Interests") will be offered without registration under a claim of exemption under section 4(2) of the Securities Act of 1933, as amended (the "1933 Act") and will be offered only to Eligible Employees and any trusts established by such Eligible Employees for the benefit of their immediate family. To be an Eligible Employee, an individual must be a present or former employee or officer of the General Partner or a person directly or indirectly controlled by the General Partner and an "accredited investor" meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the 1933 Act. The limitations on the class of person who may hold the Interests, in conjunction with other characteristics of the Partnerships, will qualify each Partnership as an "employees' securities company" under section 2(a)(13) of the Act.

8. The General Partner and the Limited Partners each have or will have a basic capital account ("Basic Capital Account") established on the books of the Incentive Partnership reflecting their initial capital contributions.[4] The Incentive Partnership may cause a portion of each partner's capital to be carried in one or more special capital accounts (hereinafter referred to as "Special Situation Account") consisting of such partner's indirect participation, in the same proportion as his or her Basic Capital Account, in each special situation investment made by one of the Private Funds that the Incentive Partnership intends to invest in.[5] If a "follow-up investment"[6] to any such special situation investment is made, each partner will share proportionately in the resulting increase in his or her Special Situation Account that such follow-up investment relates to. Notwithstanding the foregoing, if any partner shall have given notice of his or her complete withdrawal, received notice or required retirement, or shall be deemed to retire from the Incentive Partnership by reason of death, such partner will not participate in any subsequent special situation investment that would establish new Special Situation Account or any subsequent follow-up investment that would increase an existing Special Situation Account.

9. The General Partner will periodically increase Basic Capital Accounts of the partners of the Incentive Partnership by amounts which, in aggregate, are equal to the Incentive Partnership's share of any performance allocation. Because an Eligible Employee's interest in a performance allocation-based increase in the assets of the Incentive Partnership essentially will be non-contributory, the performance allocation indirectly credited to each Eligible Employee will be determined by the General Partner in its sole discretion.[7]

10. At the beginning of each accounting period, the General Partner will determine the percentage (the "Capital Account Percentage") of each

[1] To the extent that any subsequent Incentive Partnership is managed by any person neither listed on the General Partner's Form ADV nor registered as an investment adviser under the Advisers act, applicants will consider, at the time of formation of such Subsequent Incentive Partnership, whether that person will be required to register as an investment adviser under the Advisers Act.

[2] The General Partner will not receive any performance allocation from the capital accounts of the Incentive partnership.

[3] The General Partner receives from each Private Fund a management fee, currently at an annual rate equal to one percent (1.0%) per annum of the Private Fund's net worth. The Incentive Partnership or any Subsequent Incentive Partnership that will invest in any of the Private Funds will incur a proportionate share of such management fee on the same economic terms as those applicable to third party investors.

[4] The Partnerships will be similar structurally and operationally in all material respects (other than investment objective and/or strategy) to the Incentive Partnership. The management and control of each Partnership, including all investment decisions, will be vested, directly or indirectly, in the General Partner. The Limited Partners, in their capacity as such, will have no part in the management and control of any Partnership.

[5] These special situation investment activities generally involve interests that are illiquid or otherwise subject in the hands of the Private Fund to restrictions on disposition. The cost of, and any contractual commitment with respect to, all such special situation investment activities is currently restricted to 15% of the Private Fund's net assets.

[6] The term "follow-up investment" refers to the subsequent acquisition by the Private Fund of additional interests relating to the original special situation investment, where such acquisition is undertaken on a voluntary basis, not pursuant to any preexisting capital commitment.

[7] Although an Eligible Employee may be required to make a nominal capital contribution for the purpose of becoming a limited partner under state law, the Eligible Employee otherwise will not be required to contribute capital in order to receive a performance allocation.

partner with respect to Basic Capital Accounts and each category of Special Situation Accounts by dividing the amount of his or her opening capital in each such account by the sum of all capital carried by the partners in the same set of capital accounts.

11. All partners will share any increase or decrease in the net worth of the Incentive Partnership, not attributable to the current fiscal year's performance allocation or any addition or withdrawal of capital, in proportion to their *pro rata* interest in each such account at the beginning of each accounting period.[8] Because the Incentive Partnership will be entitled to an increased partnership interest in the Private Fund as performance allocation only at the end of a fiscal year (which also will be the last day of an accounting period), the current performance allocation will not influence a partner's share of that period's increase or decrease in the Incentive Partnership's net worth from other sources.

12. The respective portion of the performance allocation that a partner of the Incentive Partnership may receive at the end of a given fiscal year that is not immediately withdrawn will be reflected in his or her Basic Capital Account on the first day of the following accounting period, leading to an appropriate adjustment in that partner's Capital Account Percentage with respect to Basic Capital Accounts. Similarly, because a withdrawal of capital from a Basic Capital Account by any partner of the Incentive Partnership may occur only on the last day of an accounting period, any withdrawal will decrease the relevant partner's Capital Account Percentage starting with the following, but not the current, accounting period. In this manner, each partner will share in the incentive Partnership's holdings on a *pro rata* basis.[9]

13. The Interest reflected in any Limited Partner's capital accounts not attributable to a performance allocation will vest immediately. The portion attributable to a performance allocation may be subject to a vesting schedule agreed to between the General Partner (or a person directly or indirectly controlled by it) and such Limited Partner. The vesting schedule, which will be no longer than five years, will be governed by the terms of the Limited Partner's written agreement executed prior to his or her admission to the Incentive Partnership. The schedule may be modified only with respect to any performance allocation effected subsequent to the modification. Any amount attributable to a performance allocation previously credited will continue to be subject to the vesting schedule in effect at the time such allocation was done.

14. No Limited Partner, including one who, subsequent to admission to the Incentive Partnership, ceases to be an employee of the Genereal Partner or a person directly or indirectly controlled by the General Partner, will forfeit any vested interest. The unvested share of a performance allocation may be forfeited only if the Limited Partner (or, in the case of any Limited Partner that is a trust, the Eligible Employee who established such trust) is terminated for cause or voluntarily resigns from his or her employment prior to the relevant vesting dates. If the Limited Partner dies, becomes incapacitated, or is terminated by the General Partner other than for cause, such Limited Partner will not forfeit any unvested share of a performance allocation. If such Limited Partner (or his or her estate) is deemed to withdraw or required to retire from the Partnership as a result of such an event, the remaining performance allocation will be treated as vested and accordingly will be distributed in the manner described below.

15. The Limited Partners may make withdrawals from their vested capital accounts on a quarterly basis, provided that they deliver sixty days written notice. In addition, immediately after the last day of any fiscal quarter, the Limited Partners may withdraw, after notifying the General Partner only five days in advance, all or any part of their capital accounts attributable to a performance allocation that has been credited to them and has vested but has not yet been withdrawn, provided that the amounts so credited must have been also realized for income tax purposes. No Limited Partner may make a capital account withdrawal based on a performance allocation that has not yet vested, except as may be permitted by the General Partner in its sole discretion.

16. Notwithstanding the foregoing, the General Partner may limit withdrawals on any particular day if and to the extent that the Incentive Partnership is not permitted to effect (or is otherwise restricted regarding) a withdrawal from the Private Funds. At such time, the limitation shall be applicable *pro rata* to all partners withdrawing on such date in proportion to the amounts requested to be withdrawn.

17. In the event of a withdrawal of capital from any Limited Partner's capital accounts, such withdrawal will be deemed to be made first from such Limited Partner's Basic Capital Account, and only after such Basic Capital Account has been exhausted will such withdrawal be deemed made from any Special Situation Account. If any such withdrawal is deemed to be made from any special Situation Account payment may be postponed until no later than the last day of the fiscal quarter in which the investment in such Special Situation Account is liquidated, prior to which liquidation, the withheld amount will continue to be held for the benefit of such Limited Partner. In addition, if any Limited Partner withdraws an amount which is deemed to be from a Special Situation Account, or otherwise withdraws a substantial portion of his or her capital accounts as described above, the General Partner may withhold from the proceeds an amount equal to such Limited Partner's *pro rata* share of the Incentive Partnership's obligation to fund the Private Fund's outstanding capital commitment with respect to such special Situation Accounts and retain such amount in the Incentive Partnership as a liability to the Limited Partner. Such amount withheld will be invested in money market instruments (with interest earned thereon to be distributed to the Limited Partner annually) until the capital commitment is called, and will be returned to the Limited Partner if the investment in the Special Situation Account is liquidated without funding the outstanding capital commitment.

18. The Limited Partners who withdraw all of their capital accounts will be deemed to have retired from the Incentive Partnership and will receive the net worth of their capital accounts, subject to the provisions relating to vesting and the withdrawal from any Special Situation Account described above. In the event that the beneficial interest of any Limited Partner passes to his or her estate or another person by reason of such Limited Partner's death, the deceased Limited Partner will be deemed to have elected to withdraw all of his or her capital accounts immediately after the last day of the

[8] As noted previously, each partner's share of any special Situation Account initially will equal such partner's interest in his or her Basic Capital Account. Only persons who are partners at the time a Special Situation Account is created will participate in the account. In addition, future participation in, and additions of capital to or withdrawals from, a Special Situation Account will be limited as further described in the application. Accordingly, each partner's percentage interest (if any) in Special Situation Accounts may vary from such partner's percentage interest in Basic Capital Accounts.

[9] Each Subsequent Incentive Partnership, irrespective of whether it will receive any performance compensation allocation from the Private Funds, will be subject to all applicable representations and conditions made herein, including but not limited to the *pro rata* allocation of any increase or decrease in the net worth of such Partnership.

year in which such Limited Partner has died and will receive the net worth of his or her capital accounts, subject to the provisions relating to the withdrawal from any Special Situation Account described above. No person may become a transferee or substitute Limited Partner of the Incentive Partnership unless the person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold the Interest in order to settle an estate of a decedent or bankrupt or for similar purposes.

19. Distributions pursuant to any withdrawal from capital accounts will be made in cash, in kind, or partly in cash and partly in kind, and the determination as to the manner in which such distribution will be made will be in the sole discretion of the General Partner. Distributions in kind ordinarily will consist of securities for which market quotations are readily available within the meaning of rule 17a–7 of the Act. The General Partner will use its best efforts to distribute other forms of property *pro rata* and will not effect any in-kind distribution on a non-*pro-rata* basis unless it determines that the terms of the distribution are fair and reasonable to all the Limited Partners in light of tax and other considerations.

20. If the General Partner requires any Limited Partner to retire from the Incentive Partnership, subject to provisions relating to forfeiture to the extent that such provisions are applicable, at least ninety percent of such Limited Partner's capital accounts shall be paid within ten days after the effective day of his or her retirement, and the balance shall be paid within ninety days after such date; provided that payment from any Special Situation Account will be subject to the provisions relating to the withdrawal from any Special Situation Account described above, and provided, further, that in lieu of such continuing interest, the General Partner may, in its sole discretion, determine that such Limited Partner will receive the fair value of the Special Situation Account (after taking into account such Limited Partner's *pro rata* share of any unfunded capital commitment relating thereto) as of the effective date of retirement. If the General Partner pays such Limited Partner the fair value of a Special Situation Account, the General Partner either will purchase the retiring Limited Partner's interest in the Special Situation Account out of its own funds or reduce its Basic Capital Account and concurrently increase its interest in the applicable Special Situation Account by a like amount. In this way, the *pro rata* participation in the Special Situation Accounts by the remaining Limited Partners will not be altered.

21. The Incentive Partnership's books of account will be open to inspection by any Limited Partner or his or her duly authorized representative at any reasonable time. At the end of each fiscal year, the General Partner will cause an audit of the books and records of the Incentive Partnership by a certified public accountant. A copy of the accountant's report with respect to the fiscal year will be mailed to each Limited Partner within ninety days after the end of such fiscal year, which report will include a statement of (1) the Incentive Partnership's assets and liabilities, (ii) the Incentive Partnership's net profit or loss, and (iii) the capital account balances of such Limited Partner.

22. For purposes of determining the net worth of the Incentive Partnership at any time, the partnership assets will be valued as follows: (i) securities that are listed on a national securities exchange and that are freely marketable will be valued at their last sale price on the date of determination, or if no sales occurred on such day, at the mean between the bid and asked prices on such day; (ii) other publicly traded and freely marketable securities will be valued at their last closing bid prices if held long and their last closing asked prices if sold short as supplied by the National Association of Securities Dealers, Inc. (or, if necessary, other sources); and (iii) any securities and assets other than those described above will be assigned a fair value as determined by the General Partner in its sole discretion in accordance with generally accepted accounting principles; provided that an interest in any Private Fund that values its own assets as otherwise provided in this paragraph will be carried at the value assigned by such Private Fund.

23. The Interests in the Incentive Partnership will be non-transferable except with the prior written consent of the General Partner, which consent may be withheld in its sole discretion, and in any event, will not be transferable to persons other than Eligible Employees, any trusts established by such Eligible Employees for the benefit of their immediate family, or the General Partner.

24. Each Partnership will operate as a nondiversified, closed-end investment company of the management type within the meaning of the Act. The Partnerships will not be limited in the percentage of assets that may be invested in a particular investment. No Partnership, however, will invest more than fifteen percent of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and no Partnership will acquire any security issued by a registered investment company if immediately after such acquisition, the Partnership owns more than three percent of the outstanding voting stock of the registered investment company.

25. The investment objectives and capital structures of the Private Funds vary from one Private Fund to another. Accordingly, the Partnerships that will invest in the different Private Funds will have different investment policies. The particular investment objectives of each Private Fund will be set forth in an information memorandum relating to the interests offered by that Private Fund. Prior to being admitted to any Partnership, Eligible Employees will received a copy of such memorandum about any Private Fund in which the Partnership will invest.

26. The Partnerships may engage in certain business dealings incidental to their operation, including but not limited to the payment of brokerage commissions, research fees and other expenses, with any company or persons that the General Partner (or any officer or employee thereof) or one or more of the Limited Partners may be directly or indirectly interested in. Any such transactions will comply with section 17(e) of the Act when applicable, and must be on terms no less favorable to the Partnerships than are generally afforded to unrelated third parties in comparable transactions. With respect to any securities purchased or sold by the Partnerships from or to the General Partner (or any officer or employee thereof) or any Limited Partner, acting as principal, the purchase or disposition of such securities will be made at their fair value.

Applicants' Legal Analysis

1. On behalf of the Partnerships, Applicants request exemptions from all the provisions of the Act, and the rules and regulations thereunder, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

2. The principal reason for the requested exemption is to ensure that the Partnerships will be able to share in a performance allocation that the General Partner is entitled to in a manner described above and to invest in attractive companies, properties or vehicles in which the General Partner or its individual employees, officers, or

directors, or the limited partners of any of the Private Funds may make or have already made an investment. In addition, relief is requested to permit the Partnerships the flexibility to deal with their investments in the manner the General Partner deems most advantageous to each Partnership or as required by the terms of the limited partnership agreements of the Private Funds, including without limitation restructuring the Partnership investments, having such investments redeemed, tendering the Partnership securities or negotiating options or implementing exist strategies with respect to the Partnership investments.

3. An exemption is requested from section 17(a) of the Act to the extent necessary to (a) permit the General Partner, acting as principal, to engage in any transaction directly or indirectly with any Partnership; (b) permit any Partnership to invest in an entity that is directly or indirectly controlled by the General Partner or in which the General Partner or any other Partnership has invested or will invest, or with which the General Partner or any other Partnership is or will become otherwise affiliated; and (c) permit a third party investor in the Private Funds, acting as principal, to engage in any transaction directly or indirectly with any Partnership. The transactions to which any Partnership is a party will be effected only after a determination by the General Partner that the requirements of condition 1 set forth below have been satisfied. To the extent any of the transactions described under the request for exemption from section 17(d) (and rule 17d-1) would come within the purview of section 17(a), such transactions are incorporated hereunder and an exemption from such section also is requested.

4. An exemption from section 17(a) is consistent with the policy of each Partnership and the protection of investors and necessary to promote the basic purpose of the Partnership, as more fully discussed with respect to section 17(d) below. The Limited Partners will have been fully informed of the possible extent of the Partnership's dealings with the Private Funds or with a third party investor in the Private Funds and, as successful professionals employed in the securities business, will be able to understand and evaluate the attendant risks. The community of interest among the Limited Partners, the General Partner and the Private Funds is the best insurance against any risk of abuse in this regard.

5. The foregoing exemption is requested on the undertaking that the Partnerships will not make any loans to the Private Funds, the General Partner, any general partner of any Subsequent Incentive Partnership, or any employee, officer or director of the General Partner or any person controlled directly or indirectly by the General Partner. In addition, the Partnerships will not sell or lease any property to any Private Fund or any other person controlled directly or indirectly by the General Partner except on terms at least as favorable as those obtainable from unaffiliated third parties. The considerations described above will protect the Partnership and limit the possibilities of conflict of interest and abuse of the type that section 17(a) was designed to prevent.

6. An exemption is requested from section 17(d) of the Act and rule 17d-1 thereunder to the extent necessary to permit the Partnerships to engage in any transactions in which affiliated persons of the Partnerships (including without limitation the General Partner and the Private Funds) or affiliated persons of such affiliated persons, (including without limitation the third party investors in the Private Funds) are participants. The exemption requested would permit, among other things, co-investments by the Partnerships, the General Partner, and the individual employees, officers, or directors thereof making their own individual investment decisions apart from the Partnerships. To the extent any of the transactions described under the request for exemption from section 17(a) would come within the purview of section 17(d) (and rule 17d-1) such transactions are incorporated hereunder and an exemption for such section and rule is also requested.

7. The flexibility to structure co-investments and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. The Concern that permitting co-investments or joint investments by the General Partner or by third party investors in the Private Funds might lead to less advantageous treatment of the Partnerships should be mitigated by the fact that (a) the General Partner, in addition to its substantial economic interest as general partner of the Private Funds and the Partnerships, will be acutely concerned with its relationship with the key personnel who invest in the Partnerships; and (b) senior officers and directors of the General Partner will be investing in the Partnerships.

8.The Partnerships will maintain their assets with either a bank qualified to serve as a custodian under section 17(f) of the Act or a registered broker-dealer. To the extent that the Partnerships maintain custody of their assets with a registered broker-dealer, applicants will comply with rule 17f-1 as described below.

9. Pursuant to paragraph (a) of rule 17f-1, each Partnership will enter into a written contract with an independent registered broker-dealer, provided that approval by the General Partner or any general partner of any Subsequent Incentive Partnership will be deemed to be approved by a majority of the board of directors of that Partnership.

10. Pursuant to paragraph (b)(1) of rule 17f-1, to the extent that any investment in the Private Funds will be evidenced only by partnership agreements and similar documents, the Partnership's copies of such documents will be kept in the registered broker-dealer's locked files. To the extent that the Partnerships invest in any securities that are either uncertificated or held in book-entry form, such investments will be maintained by the broker-dealer in the same manner as similar investments for other third parties are maintained.

11. Applicants will comply with paragraphs (b)(2) and (b)(3) of rule 17f–1.

12. Applicants request relief from paragraph (b)(4) of rule 17f–1 to permit the Partnerships to enter into the arrangement discussed below without periodic verifications. Given the community of interest of all the parties involved, the existing requirement for an annual audit, and the protections and procedures described below, applicants submit that the burden of complying with such a requirement is unwarranted.

13. Applicants will comply with paragraphs (b)(5) and (b)(6) of rule 17f–1.

14. Applicants request relief from paragraph (c) of rule 17f–1. Applicants believe that the transmission to the Commission of a copy of any contract executed thereunder is unnecessary because of the community of interest of all the parties involved. Instead, such records will be maintained for the life of the Partnership and at least two years thereafter, and will be subject to examination by the Commission and its staff. Each Partnership will maintain all such records in an easily accessible place for at least the first two years.

15. Applicants will comply with paragraph (d) of rule 17f–1, provided that ratification by the General Partner or any general partner of any Subsequent Incentive Partnership will be deemed to be ratification by a majority of the Board of directors of that Partnership.

16. In addition to compliance with rule 17f–1 in the manner and to the extent described above, applicants will adopt the following procedures. Each Partnership will engage an attorney or certified public accountant to act as an independent representative to review and authorize the transfer of Partnership funds or securities to its partners. The custodian will transfer funds or securities to the General Partner or any Limited Partner only in connection with the withdrawal of all or part of such person's partnership interest. Before the Partnership makes any distribution of Partnership funds or securities to either the General Partner or any Limited Partner, the General Partner will submit a written request to the independent representative showing (i) the amount of the withdrawal in dollars, (ii) the Capital Account Percentages of the partner in all Basic Capital Accounts and Special Situation Accounts before the withdrawal, and (iii) the Capital Account Percentages of the Partner in all Basic Capital Accounts and Special Situation Accounts after the withdrawal. The General Partner will give the independent representative information sufficient to permit him or her to determine whether the withdrawal is being effected in accordance with the provisions of the Partnership Agreement. The General Partner will send copies of all written requests for capital withdrawals of the custodian. The agreement with the custodian will require that the custodian transfer funds or securities to the General Partner or any Limited Partner only after receiving written authorization from the independent representative. The custodian will provide the independent representative and the Partnership with statements listing all amounts disbursed from the Partnership account at least quarterly. Applicants believe that these conditions and procedures will provide substantial protection against any risk of abuse and overreaching of investors.

17. An exemption is requested from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnerships to comply with rule 17g/1 without the necessity of having a majority of the General Partner's Committee who are not "interested persons" take such action and make such approvals as are set forth in such rule 17g–1. Since all the members of the Committee will be affiliated persons, without the relief requested the Partnerships could not comply with rule 17g–1. The Partnerships will, except for the requirements of such approvals by "not interested" persons, otherwise comply with rule 17g–1.

18. Section 17(j) and rule 17j–1 require that every registered investment company adopt a written code of ethics requiring that every access person of the investment company report to the investment company with respect to transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in the security. Applicants request an exemption from rule 17j–1 (except rule 17j–1(a)). Requiring the Partnerships to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the participants of the Partnerships; the concern of the General Partner that personnel who participant in the Partnerships actually receive the benefits they expect to receive when investing in the Partnerships; and the fact that the investments of the Partnerships will be investments that ordinarily would not be offered to the Limited Partners, including those Partners who would be deemed access persons, as individual investors.

19. Sections 30(a), 30(b) and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. The forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partner. The pertinent information contained in such filings will be furnished to the Limited Partners, the only class of people truly interested in such material. In view of the community of interest among all parties concerned with the Partnerships and the fact that the Interests are not available to the public, but rather a specific group of people, it would seem that the protection afforded by sections 30(a) and (b) (*i.e.*, public dissemination of information to ensure orderly markets and equality of information among the public) is not relevant to the Partnerships or their operations. Consequently, applicants respectfully request that the exemptive relief be granted. Exemptive relief is also requested under section 30(d) to the extent necessary to permit each Partnership to report annually in the manner described herein. In light of the lack of trading or public market for the Interests held by the Limited Partners, it is respectfully submitted that to allow annual reports, rather than semi-annual reports, would be consistent with the protection of investors and the policy fairly intended by the Act.

20. Section 30(f) of the Act requires that every officer, director and member of an advisory board of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the 1934 Act. As a result, the General Partner and others who may be deemed members of an advisory board of any Partnership may be required to file Forms 3, 4 and 5 with respect to their interests in the Partnerships, even though no trading market for such interests would exist and transferability of such interests would be severely restricted. These filings are unnecessary for the protection of investors and burdensome to those required to make them. Because there would be no trading market and the transfers of any Interests are severely restricted, the purpose intended to be served by section 16(a) is not apparent. Accordingly, exemption from the requirements of section 30(f), to the extent necessary to exempt the General Partner and the members of the Committee and any other persons who may be deemed members of an advisory board of any Partnership from filing Forms 3, 4 and 5 under section 16 of the 1934 Act with respect to their ownership interests in the Partnerships, is appropriate and consistent with the protection of investors.

21. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the fact that each Partnership will be an "employees' securities company" as that term is defined in section 2(a)(13) of the Act, organized to provide incentive compensation and investment opportunities to Eligible Employees. Applicants further submit that there is a substantial community of economic and other interests among the General Partner, the members of the Committee, and the individual Limited Partners of the Partnerships, and there is no public group of investors.

Applicants' Conditions

Applicants will comply with the following conditions if the requested order is granted:

1. Proposed transactions otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which any Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner or, in the case of any

Subsequent Incentive Partnership, its general partner, determines that:

a. the terms of the transactions, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching or the Partnership or its Limited Partners on the part of any person concerned; and

b. the transactions are consistent with the interests of the Limited Partners, the Partnership's organizational documents and the Partnership's reports to its partners.

In addition, the General Partner and any general partner of any Subsequent Incentive Partnership will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnership and at least two years thereafter, and will be subject to examination by the Commission and its staff. Each partnership will maintain all such records in an easily accessible place for at least the first two years.

2. In connection with the Section 17 Transactions, the General Partner and any general partner of any Subsequent Incentive Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d-1, the General Partner and any general partner of any Subsequent Incentive Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor agrees that, prior to disposing of all or part of its investment, it will (a) give the General Partner or, in the case of any Subsequent Incentive Partnership, its general partner, sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrain from disposing of its investment unless the Partnership has the opportunity to dispose of the Parthership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) an "affiliated person" (as such term is defined in the Act) of the Partnership; (b) an officer or director of the General Partner or any entity directly or indirectly controlled by the General Partner; or (c) a company in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities (including without limitation each Private Fund). The restrictions contained in this condition 3, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2-1 thereunder.

4. Each Partnership and its general partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.[10]

5. The General Partner and any general partner of any Subsequent Incentive Partnership will send to each Limited Partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by a certified public accountant. At the end of each fiscal year, the General Partner and any general partner of any Subsequent Incentive Partnership will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end. In addition, within ninety (90) days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner or the general partner of any Subsequent Incentive Partnership shall send a report to each person who was a limited partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by that partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. If purchases or sales are made by any Partnership from or to an entity affiliated with the Partnership by reason of a five percent (5%) or more investment in such entity by any director, officer, or employee of the general partner of that Partnership, such individual will not participate in that general partner's determination, under the terms set forth above in condition 1, concerning whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[10] The Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[Release No. 34-35055; File No. SR-Phlx-94-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Limited Registration/Floor Member Registration Status and the Use of the Series 7A Examination

December 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Rule 604, Registration and Termination of Registered Representatives, to adopt a limited registration provision applicable

to persons conducting a professional customer business from the Phlx trading floor. The Exchange also proposes to adopt a requirement that persons conducting functions customarily performed by a registered representative must register and be qualified pursuant to Phlx Rule 604.

The limited registration provision would require registration with the Exchange as a Limited Registration/Floor Member and completion of an examination, in lieu of registration as a Registered Representative and completion of the General Securities Registered Representative Examination ("Series 7"). The Exchange also proposes to adopt the Content Outline for the Examination Module for Floor Members Engaged in Public Business with Professional Customers.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Access to the trading floor of the Exchange is available in different forms, including direct floor presence through Exchange membership, direct access through participation in automatic order routing systems, and indirect access through floor members via telephone. Direct access also refers to a telephone line that rings automatically to one location once the headset is lifted, as distinguished from speed-dialing capabilities. Direct access to the Exchange's trading floor is governed by Phlx Rule 606, which requires approval by the appropriate floor standing committee. For instance, such access has been approved by the Exchange's Floor Procedure Committee, permitting qualified equity floor members to apply for approval as limited registration/floor members on the Phlx.

Accepting orders from non-member, non-broker-dealers constitutes a public business, such that any person accepting such orders must be Series 7 registered, pursuant to the proposed language in Rule 604(a). In addition, Phlx Rule 701, Permission to Deal With Public, requires a member or member organization to obtain prior approval from the Exchange's Business Conduct Committee to deal in securities with non-members of the Exchange or persons not registered as over-the-counter brokers or dealers. In 1986, the Commission approved the use of the Series 7 examination by the Phlx to qualify persons seeking registration as general securities representatives.[2]

At this time, the Exchange seeks to adopt a specific provision in Rule 604(a) bolstering the requirement for registered representatives to register as such. A registration requirement for qualified registered representatives was recently codified into Rule 604(a).[3] The Phlx now proposes to expressly state that conducting a public business requires Series 7 registration, adding this missing requirement to Exchange rules.[4]

In addition to amending Rule 604(a), the Exchange seeks to adopt a new paragraph (c) of Rule 604 to permit a limited registration for persons conducting a professional customer business from the Phlx trading floor. In lieu of full registration as a registered representative, the proposed limited registration would apply to accepting orders from professional customers[5] only, as defined in proposed Rule 604(c)(i). Limited registration/floor members would be required to register as such with the Exchange and pass an examination. This examination, a subset of the Series 7, would be tailored toward the professional customer business being conducted, testing knowledge required to conduct such a business. The advantage of such an examination is that it would cover important topics relevant to conducting a professional customer business, but not knowledge particular to conducting a retail business. For example, municipal securities, although covered on the Series 7, would not be tested on the proposed new examination, because such securities are not listed on the Exchange and would not be governed by the proposed rule. The outline of the information to be covered includes the following topics: federal and state securities laws; general characteristics of equity securities and corporate bonds, conduct respecting customer accounts; primary and secondary securities markets; and order execution, confirmation, settlement and recordkeeping.

The proposed rule change is intended to simplify the procedure for Phlx members to conduct business with non-member, non-broker-dealer professional customers. The Exchange believes that the new examination is appropriate, in lieu of the Series 7, because it nevertheless tests knowledge relevant to conducting a public business. For example, the rules governing customer accounts, as listed in the examination outline, would be covered, such that Limited Registration/Floor Members would be tested for competence regarding excessive trading, approval of accounts and discretionary transactions.

The Phlx notes that conducting a public business with other than professional customers as defined in Rule 604(d) would require full Series 7 registration. In addition, conducting a professional customer business from off the Phlx trading floor, or in non-Phlx listed issues, would also require full Series 7 registration. Of course, persons who are Series 7 registered need not register as Limited Registration/Floor Members in order to conduct a professional customer business.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. The examination requirement is intended to protect investors and the

[1] The Exchange will use the Series 7A Examination that was approved in SR-NYSE-93-10 (Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539). The Series 7A Examination for Phlx members will be administered by the New York Stock Exchange, Inc. ("NYSE"). Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx and Elisa Metzger, Senior Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 5, 1994.

[2] Securities Exchange Act Release No. 23685 (October 6, 1986), 51 FR 36621 (SR-Phlx-86-31).

[3] Securities Exchange Act Release No. 32883 (September 14, 1993) (File No. SR-Phlx-93-24).

[4] The Exchange notes that its members who are also NYSE members, for example, are currently subject to the NYSE's definition and registration provisions; "Phlx-only" members would now be subject to a corresponding provision.

[5] The proposal would define a professional customer to include a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or political subdivision thereof or any person who has, or has under management, net tangible assets of at least sixteen million dollars. For purposes of this definition of professional customer, the term "person" shall mean the same as that term is defined in Rule 20, except that it shall not include natural persons.

public interest, namely the professional customers whose orders would be handled by Limited Registration/Floor Members, by requiring a minimum competence level. The Exchange also believes that the proposed limited registration requirements should facilitate direct access to professional customers, which should enhance liquidity in Exchange-listed securities. This, in turn, should promote just and equitable principles of trade.

Accordingly, the proposed rule change is also consistent with Section 6(c)(3)(B) of the Act, which provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established. Lastly, the Exchange believes that the proposed rule change is consistent with Section 15(b)(7) in that it is designed to ensure that a registered broker or dealer, prior to effecting any transaction in, or inducing the purchase or sale of, any security, meet certain standards of operational capability, training, experience, or competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–15 and should be submitted by January 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30619 Filed 12–13–94; 8:45 am]

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[Release No. 34–35056; File No. SR–CHX–94–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Increase Its Listing Fees

December 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 30, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend effective January 1, 1995 its "listing fees" set out in item (1) of the Exchange's Fees and Assessments schedule. Generally, the Exchange proposes to increase the minimum and maximum fees associated with listing securities on the CHX.

The proposed change raises the original listing fee from $10,000 to $15,000 per issue of common stock, and increases the minimum maintenance fee for shares listed from $1,000 to $1,250 and the maximum maintenance fee from $2,750 to $3,000. The Exchange also proposes to amend its Interpretations and Policies (paragraph .01) of Rule 1 of Article XXVIII of the Exchange's Rules to reflect the amended listing fee structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX's purpose for amending its listing fees is to make them consistent with the fees charged by other exchanges, and to adequately reflect the costs of providing listing services. While the overall effect of the proposed changes is to increase listing fees, the Exchange believes such increases are necessary to defray the rising costs associated with maintaining listing services and related overhead expenses.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Rule of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–25 and should be submitted by January 4, 1995

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc 94–30620 Filed 12–13–94 8 45 am]

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[Release No. 34–35059; File No. SR–NASD–94–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the NASD's Free-Riding and Withholding Interpretation

December 7, 1994.

On March 18, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder.[2] The proposed rule change amends the Free-Riding and Withholding Interpretation, an Interpretation of the NASD's Board of Governors under Article III, Section 1 of the Association's Rules of Fair Practice ("Interpretation").[3]

Notice of the proposed rule change, together with the substance of the proposal, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 34485, Aug. 3, 1994) and by publication in the **Federal Register** (59 FR 40933, Aug. 10, 1994). Four comment letters generally favoring the proposed rule change were received in response to the Commission release.[4] This order approves the proposed rule change.

I. Overview of the Free-Riding and Withholding Interpretation

The purpose of the Interpretation is to protect the integrity of the public offering system by ensuring that members make a bona fide public distribution of "hot issue" securities and do not withhold such securities for their own benefit or use the securities to reward other persons who are in a position to direct future business to the member Hot issues are defined by the Interpretation as securities of a public offering which trade at a premium in the secondary market whenever such trading commences. The Interpretation prohibits members from retaining the securities of hot issues in their own accounts and prohibits members from allocating such securities to directors, officers, employees and associated persons of members and other brokerdealers. It also restricts member sales of "hot issue" securities to the accounts of specified categories of persons, including among others, senior officers of banks, insurance companies, registered investment companies, registered investment advisory firms and any other persons within such organizations whose activities influence or include the buying or selling of securities. These basic prohibitions and restrictions are also made applicable to sales by members of hot issue securities to accounts in which any such persons may have a beneficial interest and, with limited exceptions, to members of the immediate family of those persons restricted by the Interpretation.

In May 1992, the NASD Board of Governors appointed a special committee (the "Committee") to revisit the Interpretation to determine whether changes in securities markets called for amendments to the Interpretation's restrictions, definitions and obligations. The Committee also examined various interpretative issues that had been raised with the NASD.

In June 1993, the NASD published for comment proposed modifications to the Interpretation based on its review and suggestions received. The NASD received 36 comment letters on the proposed modifications. The Committee considered the comments and made final recommendations to the National Business Conduct Committee ("NBCC") in November 1993 The Board considered and approved the NBCC's recommendations in November 1993

The proposed rule change includes language clarifications to facilitate understanding of the Interpretation's application, as well as substantive modifications.

II. Substantive Modifications

The NASD proposed several substantive modifications to the Interpretation, including changes in connection with limited business broker-dealers, investment partnerships and corporations, stand-by arrangements, venture capital investors, securities offerings covered by the Interpretation, and issuer-directed securities. The substantive changes are intended to clarify the scope of the Interpretation and remedy certain unintended effects the Interpretation has had in its present form. Specifically the NASD believes that the Interpretation has prohibited

[1] 15 U S C 78s(b)(1)

[2] 17 CFR 240 19b-4

[3] NASD Manual, Rules of Fair Practice, Art III, Sec 1 (CCH) ¶ 2151 06

[4] See letter from Weil, Gotshal & Manges ("Weil") to Jonathan G Katz, Secretary SEC, dated August 31 1994, letter from James P Dowd, Senior Vice President and Associate General Counsel, Paine Webber Incorporated ("Paine Webber") to Jonathan G Katz, Secretary SEC, dated September 1 1994, letter from Sullivan & Cromwell ("Sullivan") to Jonathan G Katz, Secretary SEC, dated September 12, 1994, and letter from Daniel W Sasaki, Vice President and Corporate Counsel, CS First Boston Corporation ("CSFB") to Jonathan G Katz, Secretary SEC, dated September 14, 1994

transactions which do not implicate the Interpretation's objective of a bona fide distribution of hot issue securities to the public, and may have created unduly burdensome restrictions and expense for NASD members and their customers. The substantive changes, described further below, are intended to restrict prohibited persons from receiving hot issues without engendering unintended restrictions inconsistent with the purpose of the Interpretation.

A. Stand-by Arrangements

The Interpretation currently prohibits the sale of a hot issue to a group of stand-by purchasers if any purchaser is restricted under the Interpretation and has a beneficial interest in the stand-by account. This prohibition may affect the successful completion of an offering in which some of the offered securities are not otherwise purchased during the offering period. The NASD proposed to permit restricted accounts to purchase hot issue securities pursuant to a stand-by arrangement (*i.e.*, an agreement to purchase securities not purchased during the offering period) under certain conditions. The Commission believes that the proposed conditions (prospectus disclosure, a formal agreement, absence of any other purchaser, and a three month holding period) will ensure that no NASD member will withhold such securities for its own benefit or use the securities to reward other persons who are in a position to direct future business to that member, while facilitating a bona fide distribution of the securities offered.[5]

B. Definition of Immediate Family

The Interpretation presently restricts immediate family members of: (i) persons enumerated in Paragraph 2 (persons associated with broker-dealers) ("absolutely restricted persons"); and (ii) Paragraphs 3 and 4 of the Interpretation (persons having a connection to the offering and individuals related to banks, insurance companies and other institutional type accounts) (collectively, "conditionally restricted persons") from participating in hot issue distributions. The Interpretation defines immediate family members very broadly and includes such persons as father-, mother-, brother-in-law. An immediate family member of an absolutely restricted person is prohibited from purchasing hot issues to the same degree as the absolutely restricted person, unless it can be demonstrated that the absolutely restricted person does not contribute directly or indirectly to the support of the immediate family member. In the latter circumstance, the immediate family member of the absolutely restricted person may purchase a hot issue under the same conditions as conditionally restricted persons. Specifically, such persons may purchase hot issues if: (1) The securities were sold to such persons in accordance with their normal investment practice with the member making the distribution; and (2) the securities sold are insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one such person is insubstantial.

The Committee determined that in its present form, the immediate family member provisions often place inequitable restrictions on a person with a fairly attenuated connection to a restricted person named in the Interpretation (*e.g.*, the sister-in-law of a bank vice-president), and often result in unduly burdensome compliance difficulties for members monitoring whether such persons are restricted or become restricted. The modifications to the immediate family member provisions are intended to ensure that: (i) those persons with a substantial nexus to a restricted person will be similarly restricted under the Interpretation; (ii) NASD members may determine more easily whether such persons are restricted; and (iii) the Interpretation no longer will apply to persons not intended to be restricted.

The modifications:

(a) retain the investment history exemption, and expand it to include the use of investment history at firms other than the member making the allocation. The burden of obtaining such information will remain with the firm making the sale;

(b) eliminate the immediate family restrictions on conditionally restricted persons and clarify that the Interpretation will apply only to conditionally restricted persons and to persons who are supported directly or indirectly to a material extent by that conditionally restricted person; and

(c) with respect to absolutely restricted persons, continue to apply the immediate family restrictions to persons supported by the restricted individual and to allocations by the restricted individual's firm, but no longer will prohibit sales to non-support family members of an absolutely restricted person by a broker-dealer that does not employ the absolutely restricted person, where the absolutely restricted person has no ability to control the allocation of the hot issue.

There will continue to be a violation if it can be determined that the restricted person has a beneficial interest in the account to which an allocation was made.

C. Venture Capital Investors

The Committee determined that the Interpretation should permit bona fide venture capital investors to purchase a hot issue to maintain their percentage ownership in an entity, notwithstanding that the venture capital investor may be a restricted person, or that such person may have a beneficial interest in the venture capital account. Venture capital investors often play a pivotal role in the continued viability of an entity prior to its public offering. Therefore, such investors should be allowed to maintain their ownership interest after the entity completes its public offering.

The venture capital investor, in order to purchase the hot issue without implicating the Interpretation's restrictions, must meet the following conditions:

(a) One year of preexisting ownership in the entity;

(b) No increase in the investor's percentage ownership above that held for the three months prior to the filing of a registration statement in connection with the initial public offering;

(c) A lack of special terms in connection with the purchase; and

(d) The venture capital investor cannot assign, sell, pledge, hypothecate or otherwise dispose of the securities for a period of three months following the effective date of the registration statement in connection with the offering.

The conditions imposed on the venture capital investor are intended to ensure that the securities can be purchased by a bona fide venture capital investor who has had an on-going interest in an entity, and protect against any attempt to circumvent the Interpretation's restrictions by investing in an entity shortly before its public offering.

D Investment Partnerships and Corporations

The Interpretation generally disallows sales of a hot issue to an investment partnership or corporation, or similar account ("investment partnership") if a restricted person has a beneficial interest in the entity Thus, an investment partnership with several limited partners would be "tainted" due to the limited partnership interest of the restricted person. In August 1992 and

[5] When the securities are sold by stand-by purchasers, the stand-by purchasers would need to comply with all applicable regulatory requirements including prospectus delivery pursuant to Section 5 of the Securities Act of 1933 ("Securities Act") and Rule 10b-6 under the Act.

October 1993 Notices to Members, the NASD announced it would allow investment partnerships, on an interim basis, to use a "carve out" mechanism to prevent restricted persons with an interest in an investment partnership from participating in hot issue allocations. This "carve out" mechanism requires the NASD member making such allocation to set up a separate account for these transactions and obtain from the investment partnership and its accountants documentation that indicates that the restricted persons are prevented from participating in a hot issue allocation.

The carve-out methodology has been codified in the Interpretation. The NASD intends that the carve-out procedure not allow a person restricted under the Interpretation to receive a hot issue allocation inconsistent with the Interpretation's provisions without inequitably penalizing those not restricted under the Interpretation due to their interest in an investment partnership in which a restricted person also has an interest.[6] The carve-out procedure will allow the limited partnership to purchase the hot issue by properly allocating the hot issue away from the restricted limited partner rather than restricting the whole limited partnership.

In addition, the NASD is amending the Interpretation to provide that a beneficial interest, as defined under the Interpretation, will not be created by the receipt of a management fee based on the performance of an account. The Commission understands that investment partnerships and other similar accounts typically require that the management fee structure of such accounts include a performance-based component. Thus, an investment advisor restricted under Paragraph 4 of the Interpretation could restrict an entire investment partnership, in which no restricted persons have an interest, based solely on the investment advisor receiving a fee based on the performance of the securities in the investment partnership account. The Beneficial Interest provision of the Interpretation is intended to address those accounts in which a restricted person has a substantive, albeit not necessarily direct, ownership interest that should be appropriately restricted. The receipt of a performance-based fee, without the existence of any other beneficial interest, should not create such an interest.

E. Definition of Public Offering

The Interpretation currently defines "public offering" to include virtually any and all distributions of securities, whether registered or unregistered under the Securities Act. The definition has imposed the Interpretation's restrictions on *bona fide* private placements of securities which do not present the potential abuses against which the Interpretation is intended to guard. The amendment will not apply the Interpretation to a traditional private placement of securities because such distributions generally are limited in scope and have holding periods placed on the privately placed securities, thereby limiting the potential for restricted persons to purchase the securities and resell or "flip" them in a short period of time.

F. Associated Person Definition

Article I, Section (m) of the NASD By-Laws defines a "person associated with a member" to include a partner of a broker-dealer and any person who is directly or indirectly controlling or controlled by such member, whether or not such person is registered with the Association. A certain degree of confusion exists as to the status of passive investors in broker-dealers, such a broker-dealer limited partners, equity owners, or subordinated lenders.

Certain passive investors lack the necessary element of control. Therefore, the Interpretation has been amended to provide that a person who owns or has contributed 10% or less to a broker-dealer's capital should not be construed to be an associated person if: (i) such ownership interest is a passive investment; (ii) the person does not receive hot issues from the member in which she has the interest; and (iii) the broker-dealer is not in a position to direct hot issues to the person. These conditions are intended to prevent such persons from attempting to use their ownership interests in a broker-dealer to effect the purchase of hot issues, and circumvent the Interpretation's objective of a bona fide distribution of a hot issue.

G. Persons Associated With Limited Business Broker-Dealers

Certain broker-dealers transact a securities business that is limited to direct participation programs or investment company/variable product securities. Persons associated with such limited broker-dealers are not in a position to sell, distribute, or withhold hot issue securities. The Interpretation has been amended to recognize that such persons would not be in a position to inhibit a bona fide distribution of a hot issue security. Specifically, the Interpretation has been modified so that persons associated with broker-dealers whose business is limited to direct participation programs or investment company/variable product securities are not restricted under the Interpretation to the same extent as those persons associated with broker-dealers with a more comprehensive securities business. The modification applies only to a person associated with such a limited broker-dealer, and not to the broker-dealer itself, as it is inappropriate for any NASD member to purchase a hot issue security for its own account, regardless of the extent of its securities business.

H. Issuer Directed Securities

Presently, an employee of an issuer, who also is restricted under the Interpretation, must receive permission from the NASD Board of Governors in order to purchase hot issue securities of its employer, if the employee does not have the requisite investment history with the NASD member making the securities distribution. For example, an employee of a manufacturing company who is married to the senior officer of a bank would be restricted under the Interpretation because he or she is the immediate family member of a restricted person under Paragraph 3 of the Interpretation. Under the proposed changes to Paragraph 3 of the Interpretation, the employee would still be restricted if the senior officer of the bank directly or indirectly supports the employee. If permission is granted by the Board of Governors, the employee is allowed to purchase the securities of the employer without meeting the investment history requirement, but the amount purchased would still have to meet the insubstantial and not disproportionate tests described above.

Issuer-directed share programs are viewed as a valuable tool in employee development and retention, and are not likely to pose the risk of members using these securities to reward other persons who are in a position to direct future business to the member. Thus, the modifications to the Issuer Directed Securities section of the Interpretation will allow employees of issuers to purchase hot issue securities of the employer under the same terms and conditions as persons associated with NASD members are permitted in connection with purchases of securities issued by the member, pursuant to an exemption provided in Section 13 of Schedule E to the NASD's By-Laws

[6] A typical scenario is where a limited partnership with a large number of limited partners is restricted under the Interpretation because one of the limited partners is an officer of an insurance company, and therefore restricted under Paragraph 4 of the Interpretation.

I. Cancellation Safe Harbor

It will not be a violation if a NASD member makes an allocation of a hot issue to a restricted person or account, so long as the member cancelled the trade and reallocated the security at the public offering price to an unrestricted account, prior to T+1 of the initial transaction. The clarification is intended to remedy concerns caused by inadvertent violations of the Interpretation that are corrected by the NASD member making the distribution. Sales following cancellation would need to be made in compliance with applicable laws, including section 5 of the Securities Act.

Whether a particular cancellation and reallocation for purposes of compliance with the Interpretation will raise an issue under Rule 10b-6 will depend upon the facts and circumstances involved in that cancellation and reallocation For purposes of Rule 10b-6, a distribution includes "the entire process by which in the course of a public offering the block of securities is dispensed and ultimately comes to rest in the hands of the investing public."[7] Thus, a distribution continues if a broker-dealer withholds any part of an offering in proprietary or nominee accounts and later sells those securities to the public after secondary trading has begun.[8] However, a cancellation of a bona fide purchase order will not reopen the distribution where there is no reason for the underwriter to believe that the purchase order would be cancelled.[9]

III. Comments

A. Investment Partnerships

Weil, Sullivan and CSFB believe that the carve-out methodology proposed by the NASD remains unduly restrictive. Weil argues that the proposal is unduly restrictive with respect to those investment partnerships in which conditionally restricted persons hold beneficial interests. Weil notes that members may sell directly to conditionally restricted persons if such sales are made in conformity with the investment history exemption. Weil suggests that members be permitted to sell hot issues to investment partnerships in which conditionally restricted persons hold beneficial interests if the sales conform to the normal investment practice of the investment partnership and such sales meet the "insubstantial" and "not disproportionate" tests.

The NASD notes that it interprets the Interpretation to permit sales to investment partnerships or corporations in which conditionally restricted persons with the requisite investment history have a beneficial interest if the member can demonstrate that the percentage ownership of the hot issue security attributable to the conditionally restricted person is not greater than the amount that that person would have been allowed to purchase directly.[10] The Commission believes that this interpretation ensures that conditionally restricted persons are not treated less favorably if they hold an indirect interest in a hot issue purchased by an investment partnership than they are if they directly purchase a hot issue.

Weil also suggests that the Interpretation permit an investment partnership that has created a "hot issue" to "journal" securities in the hot issue account to the regular account upon completion of the offering. Weil states that such a transfer of accounts, after the completion of the distribution of the issue, would have no bearing upon the adequacy of the distribution to the public. Sullivan suggests that the NASD dispense with the "hot issue" account entirely, instead permitting investment funds to segregate new issue purchases on their internal records.

The NASD believes that such a mechanism would make it unnecessarily difficult to enforce compliance with the carve-out provisions. The Commission notes that the carve-out mechanism is not necessary when no conditionally restricted person would obtain an interest in a hot issue that is greater than the amount that that person would have been allowed to purchase directly. Therefore, the Commission agrees that a journaling mechanism is not necessary

Sullivan also argues that the NASD should permit restricted persons who manage investment partnerships to maintain a *de minimis* equity investment in the managed entities. It argues that federal tax laws require a general partner to keep a specified minimum interest in the partnership in order to ensure that it qualifies for taxation as a partnership under the Internal Revenue Code. It also argues that the NASD proposes to permit managers to accept performance fees, which often will greatly exceed any amounts that a manager may earn from its *de minimis* investment.

The NASD responds that the Committee that reviewed the Interpretation explored various *de minimis* provisions and determined that: (i) any *de minimis* amount necessarily would be an arbitrary figure; and (ii) monitoring accounts to ensure compliance with a *de minimis* provision would be difficult.

The Commission acknowledges that on many occasions, performance fees will greatly exceed any amounts that a manager may earn from its *de minimis* investment. However, the Commission agrees with the NASD that *de minimis* provisions are arbitrary and that monitoring accounts to ensure compliance would be difficult.[11]

Sullivan and CSFB argue that the NASD should permit absolutely restricted persons to hold a *de minimis* indirect financial interest in an investment partnership without triggering the "carve out" requirement Sullivan and CSFB argue that it is possible for an absolutely restricted person to have an indirect beneficial interest in an investment partnership because the person is an officer of a member affiliated with the general partner of the partnership and may benefit from the partnership's performance solely by virtue of his status as a shareholder of an entity which owns the member and which receives a portion of the profits allocated to the general partner.

The NASD objects to this *de minimis* proposal for the same reasons that it objected to the other *de minimis* proposals, namely: (i) any *de minimis* amount necessarily would be an arbitrary figure; and (ii) monitoring accounts to ensure compliance with a *de minimis* provision would be difficult.

The Commission notes that the NASD has justified the payment of performance-based fees because such fees are not deemed to be the substantive, albeit not necessarily direct ownership, interest that the Interpretation is intended to restrict. The examples used by Sullivan and CSFB also present interests which are not substantive. However, not all such situations may be as innocuous as those posed by Sullivan and CSFB. The Commission agrees with the NASD that *de minimis* guidelines are arbitrary and that monitoring accounts to ensure compliance would be difficult.

[7] *R.A Holman & Co v SEC*, 366 F 2d 446, 449 (2d Cir. 1966), *modified on other grounds*, 377 F 2d 665 (2d Cir. 1966), *cert denied*, 389 U.S. 991 (1967).

[8] *Wall Street West, Inc.* 47 S.E.C. 1003, 1005 (1984).

[9] *Cf Id*

[10] *See* Letter from T Grant Callery, Vice President and General Counsel, NASD, to Mark P Barracca, Branch Chief, Over-the-Counter Regulation, SEC, dated November 10, 1994

[11] The Commission notes that a partnership is not the only structure that permits flow-through tax treatment.

B. Application of Interpretation to Offerings of Straight Debt Securities

PaineWebber and Sullivan argue that the Interpretation should not apply to investment-grade straight-debt securities, because the manner in which they trade would make it impossible for a restricted person to earn a free-riding premium at the expense of public investors. PaineWebber states that investment-grade debt is priced relative to the interest rate of U.S. Treasury securities of comparable maturity. Both state that such securities are considered fungible with other non-convertible securities with comparable economic terms and credit ratings. Alternatively, PaineWebber suggests that the Interpretation apply to such securities only in those instances in which there has been a material narrowing in yield spread versus the comparable maturity U.S. Treasury security between the initial offering yield spread and the yield spread when the issue is freed to trade in the secondary market.

The NASD states that PaineWebber and Sullivan have raised legitimate concerns regarding the treatment of investment-grade straight-debt securities and that the NBCC should revisit the issue. However, it believes that these issues can be addressed in another proposed rule change. The Commission agrees that consideration of these comments should not delay implementation of the beneficial modifications contained in this proposed rule change.

C. Application of Interpretation to Offerings of Equity Securities for Which a Secondary Trading Market Exists

Sullivan suggests that the Interpretation should not apply to most common stock offerings by issuers whose common stock is currently listed on a national securities exchange or traded over-the-counter, because the stock already is traded publicly and the public offering price will reflect the stock's market price. It suggests that the Interpretation should apply only in those instances when the public offering price reflects a discount greater than a specified percentage from the closing price on the pricing date or when the stock has become hot for a reason other than increased demand for the issuer's stock generally.

The NASD states that Sullivan has raised legitimate concerns regarding the treatment of equity securities for which a secondary trading market exists and that the NBCC should revisit the issue. However, it believes that these issues can be addressed in another proposed rule change. The Commission agrees that consideration of these comments also should not delay implementation of the beneficial modifications contained in this proposed rule change.

D. Definition of Public Offering

Sullivan also suggests that the definition of "public offering" for purposes of the Interpretation expressly exclude offerings made in reliance on Rule 144A and should exclude "exchange offers" and "offerings made pursuant to a merger or acquisition."

The NASD states that it interprets the Interpretation not to apply to offerings made in reliance on Rule 144A. In addition, it states that it does not apply the Interpretation to "exchange offers" and "offerings made pursuant to a merger or acquisition" but to other distributions made in connection with these types of offerings.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6) of the Act.[12] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest. The Commission believes that the amendments to the Interpretation further the goals of Section 15A(b)(6) because the amendments ensure that the Interpretation will continue to prohibit those transactions which present an undue risk that a member will withhold "hot issue" securities for its own benefit or use the securities to reward other persons who are in a position to direct future business to the member. At the same time, the Commission believes that the amendments will permit certain transactions that the Interpretation previously prohibited, but which do not pose a risk of undercutting the Interpretation's objective of a bona fide distribution of hot issue securities to the public. The Commission finds that the proposed rule change will facilitate the capital raising process by removing restrictions and compliance burdens imposed by the Interpretation with respect to certain transactions where application of the Interpretation does not enhance investor protection or the public interest, *e.g.*, stand-by purchasers, venture capital investors and issuer-directed transactions]. The Commission also finds that the changes in the definition of immediate family and associated person ensure that the Interpretation continues to apply to those allocations which are likely to benefit the member or are likely to be used as a *quid pro quo* for persons in a position to direct future business to the member, while permitting allocations to categories of persons who are not likely to direct future business to the member. Finally, the Commission recognizes that the Interpretation will continue to prohibit or restrict certain transactions which are not likely to conflict with the objective of the transaction. However, the Commission believes that permitting those transactions would pose an undue risk that the NASD will be unable to effectively monitor compliance with the Interpretation. Therefore, the Commission believes that the Interpretation should continue to apply on a prophylactic basis to these categories of transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No SR–NASD–94–15 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–30709 Filed 12–13–94 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78o–3.

[Release No. 34–35060; File No. SR–NYSE–94–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Reporting by Members and Member Organizations of Decreases in Net Capital and Tentative Net Capital

December 7, 1994

On September 13, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 325 to require members and member organizations to notify the Exchange in the event the member's net

[1] 15 U.S.C. 78s(b)(1) (1988)

[2] 17 CFR 240.19b–4 (1993)

capital [3] or tentative net capital [4] declined below certain threshold amounts. On October 27, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[5]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34924 (November 1, 1994), 59 FR 55719 (November 8, 1994). No comments were received on the proposal.

Among other matters, the amendments being adopted require all members and member organizations that are subject to the Commission's net capital rule, Rule 15c3–1 under the Act,[6] to notify the Exchange forthwith if such member's net capital, after deduction of all capital withdrawals including maturities, if any, scheduled during the next six months, falls below the applicable percentage indicated below:

1. If the net capital minimum dollar amount requirement is applicable,[7]—150% or such greater percentage as may from time-to-time be designated by the Exchange;

2. If the ratio of aggregate indebtedness to net capital is applicable—10% of aggregate indebtedness; or

3. If the alternative net capital requirement percentage is applicable, the greater of 5% of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under Exhibit A to Rule 15c3–3 under the Act,[8] or, if the broker-dealer is registered as a Futures Commission Merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder.

Additionally, the amendments require all members and member organizations to notify the Exchange, in writing, within forty-eight hours whenever such member's tentative net capital (net capital before application of haircuts and undue concentration charges), as computed under the net capital rule, has declined 20% or more from the amount reported in the most recent FOCUS Report filed with the Exchange.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including the requirements of Section 6(b) of the Act.[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that this rule will protect investors and the public interest by providing the NYSE with an early warning of potential financial difficulties at members and member organizations and by otherwise enhancing the NYSE's ability to monitor the continued financial well being of such firms. Moreover, the proposed rule will help the NYSE to ensure its members' compliance with the requirements of the Commission's net capital rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–94–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30711 Filed 12–13–94; 8:45 am]

BILLING CODE 8010–01–M

[3] For purposes of Rule 325, as proposed to be amended, net capital is computed in accordance with Rule 15c3–1 under the Act, 17 CFR 240.15c3–1 (1993). Under Rule 15c3–1, net capital is computed by adding to a broker-dealer's net worth, determined in accordance with generally accepted accounting principles, certain liabilities subordinated to the claims of customers and by deducting from net worth assets not readily convertible into cash and certain percentages (called "haircuts") of the market value of all proprietary positions held by the applicable broker-dealer.

[4] As proposed to be amended, Rule 325 defines "tentative net capital" as net capital before the application of haircuts and undue concentration charges.

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Senior Counsel, SEC, dated October 26, 1994. Amendment No. 1 clarified the definition of the term "tentative net capital." The amendment also added a reference to Rule 15c3–1 under the Act.

[6] 17 CFR 240.15c3–1 (1993).

[7] There are two methods that a broker-dealer may use to determine its net capital requirement. Under the basic or "aggregate indebtedness" method, a broker-dealer's aggregate indebtedness may not exceed 1,500% of its net capital. In addition to the percentage requirement and regardless of its aggregate indebtedness, a broker-dealer calculating its capital under the basic method must maintain a minimum level of net capital based upon the nature of its business. A broker-dealer that elects to determine its net capital requirement under the "alternative" method must maintain net capital equal to the greater of 2% of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers under Exhibit A to Rule 15c3–3 under the Act, 17 CFR 240.15c3–3a (1933), or $250,000.

[8] 17 CFR 240.15c3–3a (1933).

[9] A FOCUS Report is a combined financial and operational report on Form X–17A–5 that every registered broker-dealer is required to file periodically pursuant to Rule 17a–5 under the Act, 17 CFR 240.17a–5 (1993).

[10] 15 U.S.C. 78f(b) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

DEPARTMENT OF STATE

[Public Notice 2136]

International Joint Commission Boundary Waters Treaty of 1909

An Invitation to Comment on the second Progress Report of the Canada-United States Air Quality Committee.

The International Joint Commission invites public comment on progress by the United States and Canada in reducing transboundary air pollution under the 1991 Agreement on Air Quality. The Commission will provide a synthesis of the comments to the two governments and the public as directed by the Agreement.

The Governments of the United States and Canada signed an Agreement on Air Quality on March 13, 1991. The purpose of the Agreement was to establish a practical and effective instrument to address shared concerns on transboundary air pollution.

Under the terms of the Agreement, the Governments have established a bilateral Air Quality Committee. This Committee is responsible for reviewing progress made in the implementation of the Agreement, preparing and submitting periodic progress reports to the Governments, referring each progress report to the International Joint Commission, and releasing those reports to the public. The second progress report of the Committee is now available and may be obtained from:

Acid Rain Division, U.S. Environmental Protection Agency, Mail Code: 6204J, 401 M Street, SW, Washington, DC 20460, Acid Rain Hotline: (202) 233–9620

Environment Canada, Enquiry Centre, 351 St. Joseph Blvd., Hull, Quebec, KIA 0H3, (819) 997–2800

Under the Agreement, the Governments have assigned the International Joint Commission the responsibility of inviting comments on each progress report of the Air Quality Committee. A synthesis of comments received will be provided to the Governments and made available to the public.

The International Joint Commission invites comment on any aspect of the second Progress Report of the Air Quality Committee. Please send comments in writing by March 10, 1995 to either address below or contact us by telephone if you have any questions about the comment process.

International Joint Commission, 1250 23rd Street, NW, Suite 100, Washington, DC 20440, Telephone: (202) 736–9000

International Joint Commission, 100 Metcalfe Street, 18th Floor, Ottawa,

ON K1P 5M1, Telephone (613) 995–2984.

Dated: December 5, 1994.

David A. LaRoche,

Secretary, United States Section.

[FR Doc. 94–30600 Filed 12–13–94; 8:45 am]

BILLING CODE 4710–14–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 239
Wednesday, December 14, 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).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–30394.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, December 14, 1994 at 10:00 a.m. Meeting Open to the Public.

Amendments to the Agenda:

1. Addition: Report of the Audit Division—Clinton for President Committee
2. Continuation: Final Audit Report—Bush-Quayle '92 General Committee, Inc. and Bush-Quayle '92 Compliance Committee, Inc. (continued from meeting of December 8, 1994)

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 15, 1994 at 10:00 a.m. Meeting Open to the Public.

The following item was added to the Agenda:

Future Meetings.

The following items are deleted from the Agenda:

Advisory Opinion 1994–33: Mr. Paul E. Sullivan on behalf of VITEL International, Inc.

Advisory Opinion 1994–34: Mr. Peter H. Rodgers and Gregory L. Worthham on behalf of NYMEX Political Action Committee, Inc.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–30874 Filed 12–12–94; 3:12 pm]

BILLING CODE 6715–01–M

federal register

Wednesday
December 14, 1994

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1040
Milk Marketing Orders; Southern Michigan; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A45-R01; DA-92-10]

Milk in the Southern Michigan Marketing Area; Revised Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends incorporating a multiple component pricing system in the Southern Michigan Federal Milk Order. The three components to be priced are butterfat, protein, and a "fluid carrier" residual. The proposed plan includes adjustments to the producer protein price based on the somatic cell count of producer milk. The decision recommends changes in qualifying shipments from pool supply plants and would give the market administrator the authority to adjust the monthly shipping percentage requirements for a cooperative supply plant or unit of supply plants. In addition, the maximum allowable administrative and marketing service assessment rates would be increased to 4 and 7 cents, respectively.

DATES: Comments are due on or before January 13, 1995.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

Notice of Reopened Hearing: Issued February 18, 1994; published February 24, 1994 (59 FR 8874).

Extension of Time for Filing Briefs: Issued April 6, 1994; published April 13, 1994 (59 FR 17497).

Emergency Partial Final Decision: Issued May 12, 1994; published May 23, 1994 (59 FR 26603).

Final Rule: Issued June 22, 1994; published June 29, 1994 (59 FR 33418).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of public hearings on February 17-18, 1993, at Novi, Michigan, and on March 1, 1994, at Grand Rapids, Michigan. The February 1993 hearing was held pursuant to a notice of hearing issued December 3, 1992 (57 FR 58418), and a supplemental notice of hearing issued January 19, 1993 (58 FR 6447). The March 1994 reopened hearing was held pursuant to a notice of hearing issued February 18, 1993 (59 FR 8874).

The material issues on the record of the hearings relate to:

1. Pool supply plant definition.
2. Modification of cooperative pool supply plant shipping requirement by market administrator.
3. Multiple component pricing.
4. Somatic cell adjustment.
5. Administrative assessment.
6. Marketing service assessment.
7. Pool distributing plant definition (UHT plant "lock-in").
8. Emergency action with respect to issue 7.
9. Conforming changes.

Issues 1, 5, and 6 were discussed in the initial recommended decision issued in November 1993 and were not addressed in the reopened hearing. No changes have been made in the discussion of these issues in this revised recommended decision.

Issues 7 and 8 were dealt with in an emergency partial final decision issued May 12, 1994, and the resulting final order amendments were made effective for June 1994. The amendments were issued June 22, 1994, and published June 29, 1994 (59 FR 33418).

Issues 2, 3, 4, and 9 were addressed in the reopened hearing on March 1, 1994, and the discussion of Issues 3 and 4 in this revised recommended decision has been revised to reflect the record of that hearing session. Issues 2 and 9 are additions to the original recommended decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearings and the record thereof:

Background Statement

A public hearing was held February 17–18, 1993, to consider the implementation of multiple component pricing in the Southern Michigan marketing area. On November 29, 1993, the Department issued a recommended decision in this proceeding. The decision proposed a multiple component pricing plan for Order 40. The hearing was reopened at the request of proponents on March 1, 1994, to consider modifications to the pricing plan recommended for the order. An additional proposal considered during the reopened hearing would authorize the market administrator to adjust pool supply plant shipping standards to reflect changes in marketing conditions. A third proposal, to "lock-in" to regulation under the Southern Michigan order a distributing plant processing ultra-high temperature milk, was considered on an emergency basis. The decision and final rule pertaining to the "lock-in" were published on May 23, 1994 (59 FR 26603) and June 29, 1994 (59 FR 33418), respectively.

This recommended decision is revised with respect to the portions dealing with the multiple component pricing issue and somatic cell adjustments (Issues 3 and 4). Portions of the decision dealing with adjustment of cooperative pool supply plant shipping requirements by the market administrator and conforming changes have been added in this revised recommended decision (Issues 2 and 9).

No comments were received in response to the November 1993 recommended decision regarding the pool supply plant definition, administrative assessment, and marketing service assessment provisions that were considered at the initial 1993 hearing. Therefore, this revised recommended decision contains no changes regarding those issues from the decision published December 6, 1993 (58 FR 64176).

1. Pool Supply Plant Definition

A witness for Michigan Milk Producers Association (MMPA) testified during the initial hearing in support of the cooperative's proposal which would amend the pool supply plant definition to include as qualifying shipments transfers of milk to a partially regulated distributing plant. The witness testified that MMPA supplies bulk milk to a local partially regulated distributing plant that has substantial Class I and Class II utilization but receives no credit for such sales toward fulfilling the pool supply plant shipping requirement. The witness explained that the shipment is a bulk transfer from the cooperative (MMPA) to the nonpool plant, with its classification determined during the pooling process. MMPA's post-hearing brief contended that adoption of the proposed amendment would eliminate the inequity caused by such transfers.

According to the cooperative's brief, the current month's marketwide Class I utilization percentage, which includes the portion of the transfer classified as Class I, determines the minimum qualifying shipping requirement for the same month of the following year but does not contribute to the cooperative's Class I use in determining whether pooling standards have been met.

The MMPA witness testified that the partially regulated plant historically had been a pool distributing plant but recently had become involved in the production of extended-life Class II products. As a result, he stated, the plant now has Class I utilization of approximately 40 percent. According to the witness, the partially regulated plant to which MMPA transfers milk is the only such plant to which the proposed amendment would apply. NFO's post-hearing brief supported adoption of the proposed amendment. There was no opposition to the proposal.

Testimony in the record illustrates that the partially regulated distributing plant is indeed satisfying Class I needs in the marketplace through the use of pooled milk, thereby benefitting the pool. Therefore, the proposal to include shipments of producer milk to a partially regulated distributing plant when determining the qualifications of pool supply plants should be adopted.

2. Modification of Pool Supply Plant Shipping Standard by Market Administrator

A proposal to give the market administrator the discretionary authority to administratively change the shipping percentages upward or downward for a supply plant or a unit of supply plants being qualified by a cooperative association should be adopted. The proposed provisions would operate similarly to "call" provisions in other order markets where the market administrator, upon request or upon recognizing a potential problem, notifies the handlers in the order that action may be taken to change the shipping percentage requirements. The percentage change required would be based upon the evidence that the market administrator receives and/or the supply and use data for the market.

The order currently provides that for a cooperative's balancing plant or unit of such plants, the minimum qualifying percentage for each month is established according to the amount of producer milk used in Class I as a percent of total producer milk within the order for the same month of the previous year. The order currently does not provide for any sort of discretionary authority to change pool supply plant shipping requirements. To adjust the shipping percentage requirements, either the requirements must be suspended or permanent changes must be sought through amendments to the order.

The director of bulk milk sales for Michigan Milk Producers Association (MMPA) testified in support of the cooperative's proposal at the reopened hearing. The proponent's intent is to allow for the adjustment of these requirements on a more timely basis than can be done under the current provisions.

The MMPA witness testified that the current order provision is designed to establish a performance standard that reflects the Class I needs of the local market and assures fluid processors that their requirements will be fulfilled. He stated that the provision contains a self adjusting mechanism because the current month's shipping requirements are based on the market requirements from the previous year. He further stated that the provision normally works well. The witness testified, however, that occasions exist in which the market conditions have changed to such an extent that necessary corrections to the self-adjusting mechanism cannot be made on a timely basis.

As an example, the MMPA witness stated that because the minimum shipping percentages are determined by the percentage of producer milk utilized in Class I, the percentage can be influenced by changes in the monthly producer receipts. The witness stated that if milk that normally would be pooled is not, producer receipts and the Class I utilization percentage for the order would change, in turn affecting the following year's shipping requirement. The witness also stated that combining this possible decrease in pool receipts with an increase in bulk milk sales to other markets also may impact the following year's shipping requirements. He said that the shipping percentages established may not reflect the following year's actual fluid requirements from the local and distant markets.

The witness noted that two current options to adjust the shipping

percentage requirements, suspension or permanent amendment to the order provisions, are time-consuming and may require unwarranted drastic action.

In a post-hearing brief, MMPA reiterated support for the proposal. No other support or opposition was expressed at the hearing or in briefs.

The record evidence indicates that empowering the market administrator with the authority to adjust the pool supply plant shipping requirements should result in more timely changes in comparison to current procedures. A more flexible and efficient process would result by authorizing the market administrator to adjust the requirements to either encourage shipments or discourage uneconomic movements of milk as a result of changes in marketing conditions.

It appears that there is a need to provide flexibility of supply plant performance standards when market conditions change from one year to the next. Under such conditions, which could occur at any time, the normal mechanism for change in the order program, which is the hearing process, would not provide a timely response.

Thus, the proposal to give the market administrator discretionary authority to revise the supply plant shipping standards should be adopted. Doing so will provide a means of making appropriate adjustments in this pooling provision as market conditions indicate a need for adjustments. It must be recognized that a more timely response to changed conditions can be provided under such a provision.

There is no apparent reason why restrictions should be imposed to limit the market administrator's authority to change the pooling provisions. It is intended and expected that this authority will be exercised with impartiality and integrity. Moreover, without restrictions more appropriate responses over a broader range of changed conditions may be obtained. Limitations on the authority to revise shipping percentages could result in the market administrator being unable to either increase or decrease the requirements to the full extent necessary in a given situation.

It should be noted that, to the extent appropriate shipping requirements for supply plants can be determined in advance, it would be desirable for the market administrator to revise the requirements for several months at a time, if necessary. If conditions subsequently changed, the market administrator would again review the situation and make further adjustments as necessary. It is hoped that such an arrangement will serve the market well and provide less uncertainty as to what the requirements will be.

There are proprietary supply plants, apparently with no history of pooling problems, thus no need exists to have this type of proposed provision applicable to these plants. Proprietary plants have a fixed qualification percentage of 30 percent each month, with a provision to automatically qualify during the months of March through August based on performance from the previous September through February.

Whenever the market administrator believes that a change in the shipping standards may be needed, whether by request or on his own initiative, he will give written notice that such a change is being considered and invite interested persons to comment. This procedure will assure that all potentially affected persons can have their views and other pertinent information fully considered by the market administrator before a decision is made and announced. Such a procedure now is followed under other orders when a "call" for additional shipments by supply plants is contemplated and also is an appropriate requirement for the new authority provided herein.

3. Multiple Component Pricing

A multiple component pricing plan should be adopted in the Southern Michigan Federal milk marketing order. The pricing plan would be patterned after the multiple component pricing plan initially proposed by Leprino Foods Company and supported by Michigan Milk Producers Association, Independent Cooperative Milk Producers Association, and several other dairy organizations. Producers would be paid on the basis of three components in the milk: butterfat, protein, and the remaining fluid portion that is the "fluid carrier" of the butterfat and protein ingredients. Producers would also share in the value of the pool's Class I and Class II uses. A somatic cell adjustment would apply to the protein prices paid to all producers no matter how the milk was used.

Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and fluid carrier used in Classes II and III, skim milk used in Class I, and the hundredweight of milk used in Classes I and II.

At the present time, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the order for each class of use. Adjustments for such items as overage, reclassified inventory, location, and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight for milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price (the M-W) at test, also as reported by the U.S. Department of Agriculture, multiplied by 0.0028.

The initial hearing in this proceeding was held February 17 and 18, 1993. Michigan Milk Producers Association (MMPA) and Independent Cooperative Milk Producers Association (ICMPA), the two original proponents of multiple component pricing (MCP) under the order, requested reopening the February 1993 proceeding to consider proposals to modify the MCP plan recommended by the U.S. Department of Agriculture (USDA) for the Southern Michigan Order in a decision issued November 29, 1993 (58 FR 64176). MMPA and ICMPA represent approximately 80 percent of producer milk in the Order

The November 1993 recommended decision included a thorough analysis and discussion of the need for MCP pricing and the desirability of including protein as a pricing component based on the record of the proceeding initiated on February 17, 1993. This revised recommended decision includes some of the discussion and basis for adoption of MCP contained in the initial recommended decision, but is based on the entire record of the proceeding which includes the reopened hearing held March 1, 1994.

The MCP plan in the original recommended decision would have priced milk on the basis of its protein and butterfat components. The recommended MCP plan generally was patterned after the plan adopted for the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. Producers would have been paid on the basis of the pounds of milkfat and protein contained in their milk and would have shared in the value of the pool's Class I and Class II uses on a per hundredweight basis. The butterfat

price would have been based on the market value of butter, while the protein price would have been computed by attributing all of the residual value of the M–W, after its butterfat value had been subtracted, to protein. Regulated handlers would have paid for the milk they received on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II. Protein prices paid to producers on all producer milk would have been adjusted by the somatic cell count of the milk.

MMPA and ICMPA endorsed the recommendation to adopt MCP, but proposed a specific change to the recommended MCP plan. The MMPA and ICMPA (proponent) witness stated in testimony at the reopened hearing that the cooperatives remain committed to the adoption of a MCP plan administered through the Federal order system. Proponents' witness testified that the adopted plan should be equitable to both producers and processors and should send the correct economic signals from the marketplace to the farmer. The witness testified that when the proponents initially proposed a multiple component pricing plan for the Southern Michigan order, their intent was not to create conflicting economic signals for farmers and processors. Proponents' witness stated that the recommended MCP plan could send conflicting signals to handlers and producers by overstating the value of protein in producer milk. The witness stated that such overstatement would create an incentive for processors to purchase low-protein milk while at the same time would encourage farmers to produce high-protein milk.

In the reopened hearing, MMPA and ICMPA specifically requested further consideration of the MCP approach proposed by Leprino Foods Company (Leprino) in the original proceeding. Because other hearing participants had been given insufficient advance notice of Leprino's pricing plan to adequately evaluate the proposal and cross-examine the Leprino witnesses, the Leprino proposal was not considered as a viable alternative in the recommended decision. After having an opportunity for extensive review of the Leprino proposal after the initial hearing, the proponents concluded that the Leprino alternative was a better alternative than the one in the recommended decision.

The Leprino proposal is a three-component pricing system, with the butterfat and protein component prices based on market values for butter and cheese, and a "fluid carrier" component representing the residual value of the M–W price after the protein and butterfat values are subtracted. Proponents' witness testified that because butterfat and protein values can be determined by the butter and cheese markets, respectively, they are reflective of economic conditions with a known degree of precision. Proponents' witness agreed with the original Leprino proposal that the balance of the M–W value should be attributed to a fluid residual price applied to milk volume after the butterfat and protein portions of the M–W price have been accounted for, stating that it is not feasible to assign as precise a value to the other nonfat nonprotein solids in milk as can be assigned to the butterfat and protein components.

Proponents' witness gave two reasons for wanting to consider the Leprino proposal instead of supporting the recommended MCP plan. The first reason involves the method of determining the value of protein. The witness stated that the recommended decision equates the protein value to the skim residual of the M–W price, while the Leprino proposal values protein on the basis of its cheese yield potential.

The proponents' witness stated that the Leprino proposal uses a current market value for cheese and a modified version of the Van Slyke formula, which relates changing protein levels in milk to changes in cheese yield, to calculate the value of protein. The witness stated that the protein price determined through the Van Slyke formula accurately reflects the incremental value of protein in milk and would result in a fair measure of protein value to the dairy producer and handler.

The proponents' witness suggested that the protein price should be derived from the National Cheese Exchange (NCE) price for 40-pound blocks of Cheddar cheese as representing the current market value for cheese. The witness stated that the block cheese price is the most commonly used base price for cheese and is a standard that many cheese manufacturers recognize in pricing their product. The witness testified that the block price better reflects the Southern Michigan commercial market for cheese than the barrel cheese price. He contended that a barrel cheese price would reflect a surplus commodity price, a situation that does not exist in this order.

The second reason that proponents' witness gave for supporting the Leprino proposal is that this plan moderates the impact that component pricing would have on processors of dairy products that have not been scientifically shown to have as direct a relationship between yield and protein content as does cheese. For example, the witness testified, in some instances processors may be unable to recover the same value for protein from products such as packaged fluid cream, condensed milk, and powder in comparison to the value from cheese manufacture.

MMPA's post-hearing brief asserted that under Leprino's proposal, the cost and value of protein is neither too low nor too high. The brief contended that the current butterfat/skim pricing system, in which only the value of butterfat is specifically recognized, places no value on protein. The brief further contended that the recommended decision, in which the entire value of the skim portion of milk is assigned to protein, places too much value on protein, for the true economic value of protein to dairy product processors may bear little resemblance to the skim residual.

A Leprino witness testified again at the reopened hearing in support of Leprino's proposal. Leprino operates two manufacturing plants in the Southern Michigan marketing area that process over 40 percent of the Class III milk and approximately 16 percent of all milk marketed in the Southern Michigan order area. Leprino also manufactures and distributes mozzarella cheese to the food service industry throughout the country.

In testimony at the reopened hearing, the Leprino witness supported the pooling and producer pay price proposals suggested by MMPA and ICMPA. The witness reiterated the characteristics and merits of Leprino's three-component proposal submitted at the original hearing.

The Leprino witness argued at the reopened hearing that one of the major inadequacies of the current butterfat/skim pricing system is that skim is priced without any consideration to the components in this skim milk. The witness said that under the current pricing provisions, the skim value of milk accounts for almost 79 percent of the total Class III (M-W) price; however, the protein or solids-not-fat components included in the skim are not valued. The witness said that producers and handlers receive or pay the same price for milk containing lower or higher levels of protein.

The Leprino witness stated that the original recommended decision in the proceeding would have replaced this current system with another system that inequitably allocates almost 79 percent of the M-W price to only the protein component of skim milk. The witness testified that allocating all of the skim value of milk to the protein component creates a residual protein value which

reflects more than the true value of protein to manufacturers. The witness stated that the recommended decision ignores the value and importance of milk components other than butterfat and protein and places a value on protein that cannot be recovered from the marketplace by most manufacturers of butter, nonfat dry milk, or cheese.

The Leprino witness stated that encouragement needs to be given to producers to produce milk with higher protein content and to manufacturers to utilize these higher levels of protein. He stated that the intent of Leprino's proposal is to send an economic message to producers to produce higher-protein milk while allowing handlers to recover the cost of milk components from the market and cover operating costs. The witness asserted that the concepts offered in its proposal are economically sound, fair to handlers and producers, and in the best interest of long-term stability in milk pricing.

Leprino's post-hearing brief stated that under the original recommended decision, a Cheddar cheese manufacturer's gross margin may decline when paying more for milk with a higher protein content. The brief described Leprino's proposal as achieving the economic balance necessary for processors to pay producers for milk with higher protein levels without reducing processors' profit margins. Leprino's brief stated that consumers also would benefit by receiving dairy products with potentially higher-protein contents without unwarranted inflationary price increases.

The Leprino witness stated that pricing the butterfat component provides producers with an economic incentive to produce the butterfat in raw milk. The witness asserted that a related revenue value for processors exists for butterfat in finished products such as butter, fluid milk, cheese, and other products.

As in the case of butterfat, the witness stated, pricing the protein component gives producers an economic incentive to increase the protein content of their milk. The Leprino witness stated that the protein component's value and related revenue to processors is based on its market value in cheese, with the formula for the protein price based on recognized Cheddar cheese yields using the modified Van Slyke formula.

The Leprino witness suggested that the National Cheese Exchange price reflects the market value of cheese and that the NCE price multiplied by a representative yield factor (calculated via the Van Slyke formula) would establish the value of a pound of protein to a cheese manufacturer. He stated that either the block or the barrel price could be used to represent the Cheddar cheese market price, and stated a preference for the barrel price.

Leprino's exception to the original recommended decision and testimony in the reopened hearing noted that a single component such as protein is not an appropriate means of accounting for all of the value of the skim portion of milk to a handler. Instead, the exception and witness suggested, the value of the protein component should be based on the value of protein in cheese, and the fluid carrier should be used to carry the residual M-W value (M-W price less fat and protein values) which currently cannot be tied specifically to an individual component of milk or derived from a market value for individual components of milk.

A witness for the National Cheese Institute (NCI), the national trade association for manufacturers, processors, and marketers of all varieties of cheese, stated that NCI did not testify at this proceeding's initial hearing because at that time a NCI task force made up of cheese manufacturers and processors was studying the MCP issue. The witness testified that NCI supports the adoption of a single uniform three-component pricing system in all orders where a significant amount of cheese is produced. At the reopened hearing, the NCI witness supported MCP on Class III milk but had no position regarding Class II milk. In a post-hearing brief, NCI asserted that applying MCP to Class I milk would be inappropriate because there exists no measurable or discernable advantage to varying protein levels for milk used as a fluid beverage.

The pricing plan supported by NCI is identical to the proposal advanced by Leprino, MMPA, and ICMPA. NCI's post-hearing brief noted that its proposal (the Leprino plan) allows cheesemakers to break even from processing milk with higher protein contents by seeking out and rewarding producers with higher-protein milk. The NCI witness asserted that any formula which prices protein higher than its value in producing cheese will cut into processor margins and cause cheese manufacturers to seek out lower-protein milk.

As an industry-wide consensus resulting from the NCI task force, the NCI witness suggested that the NCE barrel price should be used to represent the market value of cheese. The witness stated that Cheddar cheese is recognized as an industry standard, and the barrel price was chosen because a significant amount of barrel cheese is traded on the National Cheese Exchange.

Kraft General Foods (Kraft) testified at the initial hearing in this proceeding but not at the reopened hearing. A post-hearing brief filed on behalf of Kraft supported the Leprino proposal. The brief supported using a barrel cheese price to derive a value for protein in milk. The brief also supported maintaining the quality/somatic cell count adjustment included in the recommended decision.

The Kraft brief asserted that the Leprino plan would avoid establishing conflicting economic signals from a protein price which is so high that manufacturers are encouraged to procure low-protein milk. As such, according to the brief, the Leprino proposal represents a positive refinement in the evolution of MCP plans under the Federal order system. The brief stated that the Leprino proposal's protein price tracks the added value of extra protein in added cheese yield and is more closely aligned to the competitive value of milk protein as reflected in many existing industry-sponsored MCP plans than is the plan contained in the recommended decision.

The Kraft brief stated that no proposal at the reopened hearing accounted for handler manufacturing costs when protein is converted from producer milk to finished products. Therefore, the brief noted, all proposals overstate the protein component in raw producer milk.

The Kraft brief noted that the absence of a make allowance causes exaggeration of the component value of protein in raw producer milk and that using the barrel price will tend to moderate any overstatement of the protein value. The brief argued that the price difference between the barrel and the block prices of cheese is due primarily to packaging costs, not milk or cheese value, and concluded that use of the block price instead of the barrel price to calculate a protein price would effectively assign some finished product packaging value to milk protein.

In opposition to one feature of the Leprino plan, a witness for National All-Jersey, Incorporated, (NAJ) argued at the reopened hearing that attributing the residual M-W value to volume does not recognize the value of solids in milk other than protein and fat. The witness asserted that MCP plans that price a portion of the skim milk value on a volume basis would only partially correct the current provisions because all of the solids in skim milk should be priced. The witness stated that increasing returns for milk on a volume basis relative to the price of protein would tend to reduce the producer's

incentive to employ feeding, genetics, and management practices to increase protein.

National All-Jersey, Incorporated, is a national dairy farmer organization that assists members in marketing their milk. The NAJ witness testified that NAJ's primary mission since 1976 has been the promotion of multiple component pricing with the goal of implementing a uniform MCP plan throughout the Federal order system.

In the reopened hearing, the NAJ witness supported the proposal submitted by MMPA and ICMPA, with two modifications. The witness stated that under the NAJ proposal, the protein price is calculated using a different formula than in the proponents' proposal, and the protein price includes a market value for whey. The NAJ witness also stated that the NAJ proposal, after pricing the butterfat and protein components, places the residual value on other nonfat nonprotein solids.

The NAJ witness stated that the major objective of any MCP plan is to provide dairy producers with an economic incentive to produce protein, the most valuable component in milk. The witness stated that because a direct relationship exists between product yields and the level of protein and other solids contained in milk, Class II and III handlers are able to pay for milk in more direct relation to its economic value. The witness stated that an economically and justifiably high protein price is needed to encourage producers to increase the ratio of protein to fat in their milk production.

The NAJ proposal was characterized by the witness as a total solids plan which prices all components in milk. The witness stated that pricing all components in skim milk corrects the inadequacy of the current butterfat/skim pricing system in which a pound of water receives the same price as does a pound of protein or nonfat solids in the skim portion of producer milk. The witness asserted that the NAJ proposal allows handlers to purchase milk more in accordance with its economic return and still gives handlers the incentive to procure and producers to produce higher-protein milk. The NAJ witness supported calculating the same protein and other solids price for both handlers and producers.

The NAJ witness stated that the NAJ proposal includes whey in its protein price calculation in an effort to account for all of the value in milk protein, and described the whey protein concentrate price as the best indicator of the market value of protein in whey. The witness contended that the protein price computed under the NAJ proposal provides more equitable returns to both handlers and producers in comparison to the other proposals presented at the reopened hearing. NAJ's brief asserted that under its proposal, as high a percentage of skim value is allocated to protein as can be economically justified. NAJ maintained that whether or not a cheese plant processes whey should have no bearing on the inclusion of whey in the pricing formula.

For the protein calculation, the NAJ witness said that the NAJ proposal uses the NCE block price for Cheddar cheese because this price is used more widely than other announced cheese prices. Also, the witness stated that the NCE block price is used as a base for pricing other cheeses more than any other cheese price.

The witness stated that the residual under the NAJ proposal represents both the value of other milk solids besides protein and the difference between the value determined by product prices and the competitive M-W price. The NAJ witness testified that the purpose of placing the residual value on other solids is to provide farmers with an incentive to produce something in milk other than water.

Also supporting NAJ's proposal is Tri-State Milk Producers Cooperative, a qualified cooperative with about 640 members marketing milk in several orders, including the Southern Michigan order.

Several participants in the proceeding expressed opposition to portions of the NAJ plan during the hearing and in post-hearing briefs. MMPA's post-hearing brief asserted that placing market values on whey protein and non-fat non-protein solids (principally lactose) assigns values to these solids that are not present in the marketplace.

The Leprino witness opposed including whey in the computation of the protein price for the following reasons: (1) the value of whey is not based on the inherent value of protein or other solids in raw milk; (2) investment in a whey operation is based on a return calculated from the value-added nature of the process and/or the cost of other disposal options rather than the raw ingredient cost; (3) raw unprocessed whey recovered from the cheese making process has no inherent value in the United States; (4) unprocessed whey cannot be sold beyond the factory; (5) raw unprocessed whey is a disposal problem for many cheese operations; and (6) whey returns are excluded from calculation of the cheese support price.

Leprino's brief asserted that the main interest of NAJ is to maximize producer returns for high protein milk and that the NAJ plan achieves this objective by providing for a higher protein component price than can be justified in the marketplace. NCI's brief gave reasons similar to Leprino's for excluding whey in a MCP plan.

The Leprino witness stated that use of a residual solids approach requires a total solids test on milk in addition to a protein test. The witness stated that using a residual fluid approach ascribes all the remaining value to volume, eliminating the need for additional testing, and thus is easier and less costly to administer.

At the initial hearing session, two witnesses testified that protein testing is already widespread in the Southern Michigan market and that testing methods are reliable and accurate. A witness employed in the field of dairy chemistry testified on behalf of MMPA that in the case of protein, the infra-red milk analyzer calibrated with reference to the Kjeldahl test is the method most used by the industry. This method is approved by the Association of Official Analytical Chemists, and the repeatability and accuracy of this method is much better than those of the Babcock test for butterfat.

A MMPA quality control witness testified that protein tests on producer milk in Order 40 are conducted on infra-red test instruments. The witness emphasized that all cooperatives in Order 40 have infra-red instruments and currently are testing producer milk for protein a minimum of five times a month. Therefore, he stated, the inclusion of protein testing would not result in increased cost. The proponent's witness recommended that if the proposal is adopted, the payment to producers should be based on an average of a minimum of five fresh tests per month for both protein and somatic cell count.

The Southern Michigan order should be amended to include multiple component pricing. On the basis of both the initial and reopened records of this proceeding, the proposed multiple component pricing plan would entail pricing milk used in Class II and Class III on the basis of protein and a fluid carrier residual. The Class I and Class II differential prices would be applied to milk used in Classes I and II, and Class I milk would continue to be priced on the basis of volume. Handlers would pay all producers for butterfat directly and would adjust protein prices paid to producers for the somatic cell count of producers' milk. Because milk used for Class III–A purposes is allocated on a pro rata basis with total receipts of Class III milk, MCP is applicable to milk used

in Class III–A in this recommended pricing plan.

The record indicates that a large percentage of the producers pooled under the Southern Michigan order are already eligible for or receive some form of multiple component pricing and that nearly all of these component pricing plans use protein as a pricing component. The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs cause non-uniform bases of payments to producers.

The adoption of multiple component pricing will allow the Order to recognize the additional value in milk with a higher than-average protein content. At the same time, by establishing a residual value based on milk volume, the protein component will not be over-valued, as proponents argue would be the case under the original recommended decision.

Attributing at least a portion of the value of milk to protein in a market such as Southern Michigan, where most of the milk not used for bottling purposes is processed into cheese, is appropriate. Record evidence in this proceeding clearly shows that demand for protein is higher than for other components of milk because of its functional, nutritional, and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet.

Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as does butterfat. The record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more wholesome and nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record indicates that the level of protein varies from season to season, region to region, and farm to farm. In view of its functional, nutritional, and economic value in dairy products, its widespread use as a pricing component in the Southern Michigan market, and its qualification under the three criteria above, protein appears to be an appropriate component for pricing milk in Federal Order 40.

Hearing evidence from all parties indicates that pricing milk in Order 40 on either the current butterfat/skim basis or the basis of two components—butterfat and either protein or nonfat solids—will not adequately describe, accurately value, or be a sufficiently precise method for classifying and pricing milk used for manufactured products.

As proposed, prices for butterfat and protein should be market-driven. Deriving butterfat and protein values from finished product prices will send the appropriate economic signals to producers and handlers by indicating current market supply and demand conditions for dairy products containing these components of milk.

At issue is the specific design for the revised recommended MCP plan. Two basic MCP plans were proposed in the reopened hearing: The plan proposed by proponents MMPA and ICMPA and supported by Leprino, NCI, and Kraft (the Leprino plan) and the plan proposed by NAJ and supported by Tri-State Milk Producers Cooperative and the American Jersey Cattle Club (the NAJ plan).

The Leprino plan derives a protein price from either the NCE block or barrel cheese price and assigns the residual skim value of the M–W price to a "fluid carrier" component of milk. The NAJ plan derives a protein price from the NCE block cheese and whey protein concentrate prices and assigns the residual skim value of the M–W price to the remaining nonfat nonprotein solids. Each component of the multiple component pricing plan recommended for adoption will be discussed separately.

Butterfat. The value of butterfat in the amended order will be the same as under the current order. There was no proposal or testimony to change the way butterfat currently is valued.

This decision continues the historical relationship of the values of butterfat and butter. Currently the value of butterfat is expressed as a differential; that is, the difference in value between 0.1 pound of butterfat and 0.1 pound of skim milk. The amended order will express the value of butterfat on the basis of a price per pound. Whichever method is used, the value of butterfat in milk is the same. However, by expressing the value on a per pound basis instead of a differential, the objective of demonstrating clearly to producers the value of fat in milk is easily achieved.

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat.

Protein. The protein price for milk pooled under the Southern Michigan Federal milk order should be calculated by multiplying the monthly average of 40-pound block cheese prices on the National Cheese Exchange (NCE) at Green Bay, WI, by 1.32, without including a value for whey protein.

No opposition was expressed at the hearing to pricing protein on the basis of its value in the manufacture of cheese. The differences between participants came in determining the appropriate level of the protein price.

The original Leprino proposal would calculate the protein price by multiplying the monthly average of 40-pound block cheese prices on the NCE by 1.32. Leprino's formula would have resulted in average protein prices, per pound, of $1.6925 in 1992 and $1.6971 in 1993.

The NCI proposal supported by Kraft (modifying the Leprino plan), would calculate the protein price by multiplying the monthly average NCE Cheddar barrel price by 1.32. NCI's formula would have resulted in average protein prices, per pound, of $1.6408 in 1992 and $1.6475 in 1993.

NAJ uses a "justifiably higher protein value" established from block Cheddar (normally higher than barrel) and adds a whey protein concentrate (WPC) price

in order to account for all milk protein and to give farmers an incentive to produce protein rather than to reflect the additional value manufacturers realize from increased protein. The NAJ proposal would calculate the protein price in two parts: (1) multiply the NCE monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average WPC price multiplied by a yield factor of 0.735. The sum of these two values would equal the protein price. NAJ's formula would have resulted in average protein prices, per pound, of $2.0738 in 1992 and $2.1664 in 1993.

Each of the proposals would result in a lower protein value than in the recommended decision or in orders containing MCP plans, such as the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania Federal orders. The handler protein price per pound for these orders would have averaged $2.77 and $2.82 in 1992 and 1993, respectively.

Because the percent of the skim milk value allocated to protein differs under the two proposed plans, the protein price also differs. Under the original recommended MCP plan, 79 percent of the total milk price would be allocated to protein on the basis of 1993 prices. For 1993, the NAJ proposal would allocate 59 percent to protein, and the Leprino proposal would allocate 46 percent of the total M–W price to protein. The Leprino plan assigns less value to protein than the NAJ plan because this plan does not value the protein in whey.

Undisputed by hearing participants was the 1.32 factor, which represents the pounds of 38 percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese as calculated by the modified Van Slyke cheese yield formula. The hearing record indicates that the modified Van Slyke formula accurately measures incremental changes in protein. This accuracy supports the concept that cheese plants would be able to maintain consistent margins from the processing of small increases of protein content in milk. Assuming butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining an order protein price based on a market-determined cheese price.

Use of a Cheddar cheese price as a basis for valuation recognizes that, for Cheddar cheese: (1) a well-established national market price exists; (2) standards for manufacture and grading are accepted widely on a national basis; (3) the Van Slyke formula calculates yields that are well-known and verifiable; (4) a majority of other cheese manufactured in the U.S. is traded in relation to Cheddar values with economic differences in costs of manufacturing being reflected in the marketplace; and (5) using Cheddar as a standard significantly simplifies the process.

The question of which cheese price to use in the market protein value calculation, either the NCE block or barrel price, will determine the degree to which the value of the skim portion of milk will be assigned or allocated to protein. For the purpose of reflecting changes in Cheddar cheese market prices (as opposed to the level of such prices), it makes little difference whether the barrel or block price is used because the prices move very similarly, with the barrel price approximately 3 to 4 cents per pound lower than the block price during 1991–93. The difference between the average block and barrel prices from 1992 to 1993 was $0.0383 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $0.0506 per pound of protein between the prices derived from the barrel and the block cheese prices.

The monthly average price for 40-pound block Cheddar cheese on the NCE is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used, without handlers incurring any significantly higher cost for milk. Use of the block price is also consistent with the Eastern Ohio-Western Pennsylvania, Ohio Valley, and Indiana Federal orders, where the block price is used to adjust the producer pay price for somatic cell count. The Cheddar cheese block price is used as a standard by many cheese manufacturers to price different types of cheese; used in the Coffee, Sugar, and Cocoa Exchange futures price of cheese; in the Class II price calculation; and in California's 4a price.

The price difference between block and barrel cheese may be due to packaging and other nonmilk factors. However, the protein price must be established at a level that best meets the needs of all concerned. The block cheese price should be more effective than the barrel price in establishing a sufficiently high protein price to accomplish the goal of encouraging producers to produce protein without having a detrimental impact on handlers.

The protein formula proposed by NAJ also would include the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. NAJ's inclusion of whey value would increase the protein price computed from the NCE block price by an average of $0.3813 and $0.4690 per pound in 1992 and 1993, respectively.

The whey protein factor should not be included in the computation of the protein price. Hearing evidence shows that the whey protein portion of the NAJ protein price is not necessarily based on a value that a manufacturer can recover from a whey operation. Use of the market price for whey protein concentrate (WPC), the highest-priced whey product, ignores the diversity of whey handling operations and practices that exist throughout the dairy industry.

Whey protein concentrate manufacturing involves sophisticated and expensive technology used by very few manufacturers, and apparently by none in Michigan. Until recently, the dairy industry has treated whey as having negative value, and the production of whey in connection with cheese manufacturing represented a disposal problem involving costs rather than a byproduct opportunity. Inclusion of a whey value in the protein price at this point in the development of whey disposal technology would result in including the potential revenue associated with whey, but none of its actual cost.

Fluid Carrier. The balance of the M–W price, after the values of protein and butterfat are removed, should be priced on the basis of a "fluid carrier" residual. The fluid carrier price per hundredweight will be computed by subtracting from the Class III price the sum of the butterfat price times 3.5 and the protein price times the month's average protein test of the Minnesota-Wisconsin price survey milk. Because the computation of the fluid carrier price is based on a residual value, the fluid carrier price could be negative. In this instance, the fluid carrier price would remain negative, instead of adjusting either the butterfat or protein prices.

Because the M–W price is a competitive pay price rather than a price determined from calculating each component's value, the M–W price reflects factors such as volume premiums, cheese yield premiums, solids-not-fat premiums, butterfat values offered by some manufacturers that exceed the butterfat differential, and pure competition for supply. The fluid carrier residual helps to place a value on these factors that is not accounted for elsewhere. Also, the standards for all finished products require inclusion of some fluid from raw milk; for example, skim milk powder has approximately 4 percent moisture, and Cheddar cheese

has a 38-percent moisture standard. Therefore, the water in producer milk has some value in manufactured products, resulting in revenue to the processor as that fluid is captured in products such as butter, yogurt, cheeses, and nonfat dry milk.

MMPA, ICMPA, Leprino, NCI, and Kraft all supported a fluid carrier component to represent the residual value of the hundredweight of producer milk in Class II and Class III. Each party supported a formula identical to that which is recommended for adoption. The fluid carrier residual would have provided an average value, per hundredweight, of $3.39 in 1992 and $3.68 in 1993.

An alternative residual price was proposed by NAJ, which would price the residual value of the M–W price after the removal of the butterfat and protein values on the basis of "other nonfat solids." The other solids price would be calculated by subtracting from the M–W price the sum of the value of 3.5 pounds of butterfat and the average protein content of milk included in the M–W price survey times the protein price. The result would be divided by the M–W other solids content (M–W nonfat solids minus M–W protein) to obtain the other solids price per pound. This proposed residual would have provided average values, per pound, of $0.40 and $0.41 in 1992 and 1993, respectively.

There is no readily available measure of the market value of the other nonfat solids. The nonfat nonprotein solids component principally consists of lactose. The other solids price would represent not only the value of the lactose and ash, but would include an adjustor between the butterfat and protein component values of milk, which are determined by the market value of those components in dairy products, with a competitively set producer pay price (the M–W). While there is a value to lactose, attributing the entire residual value of milk to the nonfat nonprotein component would overstate the true economic value of lactose after accounting for processing costs and ignore the value of water in milk. It would be inequitable and uneconomical to place the residual value of milk on lactose instead of on the residual fluid volume. The other solids price may send a signal to producers to produce higher solids while sending a conflicting signal to manufacturers.

Because the M–W price is a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M–W) and the product-derived component prices. The fluid carrier is this component.

In addition, if the other solids price had a negative value, either the protein or butterfat price would need to be adjusted in order for the other solids price to retain at least a value of zero. If this situation were to arise, the adjusted protein price, for example, would no longer represent the true market value associated with protein. Consequently, producers and handlers would receive an inappropriate economic signal from the adjusted price.

The residual skim value of the M–W, after accounting for protein, should be placed on the fluid carrier component. Hearing record evidence indicates that the M–W price represents various factors that may not have a known market value, such as various premiums or pure competition for milk supply. The fluid carrier value would represent these factors. The hearing record also shows that moisture standards exist for all dairy products. The fluid carrier component recognizes the fact that the water in milk does hold value for the processor and the producer. Lastly, the correct economic signals relating to butterfat and protein will be sent to both producers and processors if the residual calculation is negative. The function of the residual is to connect the value of milk components in manufactured dairy products with a market-determined price for milk used in those products.

Miscellaneous. The butterfat and protein component prices will be expressed on a per-pound basis to the nearest one-hundredth cent. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is enhanced significantly over expressing the prices to the nearest cent. Additionally, the difference between what is paid into the producer-settlement fund and what is drawn from the producer-settlement fund is much closer to zero than when prices are rounded to the nearest full cent. The fluid carrier price will be expressed on a per hundredweight basis, rounded to the nearest whole cent.

For the purpose of allocating protein and fluid carrier to the classes of use, the assumption will be made that the protein and fluid carrier cannot easily be separated. The protein and fluid carrier will therefore be allocated proportionately based on the percentage of protein and fluid carrier in the skim milk received from producers.

In contrast to other orders that have multiple component pricing provisions, this decision incorporates only one protein price. The pooling of the components to include the Class I skim portion is incorporated within the computation of the producer price differential. This feature of the pricing plan allows for the elimination of separate handler and producer protein prices, and resulting confusion over which price, handler or producer, should be used in different situations. In addition, a handler's per-pound price for protein is the same whether the handler is buying milk from producers or from other handlers.

The producer price differential, which represents the additional value of Class I and Class II milk in the pool and any positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated to Class I, receipts from unregulated supply plants and location adjustments.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and fluid carrier contained in the skim milk allocated to Class II and Class III will be added to, and the values of the protein and fluid carrier contained in all producer milk subtracted from, the differential pool. The accumulated total for all handlers then will be adjusted by total producer location adjustments and one-half the unobligated balance in the producer-settlement fund. The resulting value then will be divided by the total pounds of producer milk in the pool, with an amount not less than six cents or more than seven cents per hundredweight deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

It is possible for the producer price differential to be negative. A negative producer price differential can result for two reasons. Any one or more of the Class I, II, or III–A differential prices may be negative and/or the minus adjustments may be large enough to offset any positive contribution from the differential prices. A negative producer price differential would be equivalent to a uniform price less than the Class III price.

The Leprino panel testifying at the initial hearing session suggested that payment for protein be based on true protein rather than total Kjeldahl nitrogen because only true protein has real value to processors.

Testing for true protein may have considerable merit. However, the hearing record lacks sufficient discussion of the benefits of specifying testing for true protein versus total protein. Approved testing methods currently vary among states, and the orders at this time should not mandate specific protein tests. If more and more states begin to mandate specific types of protein testing, it may become necessary to specify such testing in the orders.

4. Somatic Cell Adjustment

This decision continues to recommend a somatic cell count (SCC) adjustment to protein prices paid to producers for all classes of milk. The somatic cell adjustment recommended is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein.

Adjusting protein prices paid to producers by SCC was proposed during the initial hearing as part of a multiple component pricing system and was included in the recommended decision. Three fluid milk processors and a trade association for fluid milk processors filed exceptions to the recommended decision. Although this specific issue was outside the scope of the reopened hearing notice, two witnesses at the reopened hearing session testified against inclusion of a somatic cell adjustment in addition to filing exceptions to the recommended decision and briefs after the reopened hearing.

Each of these four parties opposed the recommended application of an SCC adjustment on milk used in Class I. Support for the SCC adjustment on Class I milk was stated in MMPA's post-hearing brief. Following is a summary of the initial hearing somatic cell testimony, exceptions to the original recommended decision, reopened hearing testimony, and briefs filed after the reopened hearing. Most of the exceptions, reopened hearing testimony, and briefs reiterated what was presented during the initial hearing and in post-hearing briefs. Unless specified, the following evidence was given at the initial hearing.

The director of milk sales for Michigan Milk Producers Association stated that the functional value of protein in the production of manufactured dairy products and its role in providing wholesome flavor and nutritional value in fluid milk products is affected by the SCC level of the raw milk supply. Therefore, the witness asserted, elevated SCC levels and raw bacteria counts diminish the functional value of all milk. According to the witness, the damage is irreversible and cannot be restored by a mechanical process at a dairy plant.

The MMPA witness testified that high SCC levels are accompanied by an increase in the amount of undesirable enzymes in milk as well as an increased susceptibility of the fat component to attack by these enzymes. The witness explained that the undesirable enzymes attack the fat in milk and release free fatty acids. The witness stressed that even at very low concentrations, free fatty acids are responsible for producing off-flavors in any dairy product that contains milkfat. The MMPA witness noted that research has shown that the free fatty acid content of raw milk with high SCCs is higher than that of raw milk with low SCCs. The witness also pointed out that the enzymes are able to survive normal pasteurization and continue the process of deterioration of the flavor of finished fluid products, thus reducing shelf life. Therefore, he testified, protein payments to producers should reflect the influence of somatic cells on the quality of all milk.

The director of member services and quality control for MMPA testified that mastitis, an inflammation of the mammary gland, is a reaction to a cow's immune system fighting off invading bacteria. The witness explained that white blood cells and epithelial cells known as somatic cells are secreted during the process to destroy the invading bacteria. The witness stated that the level of somatic cells indicates, and is proportionate to, the infection level of a cow's udder.

Another witness testified for MMPA that somatic cells seem to have an impact on milk quality through their ability to cause changes in the enzymatic characteristics of milk. The witness explained that the enzymes generated by somatic cells degrade the casein and change its functional attributes. He pointed out that some changes include higher losses in cheese yield, differences in flavor characteristics, and changes in other functional characteristics that may weaken the structure of curd in a curd formation when making a product. The witness stated that high SCCs in milk cause an increased rate of rancid off-flavors, which produce a flavor that would be noticeable to a consumer. The witness explained that free fatty acids are one component that determines the shelf life of a fluid product and correlates to rancid off-flavors.

MMPA's witness went on to say that the enzyme which causes the damage is always present in an inactive form in milk. The active form of the enzyme, once it is produced in milk, is heat-stable and therefore unaffected by pasteurization or ultra-high temperature processing. The witness explained that most of the damage to protein occurs while milk is in the udder of the cow. However, if milk is cooled quickly and held at refrigeration temperature, further damage is minimized. The witness explained that producers can reduce the average somatic cell count of their milk through better management and proper adjustment and maintenance of milking equipment.

The MMPA quality control employee stated that SCC standards were adopted as a measure of milk quality and are included in the Pasteurized Milk Ordinance (PMO) because of the recognition of their public health significance in the milk supply. The witness explained that the condition of mastitis and the subsequent increase of somatic cell levels decrease the quality of milk by reducing the levels of butterfat, lactose, total casein and total solids in milk and increasing whey protein, chloride, and sodium levels.

The MMPA witness noted that SCCs have been included as a criterion within quality premium programs throughout the United States, including Michigan, for several years. The witness testified that all milk marketing cooperatives in Michigan use the Optical Somatic Cell Count (OSCC), an electronic method, for measuring levels of somatic cells. According to the witness, the OSCC method is the most accurate method available for testing somatic cells and is a method approved by the Association of Official Analytical Chemists (AOAC). Another MMPA witness stated that instruments are available and currently are being used to test a large number of samples on a reliable basis for both protein and somatic cell count.

The MMPA witness noted that the SCC standards under the PMO would be lowered from 1,000,000 to 750,000 on July 1, 1993. The witness pointed out that under the PMO, all Grade A producers are required to be tested a minimum of four times in six months for somatic cells. He explained that most producers whose milk is pooled under Federal Order 40 have been tested five times a month for the past several months, with test results reported to the producers. The witness stated that MMPA's average SCC for 1992 was 308,000, according to record data. However, he stated, this average is based upon one SCC test per farm per month. The witness explained that in comparing data collected for the past six months, one test per month versus five tests per month, the cooperative's average SCC could increase by as much as 50,000. Another MMPA

representative testified that the proposed neutral zone had been reduced from the initial proposal to between 300,000 and 450,000 to better reflect current data with regard to average SCCs in Order 40.

According to an MMPA witness, an adequate number of times per month to test a herd for SCC would be the number of times currently used for butterfat, four or five times. The witness stated that the functional value of milk changes as soon as the SCC exceeds about 100,000. He stated that one of his research studies, which was conducted under ideal conditions, indicated that as SCCs change from zero to 1,300,000, cheese yields decline an additional two to three percent. The witness also stated that there is a maximum yield loss of about two percent when SCCs change from 100,000 to 750,000.

MMPA supported the SCC adjustment on all milk in a brief filed after the reopened hearing. The brief asserted that the recommended decision recognizes the impact that SCC levels have on the functional value of milk for both fluid and manufacturing processors. The brief noted that the difference in the Class I differentials between the Ohio and Indiana orders greatly exceed the four to six cents per hundredweight identified as the potential effect on a Class I handler's price resulting from the somatic cell adjustment.

The regional dairy director for National Farmers Organization (NFO) testified in opposition to the inclusion of a somatic cell adjustment. The witness stated that uniformity in the pricing provisions of Orders 40, 33, 36, and 49 is of overriding importance and urged the Secretary to adopt the same MCP programs for all orders. The witness argued that because of the degree of overlap in milksheds and sales between these orders, differences in order provisions will cause confusion and disorderly marketing conditions.

The NFO witness observed that SCC is only one of several factors in NFO's and other quality programs. The witness stated that the incorporation of an SCC adjustment would destroy the flexibility of voluntary quality programs. The NFO witness stated that adoption of an SCC adjustment would overstate the importance of SCC among other factors used in determining milk quality and elevate SCCs to a disproportionate role in determining the value of milk. He argued that this disproportionate emphasis on SCCs is exacerbated by the inherent vagaries of testing for SCCs.

The NFO representative stated that somatic cell count is one of the more volatile variables in the measurement of milk quality and can vary significantly within the same herd. The witness noted that a MMPA witness testified at the multiple component pricing hearing for Orders 33, 36, and 49 that tests for SCC are much less precise than tests for butterfat or protein. The NFO witness explained that the variations in SCC tests within a herd during a month are much greater than for butterfat or protein.

A Kraft witness stated at the initial hearing that Kraft supports the inclusion of somatic cell adjustments in any component pricing plan. The witness noted that testimony and evidence in previous hearings, as well as in this hearing, reveal that there is a reduction in cheese yield as somatic cell levels increase, thus lowering the value of protein in milk.

During the initial hearing, the witness for Country Fresh, Inc. (Country Fresh), a fluid milk and Class II processor in Order 40, supported an SCC adjustment on all classes of milk, but recommended that the size of the proposed adjustment be reduced substantially. Under his recommended changes to the proposal, the witness stated that based on the peak cheese prices during 1992, the maximum plus and minus somatic cell adjustments would have been 15 cents a hundredweight. He argued that combined, this would create a range of about 30 cents, as the most the market can bear without creating a disincentive against receiving high-quality milk.

The witness noted that effective July 1, 1993, the cap on the SCC for Grade A milk will be 750,000. The witness and Country Fresh's brief argued that the proposed neutral zone of 300,001 to 500,000 and MMPA's modified proposed neutral zone of 300,001 to 450,000 are too high. The witness testified that the average somatic cell count in the Southern Michigan marketing area is approximately 340,000, according to the market's largest cooperative. Therefore, the witness suggested that the appropriate neutral zone be 300,000 to 399,999 and the highest bracket 700,000 and up.

The witness continued by stating that if the somatic cell program is modified as suggested, Country Fresh could support its inclusion in the Southern Michigan order. He testified that Country Fresh urges that the somatic cell program be tried in a moderate rather than a radical manner. Otherwise, the witness claimed, chaotic marketing conditions could be created which would result in a new hearing being held in the not-too-distant future to amend the order. Country Fresh's brief further noted testimony of MMPA, Leprino, and NFO which asserted that there are other factors involved in high quality milk besides SCC.

In an exception to the recommended decision, in testimony during the reopened hearing, and in a post-hearing brief, Country Fresh changed its position and expressed opposition to an SCC adjustment to milk used in Class I. During the reopened hearing and in a post-hearing brief, Country Fresh proposed to modify the recommended Southern Michigan somatic cell adjustment to be similar to the SCC adjustment on Class II, III, and producer milk adopted in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing orders. Country Fresh's brief filed after the reopened hearing stated that the handler currently does not adjust for SCC on the milk it purchases.

The Country Fresh witness testified that uniformity of pricing provisions across Federal orders is important because a substantial overlap in Class I sales and raw milk procurement exists between Indiana, Ohio, and Michigan. The witness stated that the SCC adjustment on Class I milk in the recommended decision does not apply in either the Indiana or the Ohio Valley Federal orders.

Country Fresh's brief asserted that implementing an SCC adjustment on Class I milk in Southern Michigan but not the surrounding areas would change the Class I price relationship between these orders. The brief stated that disruptive and inequitable marketing conditions would result for handlers regulated under the Southern Michigan order relative to handlers regulated under orders in which no SCC adjustment is made. The brief contended that evidence presented at either the initial or reopened hearing did not justify an increase in the cost of Class I milk in Southern Michigan relative to neighboring orders.

The Country Fresh witness estimated that on a total milk supply basis, the SCC adjustment for each Class I handler could potentially affect the Class I price from four to six cents per hundredweight. The witness stated that the impact of SCC has not been this great in the Indiana Federal order, where the adjustment is not based on the total milk supply as was recommended in Southern Michigan.

Country Fresh's exception and brief agreed that lower SCC levels have some value to fluid milk processors. However, both the exception and brief argued that no difference exists whether milk is processed in Michigan or in Indiana; thus no distinction should be made between these markets based on SCC pricing. In addition, the witness stated

that it is not possible to relate somatic cell levels to a value on Class I milk or to the specific value adjustments recommended in the decision.

Witnesses for, and briefs and exceptions filed by, the Kroger Company (Kroger), Dean Foods Company (Dean), and the Milk Industry Foundation (MIF) opposed the inclusion of somatic cell counts as part of the pricing structure as it would relate to Class I fluid handlers. Kroger operates a pool distributing plant regulated under Order 40. Dean has been marketing milk in the Southern Michigan market for over 30 years and operates a bottling plant known as Liberty Dairy in Evert, Michigan. MIF is a national trade association with 215 member companies located in all 50 states that process nearly 80 percent of all fluid milk products nationwide.

The division manager of milk procurement for Kroger argued that there is no economic justification to include a somatic cell adjustment on Class I sales or any Class II and III products such as raw fluid milk inventory, half and half, eggnog, Class III shrinkage, and sales of surplus cream. According to the witness, the price or product yields of these items are not influenced by the amount of protein in the raw milk used in their manufacture. Additionally, the witness argued, adoption of the MMPA proposal would make it impossible for processors to recover the cost of these products and would create inequitable and uncompetitive Class II and Class III market conditions for Order 40 processors compared to their competitors regulated under other orders.

The Kroger representative continued by stating that Kroger is not opposed to a proposal which introduces multiple component pricing with protein pricing and a somatic cell adjustment for milk processed in Class II and III used-to-produce products. The witness stated that if the MMPA proposal is modified accordingly the MCP plan combined with a somatic cell count adjustment would have a potential benefit to producers and processors. Kroger's opposition to an SCC adjustment on Class I milk was reiterated in an exception to the recommended decision.

The Kroger witness and MIF's brief argued that adoption of an SCC adjustment on milk used in Class I would result in disruptive and inequitable marketing conditions for Order 40 handlers versus their competitors in other markets where the provision does not exist. The Kroger witness and MIF noted that a somatic cell count adjustment would eliminate the advance knowledge fluid milk processors currently have of the Class I price and force handlers to estimate the value of somatic cells for the current month's price. The Kroger representative claimed that the proposal would influence the value of Class I milk based on the SCC level in raw milk.

MIF expressed concern that milk processors would incur increased costs from milk with low SCCs that they would be unable to recover from product sales because consumers are unable to differentiate between low and high SCC milk. MIF's exception also contended that increased costs from both procuring low SCC milk and more frequent product testing would lead to higher retail prices for milk and a decrease in fluid milk sales. Exceptions to the recommended decision, testimony during the reopened hearing, and post-hearing briefs filed by MIF reiterated these arguments opposing an SCC adjustment on Class I milk.

According to MIF's brief, there is no quantifiable scientific evidence that the level of somatic cells results in any appreciable difference in the attributes of fluid milk, particularly attributes which would be discernible by consumers. MIF described the testimony of MMPA as failing to make an absolute statement regarding quantifiable economic benefits to fluid milk use resulting from lower somatic cell counts. MIF stressed that there is no need to pay a premium for reduced SCCs when the permissible count is being reduced by regulations. In briefs, MIF and NFO questioned whether it is appropriate for the Federal order system to adopt a policy and administer practices which allocate economic advantages and disadvantages among certain segments of the dairy industry.

The witness for Dean Foods stated that there is no scientific evidence which shows that handlers or consumers benefit from lower somatic cell counts and that the inclusion of SCC adjustments in the pricing structure of producer milk within the Federal order system would ultimately be borne by the consumer. However, the witness stated, Dean supports the inclusion of SCC premiums in Class II or Class III producer milk where there is evidence of improved yields due to reduced levels of somatic cells.

Dean Foods' exception reiterated arguments made by Country Fresh and MIF. Additionally, Dean's exception noted that a six cent per hundredweight adjustment in the Class I price would equal 0.005 cents per gallon and would amount to additional costs between $180,000 and $200,000 per year for the Liberty Dairy bottling plant. The exception stated that the plant, at which 85 to 90 percent of receipts are used in Class I, currently has a premium program which includes an SCC adjustment as one of the factors in pricing milk. Dean noted, however, that SCC alone is not considered to be a quality enhancer for Class I products.

The Leprino panel that testified in the original hearing stated that Leprino supports the inclusion of SCC adjustments to value protein properly as long as other basic milk quality criteria are achieved, notably low psychrotrophic bacteria count and low raw bacteria count. Additionally, the panel also testified that Leprino opposes quality adjustments for Class I milk unless it can be clearly demonstrated that there is a discernable benefit to the Class I handler. The panel recommended that yield factors used to value somatic cell counts should be conservative, given the conflicting scientific evidence, and should be uniform across Federal orders.

According to testimony at the original hearing by the Leprino production manager, Leprino participates in milk quality programs based on several parameters, providing incentives for producers with high-quality milk and disincentives for inferior-quality milk. The witness noted that in the MCP hearing for Orders 33, 36, and 49, three studies were introduced into evidence and referenced in the recommended decision to justify adjusting the protein payment by SCCs. However, the witness argued that each study shows different yield impacts at different SCC levels in raw milk. The witness also noted a study which indicates that SCCs may affect yields, but day-to-day changes in milk composition obscure the effect. The witness pointed out that a study by one of the MMPA witnesses states that payment for milk quality should not rest solely on somatic cell counts.

The Leprino witness testified that scientific evidence indicates that the greatest yield benefits are at a level of 100,000 to 200,000 and greatest yield losses are above 500,000. The witness noted that the SCC limit under the PMO soon will be adjusted to 750,000. He stated that Leprino's proposal offers an adjustment of plus 20 cents to minus 20 cents for legal Grade A milk and includes a prerequisite of other milk quality conditions that can affect cheese yield. The witness recommended that USDA use a conservative approach given the Department's limited experience with mandated milk quality criteria for payment purposes. The witness urged that the adjustments be

uniform between all Federal orders to ensure orderly marketing.

The Leprino quality assurance director testified that the two methods for testing for the level of SCC are direct microscopic cell count (DMSCC) and optical somatic cell count (OSCC). She stated that the DMSCC is a tedious method which takes extensive training and precision to perform and is used to calibrate electronic methods. She estimated that equipment for performing SCC tests by the DMSCC method costs about $4,000. According to the witness, the OSCC methods are easily performed, generally more precise, and are less labor intensive than the DMSCC. The witness stated that the unit cost for equipment is between $40,000 and $100,000 and, when combined with infra-red component testing systems, could range from $150,000 to $200,000.

The Leprino quality witness expressed opposition to the proposed order amendment which would allow no adjustment to a producer's protein price if an average SCC was not available for the month. The witness claimed that processors would not be able to reduce payments on high SCC milk if testing is not mandated. Therefore, the witness urged that testing be conducted no less than five times per month with at least one test per week. Furthermore, the witness recommended that if no tests are available, the handler should assume the milk falls in the highest adjustment category of 750,000 SCC per milliliter.

The quality witness for Leprino testified that in addition to SCC, raw bacterial count (SPC) and psychrotrophic bacteria also have a direct influence on milk quality and hence its value to a processor. The witness stated that SPC gives an indication of sanitary practices around milking, and transferring and the storage of milk. The witness claimed that SPC has been recognized and widely used as a basis for valuing milk. She added that psychrotrophic bacteria are those bacteria capable of appreciable growth under commercial refrigeration, regardless of the optimal growth temperature of the organisms. According to the witness, such bacteria degrade protein and fats, causing off-flavors, odors, slime formation, and reduction in cheese yields.

Leprino's exception to the recommended decision stated that the adoption of one quality attribute (SCC) as a requirement for milk payment purposes without consideration of the other raw milk quality attributes opposes all the market practices currently operating in the Southern Michigan order. The exception urged that if milk quality is to be regulated under the order, the adopted model should be similar to those currently used by almost all of the handlers. The exception asserted that this program would include multiple minimum raw milk quality attributes such as raw bacteria counts and psychrotrophic bacteria counts.

In a brief filed after the reopened hearing, NCI contended that a specific schedule of SCC adjustments, such as was included in the recommended decision, should not be included as part of the order. The brief suggested that the order provisions should include authority for handlers to submit individual plans for market administrator approval to pay premiums or make deductions based on SCC as long as the total payment to all producers reflects the monthly minimum pay price under the order. The brief contended that this system would permit individual handlers the option to use adjustments that reflect the effect of low or high SCC milk on manufactured product production without requiring a rigid schedule of order-specified adjustments in milk costs based on various levels of SCC.

A somatic cell count adjustment should be adopted because it reflects the value of the level of somatic cells contained in milk. The adjustment will be on protein prices received by producers for all producer milk. There was significant testimony during the initial hearing that elevated levels of somatic cells diminish the functional value of milk in all uses. A reduction in the yield of cheese and other curd-based manufactured products, an increased rate of off-flavors, and a reduction in the shelf-life of fluid products all result from elevated levels of somatic cells.

The proponents' proposed neutral zone of 300,000 to 450,000 has been reduced to between 301,000 and 400,000 to better reflect the market's average somatic cell count and to correspond more closely with the multiple component pricing plan adopted for Orders 33, 36 and 49. Although increments of 100,000 were proposed, this decision breaks down somatic cell adjustments into increments of 50,000. Increments of 50,000 assure producers that if slight testing inaccuracies (which may be greater in the case of somatic cells than for butterfat or protein) cause their protein price to be adjusted to the next level, that adjustment will not represent the entire value of a 100,000 increment of SCC.

In addition, because of the reduction in the maximum permissible SCC, 750,000 and over will become the maximum increment for which protein prices will be adjusted for somatic cell content. It is possible that some Grade A producers may have an average SCC of 750,000 or more for a month without losing Grade A status because of differences between the market administrators and health departments in the number of leucocyte (somatic cell) tests taken in a given period of time. In cases where a handler has not determined a monthly average SCC for a producer, it will be determined by the market administrator.

Because the value of milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells. These adjustments will be used to adjust the protein prices paid to individual producers. The somatic cell adjustment to producer protein prices will be computed by multiplying the appropriate constant for increment of somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell adjustment will be added to or subtracted from the protein price paid to producers.

The somatic cell adjustment to be used in determining protein prices paid to producers is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that there is a one percent reduction in cheese yields as somatic cells increase to 100,000, and cheese yields decline an additional two to three percent as somatic cells increase from 100,000 to 1,000,000. There is also a maximum yield loss of about two percent as SCCs increase from 100,000 to 750,000. This decision reflects the proportional change in cheese yields as the SCC level changes.

The constant to be used for calculating somatic cell adjustments was computed by dividing the change in cheese yields attributable to changes in somatic cell counts by a representative protein test of producer milk (3.2 percent). As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor that varies with the somatic cell level by the representative protein percent used in calculating the handler protein price.

MMPA's proposed factors varied from .20 for a somatic cell count below 100,001 to −.20 for a somatic cell count above 750,000. Leprino's proposed

factors varied from .20 to −.25, and Country Fresh proposed factors varied from .128 to −.128. This decision includes factors that vary from .25 to −.25 and are based on the reduction in cheese yield associated with varying somatic cell counts. Although .20 was the maximum positive factor proposed, .25 should not overcompensate producers for producing the highest quality milk.

The factors adopted in this decision are similar to the ones proposed, with the largest difference occurring at SCC levels below 151,000 and above 500,000. Record testimony reveals that milk containing between 100,000 and 200,000 SCC yields the greatest benefits and milk containing more than 500,000 SCC yields the greatest losses in cheese production. Evidence also reveals that SCC per milliliter of milk typically ranges between 200,000 and 400,000. Therefore, it is logical to assume that the majority of Order 40 producers' SCCs will fall within the 200,000 to 400,000 range.

As shown in Table 1, the factors to be used in adjusting handler and producer protein prices for somatic cell content do not reflect a linear relationship between cheese yields and somatic cells because the relationship between these factors is not linear. Dividing these factors by a standard protein content of 3.2 yields the constants shown in Table 1 to be used for computing the somatic cell adjustment. Use of a constant substantially simplifies the computation of the somatic cell adjustment without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the adjustment will change. Therefore, the somatic cell adjustment will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.250	.078125
51,000 to 100,000	.200	.062500
101,000 to 150,000	150	.046875
151,000 to 200,000	100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.0000000
351,000 to 400,000	.000	.0000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	− 100	−.031250
601,000 to 650,000	− 125	−.0390625
651,000 to 700,000	− 150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 to above	−.250	−.078125

Several hearing participants indicated that there is a great deal of overlap in milk procurement and Class I sales between Order 40 and Orders 33, 36, and 49 and stressed the importance of uniformity between the orders. This decision differs from the MCP plan adopted for Orders 33, 36, and 49 because it recommends a somatic cell adjustment on all producer milk, as proposed. There is no reason to believe that the resulting difference between the orders will have an adverse effect by allowing Order 40 handlers a competitive advantage over Orders 33, 36, and 49, or vice versa.

Although there is considerable overlap in the production areas of these four markets, significant differences currently exist in the prices paid to producers located in the same production areas but pooled under different orders. It is not likely that the considerably smaller differences in somatic cell adjustments to producer protein prices will cause marketing disorders in milk procurement arrangements between the four marketing areas.

Regarding assertions that somatic cell adjustments would increase Class I handlers' cost of milk significantly, it is unlikely that any handler's total milk receipts would vary greatly from the market's average SCC. Even handlers with a somatic cell average in the 201,000–250,000 range will pay an SCC adjustment of no more than about 6 cents per hundredweight, which would still result in a lower Class I price than is effective in any of the other three marketing areas. It is also probable that application of somatic cell adjustments to milk used in Classes II and III, but not in Class I, would result in Class I handlers receiving lower-quality milk from suppliers without the payment of additional premium.

The effect of somatic cell adjustments on the advance nature of Class I prices should be expected to be minimal. The somatic cell adjustments are a very small portion of the cheese price and any changes from month to month would be correspondingly small in relation to changes in the cheese price. In addition, the biggest factor in Class I price movements is the amount of change in the M–W price, which can be expected, on average, to represent ten times the change in the cheese price.

The argument that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain evidence that any problems resulting from variability in testing outweighs the benefits of including SCC adjustments in the MCP plan. As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling and testing of milk purchased from producers." 7 U.S.C. 608c(5)(E). Because the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as the differences in butterfat tests

due to testing variations were minimized when the Federal milk order program was first instituted.

The Agricultural Marketing Agreement Act in 7 U.S.C. § 608c(5) authorizes the Secretary to adjust minimum prices paid to producers based upon the quality of the milk purchased. Therefore, the argument that somatic cells cannot be used as a criterion for adjusting a producer's pay price is invalid. Furthermore, the hearing record shows that the level and presence of somatic cells directly affect the quality and grade of milk in that SCCs above a certain level result in the loss of a producer's Grade A permit.

Record evidence indicates that SCC is only one of the factors that affect milk quality. However, there is not enough substantial evidence to include other factors, such as psychrotrophic and raw bacteria count, as criteria used to determine milk quality for payment purposes. Testimony indicates that there may be merit in including other quality factors besides SCC in Federal milk order pricing, but further study of the role of such other factors in affecting the value of milk is needed. In any case, the inclusion of other quality factors in this proceeding goes beyond the scope of the hearing notice.

Because the NCI proposal for individual handler SCC plans was not included in the notice for either the initial or the reopened hearing, thus precluding an opportunity for cross-examination, it cannot be considered as an alternative to the proposed or recommended SCC adjustment schedule. It should be noted that adjusting the minimum producer milk price for SCC does not preclude other premiums paid by the handler

5. Administrative Assessment

The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Southern Michigan order should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies. The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 2-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 40 since the order became effective on December 1, 1960.

The 2-cent increase in the maximum allowable rate was proposed by MMPA. During the initial hearing, a witness for the cooperative association testified that the present ceiling on the deduction rate for administrative services does not adequately compensate the market administrator for all services rendered. In a post-hearing brief, MMPA stated that the market administrator should have the authority to collect revenue necessary to perform the duties required by regulations. There was no other testimony on this proposal at the hearing. NFO's brief expressed support for MMPA's proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator

The Balance Sheets and Income and Expense Statements for the Administrative Fund are compiled by the market administrator and reported annually to regulated handlers as well as to other interested parties. Record data for the years 1990 and 1991 show that the administrative expenses associated with the operation of Orders 40 and 44 exceeded the income the market administrator received from assessments by $80,000. However, when the four markets were consolidated in 1992, income exceeded expenses by $400,000. The change indicates that Orders 33 and 36 are bearing some of the financial responsibilities of Orders 40 and 44.

The witness for MMPA stated that the current rates of assessment for Federal Orders 33 and 36 are higher than for Orders 40 and 44. Furthermore, the witness noted, the recent recommended decision for Orders 33 and 36 sets the maximum allowable deduction rate for administrative services at 4 cents per hundredweight.

Handlers and producers serving the market have jointly asked that a new multiple component pricing program be provided to adjust the value of milk used by regulated handlers and payments to producers. The implementation and administration of that pricing plan for Order 40 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing plan would be paid for with money from the marketing service fund. However, because the value of milk used by handlers in Classes I, II and III would be established on the basis of the milk's butterfat, protein, fluid carrier, and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely would be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order When the amended order becomes effective, the market administrator may decide that no change in the effective assessment rate is necessary or that some increase to a level less than the maximum allowed is warranted. Further, an increase in the maximum rate will assure that Order 40 will bear, with Orders 33 and 36, an equitable share of the cost of operating the market administrator's office

6. Marketing Service Assessment

The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein, somatic cell testing, and market information for nonmember producers should be increased to 7 cents per hundredweight under the Southern Michigan order The increase is needed to assure sufficient revenue to cover the expenses incurred by the market administrator in providing such services to producers who are not members of a qualified cooperative association. Currently, the maximum allowable deduction for such services is 5 cents per hundredweight. Like the administrative assessment, this maximum rate has been effective since December 1, 1960.

During the initial hearing, Michigan Milk Producers Association proposed that the maximum allowable assessment rate for marketing services be increased to 7 cents per hundredweight. The MMPA representative testified that the market administrator provides services which involve verification of weights, samples and tests of milk received from producers, as well as providing market information to producers who are not members of a cooperative association. The witness and MMPA's post-hearing brief stated that in order for the market administrator to adequately perform the duties required by the order, he must be allowed to have the authority to collect the revenue necessary to provide those services. A post-hearing brief filed on behalf of NFO supported MMPA's

proposal. There was no opposition to the proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator.

The Balance Sheets and Income and Expense Statements for the Marketing Service Fund are compiled by the market administrator and reported annually to nonmember producers as well as to other interested parties. Record data for the years 1990 and 1991 show that the expenses incurred by the market administrator in providing marketing services exceeded income by about $54,000. In 1992, when the statements for the four markets were combined, expenses exceeded income by approximately $116,000.

It is evident from the foregoing that the 5-cent deduction from producer payments for marketing services in the Southern Michigan order has been inadequate to cover the costs incurred in the performance of such duties by the market administrator. It also shows that the financial situation worsened when the statements were combined in 1992. The increase will align the maximum marketing service assessment rate of Order 40 with that recently adopted for Orders 33 and 36. In addition, the multiple component pricing plan recommended in this decision will require additional testing activities. Because not all handlers are equipped to make all of the determinations that will be required under the amended order, many of these duties will have to be performed by the market administrator responsible for administering the order.

The 7-cent maximum rate of deduction for marketing services proposed by MMPA should be provided in Order 40. The higher rate should give the market administrator the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the order.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for the fund is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing service fund, while changes in order requirements and the expenses of providing marketing services result in changes in total outlays.

An increase in the maximum allowable assessment will give the market administrator the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. The market administrator may use his discretionary authority to determine if rates below the upper limits adopted in the amended order will provide sufficient funding to conduct an adequate program for nonmember producers.

9. Conforming Changes

To accommodate multiple component pricing, a number of changes need to be made in the current order provisions of the Southern Michigan order. To compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as the difference between the current month's Class II price and the current month's Class III price. These differential values should not be confused with the fixed value that is added to the Minnesota-Wisconsin price for the second preceding month to arrive at the Class I price for the current month or the computed value that is used in the computation of the Class II price. It should also be pointed out that these differential prices may be negative, which currently happens when the Minnesota-Wisconsin price is greater than the Class I or Class II price. The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis.

Because producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged.

To enable the market administrator to compute the producer price differentials, handlers will need to supply additional information on their monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers will be required to report pounds of protein. This information will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers, and receipts of bulk milk received by transfer or diversion.

Somatic cell adjustments to protein prices will be made when handlers pay producers for their milk. Somatic cell counts, therefore, must be reported with other producer payroll information. As in the case of payments to producers for butterfat, somatic cell adjustments do not have to be included in pool obligations or credits for payments to producers. The handlers receiving producer milk will pay for the protein in the milk based on its somatic cell count because they are the parties directly affected by the quality of milk they receive.

The amendments to order language accompanying this revised recommended decision are based on the current language of the Southern Michigan order There are two national amendatory proceedings in process (the M–W replacement and Class II pricing) that may result in changes to some of the provisions that will also be changed by this proceeding. No attempt has been made in drafting the order language amendments accompanying this decision to accommodate any of the changes that may result from the other two proceedings. Any adjustments needed will be made on the basis of the order language in effect at the time a final decision is issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1040.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southern Michigan marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1040, are proposed to be amended as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

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

2. Section 1040.7 is amended by adding paragraphs (b)(5)(iii) and (b)(6)(iii) to read as follows:

§ 1040.7 Pool Plant.

* * * * *

(b) * * *

(5) * * *

(iii) A partially regulated distributing plant that is neither an other order plant, producer-handler plant, nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(6) * * *

(iii) The shipping percentages determined pursuant to paragraph (b)(6)(ii) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired to be effective.

* * * * *

3. Section 1040.30 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2) and (a)(3), and paragraph (c), and removing paragraph (d), to read as follows:

§ 1040.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1040.9 (a), (b), and (c) shall report for each of its operations the following information.

(1) Product pounds, pounds of butterfat, and pounds of protein contained in:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1040.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products.

(2) Product pounds and pounds of butterfat contained in.

(i) Receipts of fluid milk products not included in (a)(1) above and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1040.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

4. Section 1040.31 is amended by revising paragraph (a) to read as follows:

§ 1040.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1040.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The producer's name and address;

(2) The total pounds of milk received from such producer, with its protein and butterfat percentage;

(3) The total pounds of butterfat contained in the producer's milk,

(4) The total pounds of protein contained in the producer's milk,

(5) The somatic cell count of the producer's milk;

(6) The amount, or the rate per hundredweight, or rate per pound of component, the somatic cell adjustment to the protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

5. Section 1040.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1040.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

6. Section 1040.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (j), to read as follows:

§ 1040.50 Class and component prices.

Subject to the provisions of § 1040.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.75

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III price (this price may be negative).

(f) *Class II differential price* The Class II differential price shall be the difference between the current month's Class II and Class III price (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Fluid carrier price.* The fluid carrier price per hundredweight, rounded to the nearest whole cent, shall be the Class III price, less the sum of the butterfat price times 3.5 and the protein price times the average protein test of the basic formula price as reported by the Department for the month (this price may be negative).

7 Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices and any other price information deemed appropriate:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month,

(3) The Class III–A price for the preceding month,

(4) The skim milk price for the preceding month,

(5) The butterfat price for the preceding month,

(6) The protein price for the preceding month;

(7) The fluid carrier price for the preceding month;

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1040.50(b).

8. The section heading in § 1040.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1040.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1040.9 (b) and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1040.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1040.44(c) by the Class II differential price for the month,

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1040.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1040.44(a) by the average protein content of producer skim milk received by the handler and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by subtracting from the hundredweight of skim milk in Class II and Class III as determined pursuant to § 1040.44(a), an amount determined by multiplying that hundredweight of skim milk by the average protein content of producer skim milk received by the handler and multiplying the resulting hundredweight of fluid carrier by the fluid carrier price.

* * * * *

(f) Add an amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1040.43(e) and § 1040.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding steps of § 1040.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

9 Section 1040.61 is revised to read as follows.

§ 1040.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1040.60 (a)(1), (a)(2) and (b) through (i) for all handlers who made reports pursuant to § 1040.30 for the month and who made payments pursuant to § 1040.71 for the preceding month,

(2) Add the values computed pursuant to § 1040.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total hundredweight of fluid carrier contained in such milk by their respective prices,

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III–A price times the pounds of product determined pursuant to § 1040.43(f);

(4) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1040.75 (a) and (b);

(5) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1040.75 (a) and (b); and

(6) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund.

(b) Divide the aggregate value computed pursuant to paragraph (a) of this section by the sum of the following

(1) The total hundredweight of producer milk, and

(2) The total hundredweight for which a value is computed pursuant to § 1040.60(f).

(c) Subtract not less than 6 cents nor more than 7 cents per hundredweight.

The result shall be the "producer price differential."

10. Section 1040.62 is revised to read as follows:

§ 1040.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The fluid carrier price;

(d) The butterfat price;

(e) The average protein content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

11. A new section 1040.63 with an undesignated centerheading preceding it and a new section 1040.64 are added to read as follows:

Producer Price Differential

§ 1040.63 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The producer price differential computed pursuant to § 1040.61 and adjusted pursuant to § 1040.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The butterfat price computed pursuant to § 1040.50(h), multiplied by the total pounds of butterfat contained in the producer milk received from the producer;

(c) The protein price computed pursuant to § 1040.50(i) and adjusted pursuant to § 1040.64, multiplied by the total pounds of protein contained in the producer milk received from the producer; and

(d) The fluid carrier price computed pursuant to § 1040.50(j), multiplied by the total pounds of fluid carrier contained in the producer milk received from the producer.

§ 1040.64 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the simple average price for the month of 40-pound blocks of Cheddar cheese at the National Cheese Exchange as reported by the Department. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.250	.078125
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

12. Section 1040.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1040.71 Payments to the producer-settlement fund.

(a) * * *

(1) The total value of milk of the handler for such month as determined pursuant to § 1040.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1040.44(c) by the producer price differential, excluding any applicable location adjustment pursuant to § 1040.75(a)(3);

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of fluid carrier contained in producer milk by the fluid carrier price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1040.60(f) by a price computed as follows: the statistical uniform price as adjusted for location pursuant to § 1040.52 less 3.5 times the butterfat differential pursuant to § 1040.74.

* * * * *

13. Section 1040.73 is amended by revising the first sentence of paragraph (a), paragraph (b)(1)(ii), and paragraph (c), to read as follows:

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from the producer during the preceding month, not less than the value determined pursuant to § 1040.63 adjusted by the location differential pursuant to § 1040.75, less the payment made pursuant to paragraph (d) of this section. * * *

(b) * * *

(1) * * *

(ii) The total pounds of butterfat, total pounds of protein contained, and total pounds of fluid carrier in such milk, and the average somatic cell count;

* * * * *

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association, which is a handler with respect to milk received by him from a pool plant operated by such cooperative association, or by bulk tank delivery pursuant to § 1040.9(c), not less than an amount computed by:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month,

(3) The pounds of butterfat received times the butterfat price for the month;

(4) The pounds of protein received in Class II and Class III times the protein price for the month;

(5) The pounds of fluid carrier received in Class II and Class III times the fluid carrier price for the month;

(6) The somatic cell adjustment to the protein price, as computed pursuant to § 1040.63(c); and

(7) Less any payment made pursuant to paragraph (d) of this section.

* * * * *

14. Section 1040.74 is revised to read as follows:

§ 1040.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

15. Section 1040.75 is amended by revising paragraphs (a)(1) and (c), to read as follows:

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(1) May deduct for milk to be paid for at the producer price differential the rate per hundredweight applicable pursuant to § 1040.52(a) (1) or (2) for the location of the plant at which the milk was first physically received.

* * * * *

(c) For purposes of computation pursuant to §§ 1040.71 and 1040.72, the statistical uniform price shall be adjusted at the rates set forth in § 1040.52 applicable at the location of the nonpool plant from which the other source milk was received except that the statistical uniform price, so adjusted, shall not be less than the Class III price.

16. Section 1040.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1040.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1040.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

§ 1040.85 [Amended]

17. In Section 1040.85 the introductory text is amended by removing the words "2 cents" and adding in their place the words "4 cents."

§ 1040.86 [Amended]

18. In Section 1040.86 paragraph (a) is amended by removing the words "5 cents" and adding in their place the words "7 cents".

Dated: December 2, 1994.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 94-30417 Filed 12-13-94; 8:45 am]

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federal register

Wednesday
December 14, 1994

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 201
Federal Seed Act Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[No. LS-91-010 PR]

RIN 0581-AA52

Amendments to Regulations Under the Federal Seed Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the Federal Seed Act (FSA) regulations by changing the common and botanical names of several agricultural and vegetable seeds; adding several kinds to the list of agricultural and vegetables seeds subject to the FSA; changing germination evaluation descriptions; changing the method of fluorescence use in determining pure seed percentages in ryegrasses; adding methods for testing coated seed; adding methods for determining the presence of fungal endophyte in seeds; and updating the standards for certified seed. These changes will result in the adoption of scientific names currently recognized by the scientific community and provide for the use of common names most widely acceptable in seed trade. They will also eliminate potential conflicts between State and Federal regulations which could inhibit the interstate movement of seeds.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: For further information contact James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Division, AMS, USDA, Building 506, BARC-E, Beltsville, Maryland 20705, telephone 301-504-9430.

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

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

The Administrator, AMS, has certified that this action will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Many small entities sell seed. However, small entities selling seed must test and label the seed to comply with the requirements of state laws. Generally the testing requirements of the state laws are similar to those of the FSA. These changes will further reconcile State and Federal testing procedures. Using similar testing procedures will reduce the burden on small entities shipping seed in interstate commerce because the test used for intrastate commerce can also be used in interstate commerce. Some additional burden might occur concerning small entities shipping kinds which are added to those subject to the FSA. However, many small entities are likely to benefit because more small entities are purchasers of those kinds than sellers. The small entity purchasers will benefit from the regulations in that the interstate shipper would be required to test and label the kinds before shipping them to the purchaser. There will be no effect on the competitive position of small entities in relation to larger entities since both will have to comply with the same regulations.

Background

Seed Testing and Labeling

This document updates the FSA regulations pertaining to seed testing to eliminate differences between the FSA regulations and the Association of Official Seed Analysts (AOSA) Rules for Testing Seed. The Association is made up of State and Federal seed testing agencies. Its function is to develop and standardize methods to be used in testing seeds. These rules are widely recognized and are used by most state and commercial seed laboratories to test seed in the United States. In addition, common and scientific names are updated.

Agricultural and vegetable seeds shipped in interstate commerce must comply with the FSA and the regulations issued thereunder. The FSA requires seed to be labeled with certain information concerning its quality when moving across state lines. Once in a state, seed must comply with state laws and regulations. Labeling requirements in State and Federal laws are generally very similar so as not to inhibit the free movement of seed. Tests used prior to shipment to determine the required labeling information, as well as tests used by state seed regulatory agencies to check compliance, are generally performed using AOSA rules. Tests to assure that seed is in compliance with the FSA are performed using methods specified in the FSA regulations. Although the testing methods under the FSA regulations and those of AOSA are generally very similar, some changes have been made in the AOSA Rules For Testing Seed without corresponding changes in the FSA regulations. The changes to the AOSA rules were based on scientific research and were made with input from AMS. This document amends the FSA seed testing regulations so that they are essentially the same as those contained in the AOSA rules. This will eliminate the need to perform separate tests to assure that seed labeling complies with both Federal and State laws. It also facilitates seed trade and reduces cost to the seed industry and to seed buyers. These changes reflect improvements in seed testing technology and the current standards of usage within the industry. The specific changes to the testing rules are discussed under "Other Amendments."

Additional Kinds

There are presently about a dozen kinds (mostly grasses) which are being shipped interstate that are not subject to the FSA. Cooperating state seed regulatory agencies have requested that the list of kinds subject to the FSA be kept current so that interstate shipments of those kinds can be regulated. Occasionally complaints are received on these kinds. For that reason these kinds are being added to the regulations under the FSA making them subject to Federal law. Bluejoint, galletagrass, bottlebrush-squirreltail, green needlegrass, kenaf, forage kochia, mountain rye, intermediate ryegrass, northern sweetvetch, and basin wildrye are added to the list of agricultural seeds subject to the FSA. Dill, sage, and summer savory are added to the list of vegetable seeds subject to the FSA. Standardized test methods have been developed for the kinds to be added and they are currently covered by AOSA rules and are being regulated by the states. Therefore, this addition will result in little cost to the seed industry. Being subject to the FSA will require that the seed is labeled when shipped in interstate commerce.

Scientific Names

Changes to § 201.2 update scientific names for the agricultural seeds colonial bentgrass, glaucantha bluegrass, Nevada bluegrass, sand bluestem, carpetgrass, soft chess, emmer, hard fescue, kudzu, Korean lespedeza, striate lespedeza, Japanese millet, pearl millet, bird rape, turnip rape, rescuegrass, smilo, sorghum-sudangrass, sudangrass, turf timothy, velvetbean, beardless wheatgrass, intermediate wheatgrass, pubescent wheatgrass, Siberian

wheatgrass, slender wheatgrass, streambank wheatgrass, tall wheatgrass, western wheatgrass, and Russian wildrye. The scientific names for the vegetable seeds artichoke, Chinese cabbage, tronchuda cabbage, water cress, leek, pak-choi, and rhubarb are also be updated. The document changes the scientific names to those currently recognized by the scientific community and to be in agreement with the names used by the USDA Germplasm Resources Information Network (GRIN).

At the request of growers, researchers, and breeders the document changes the kind name "muskmelon" to "melon," because "melon" is the more widely recognized name.

Seed Certification Standards

The rule also updates the FSA regulations pertaining to seed certification to eliminate differences with the standards of the Association of Official Seed Certifying Agencies (AOSCA). This Association is made up primarily of State seed certifying agencies. The function of AOSCA is to establish minimum standards for genetic purity and to standardize seed certification regulations and procedures. State seed certifying agencies recognize and follow minimum standards for genetic purity established by AOSCA.

Seed represented as a class of certified seed, as defined in the FSA regulations, must meet the minimum genetic certification standards for certified classes as provided by the regulations. State seed certifying agencies which certify seed pursuant to the standards contained in the FSA regulations are members of AOSCA and must also maintain minimum AOSCA standards for certifying seed. This document changes the FSA regulations pertaining to genetic certification standards in order to bring them in conformity with the AOSCA standards. The changes to the standards have been reviewed and found to be consistent with the requirements under the FSA.

Corrections and Clarifications

There are a number of technical nonsubstantive corrections and clarifications which will also be made. Some of the more important ones change "Consumer and Marketing Service" to "Agricultural Marketing Service" and omit the word "hybrid" from the name "sorghum-sudangrass." In § 201.36b the word "pole" will be enclosed in parentheses. In § 201.36c the word "garden" is added to bean to show the correct kind name. Section 201.34(d) is changed to add a footnote to reflect the effective date which was previously omitted. Paragraph (e) of this section is removed to delete partial lists of variety names.

Other Amendments

Changes to § 201.2 redefine the Act to include 7 U.S.C 1551–1611, update scientific names, and add additional kinds as discussed above. Changes also add a definition of coated seed and change the definition of certified seed to show the proper reference, § 201.70, rather than § 201.79 which does not exist. Section 201.22(c) is changed to remove scientific names. Section 201.31 is changed to establish germination standards for dill, sage, and summer savory which were added to the list of vegetable seeds subject to the FSA in 201.2(i) and to reflect the change of the name "muskmelon" to "melon."

Section 201.36c will be changed to separate and alphabetize agricultural seeds and vegetable seeds in the table and to change "bean" in the vegetable list to "garden bean," the name recognized in § 201.2(i). Section 201.43 is changed to add metric equivalent weights and to specify the minimum number of coated seeds to be taken during sampling.

Section 201.46(b) is changed to substitute the word "comprise" for the incorrect word "compromise." Table 1 will be changed to reflect the changes in § 201.2. Scientific names are removed and working weights added for those kinds added in that section. In addition, several spelling errors are corrected.

The document changes several sections to add provisions for testing coated seed. Specific procedures have been developed to provide for uniform methods to test seed coated with products such as those designed to improve planting characteristics or to improve seedling growth. Section 201.2 adds a definition of coated seed. Section 201.45 adds comments pertaining to dividing coated seed. Section 201.47 cites added instructions for purity analysis of coated seed. Section 201.51b establishes purity testing procedures for coated seed. Section 201.52 is changed to add a new paragraph (b) to establish the amount of seed to be examined for a noxious-weed seed test on coated seed. The existing § 201.52 becomes paragraph (a).

Section 201.47a is also changed to clarify that the "entire spikelet" for rice, browntop millet, and Paspalum spp. is considered to be a seed unit; to define a seed unit for galletagrass (a new kind which was added in § 201.2); to include side-oats grama and blue grama, as kinds for which the Uniform Blowing Procedure is used to determine the percentages of pure seed and inert matter; and to clarify that fruits with accessory structures of other Chenopodiaceae (fourwing saltbush and forage kochia) are to be considered a seed unit.

Section 201.48 is changed to update seed unit interpretations to be consistent with § 201.51, to remove scientific names, and to add procedures to determine pure seed of forage kochia which was added to the kinds subject to the FSA.

Section 201.48, § 201.49, and § 201.51a are changed, in part, to add tall wheatgrass and western wheatgrass to the list of kinds to be tested using the Multiple Unit Procedure. These kinds contain multiple florets. The Multiple Unit Procedure provides faster, more consistent test results without a loss of accuracy when compared to the current, more tedious, hand method.

Several sections, including some of the changes to § 201.47, § 201.48, § 201.49, and § 201.51a add blue grama and side-oats grama to the kinds for which the purity percentages are determined by using the Uniform Blowing Procedure. The Uniform Blowing Procedure provides a method, for determining purity percentages for these kinds, which has proven to be faster, more consistent, and just as accurate as the hand method.

Section 201.50 is changed to clarify that wild onion and wild garlic bulblets devoid of husks are to be classified as weed seeds if not damaged at the basal end and are a specified size. Research has shown that these seeds would likely germinate.

Section 201.51 will update seed units that are considered to be inert matter, to include classification of certain seed units of newly added kinds, forage kochia and northern sweetvetch, as well as coating material.

Sections 201.56 through 201.56–12 are changed to establish new procedures for describing abnormal seedlings of each seed group for use in determining germination percentages and to eliminate references to outdated photographs. Seedling descriptions which had been developed over many years are being completely revised so that consistent, current terminology is used to describe abnormal seedlings for all kinds. The changes are designed to make the seedling descriptions more easily interpreted so that more consistent, accurate test results will be achieved. The changes will not result in significant differences in the percentages of germination found when compared to tests made under the current regulations.

Section 201.57a is changed to remove and to add new kinds, bottlebrush-squirreltail, basin wildrye, galletagrass,

mountain rye, johnsongrass, and forage kochia to the kinds having dormant seed.

Section 201.58 is changed to clarify the definition of "prechill" applicable to Table 2, to make editorial changes in special procedures for alyceclover, bahiagrass, beet, and garden bean, and to add special procedures for green needlegrass. Changes incorporate more specific information on the type of light to be used for ryegrass fluorescence tests, add germination procedures for coated seed, and correct common and remove scientific names in the section including Table 2. Germination test procedures for those kinds added in §§ 201.2(h) and 201.2(i) are added and references to outdated photographs of seedlings removed. The changes in testing procedures incorporate into the regulations the latest research on testing these kinds.

Section 201.58a is changed to revise the use of the fluorescence test for determining the percentages of pure seed and other crop seed of annual ryegrass and perennial ryegrass. The changes incorporate methods agreed on by AOSA, AASCO, the grass seed industry, and AMS. The procedure for determining the percentage of yellow sweetclover in white sweetclover is changed from a mottled seed test to a chemical test because the chemical test provides a more accurate, consistent result. Procedures for the phenol test for wheat, previously cited in AOSA Handbook Number 28, are being added and the reference to AOSA Handbook Number 28 is being removed so that all information will be contained in the regulations removing the need to have a copy of AOSA Handbook Number 28. Procedures for conducting a peroxidase test for varietal purity of soybean and fluorescence test procedures for determining varietal purity of oat are added. These procedures have been in use for many years and have proven to be accurate, reliable, and consistent. These tests are essential to check the accuracy of variety representations.

Section 201.58d adds established testing procedures for determining the percentage of fungal endophyte in seed and plant material growing therefrom to the regulations. Some grass seed is being labeled to indicate the presence or absence of fungal endophyte. Uniform testing procedures have been developed for determining the amount of fungal endophyte present.

Changes to § 201.60 will to remove scientific names, add ryegrasses and galletagrass to the list of chaffy kinds, and make editorial changes.

Changes to § 201.61 and § 201.62 correct typographical errors in the tolerance table.

A change to § 201.76 provides for the certification agency to grant a variance in the land cropping history in specific circumstances where cultural practices have been proven adequate to maintain genetic purity. Generally this change would allow for the agency to modify the number of years the field must have been free of potential contaminants before being planted to a crop under certification. Section 201.76 is also changed to update Table 5 and the footnotes to Table 5 to include metric equivalents, to update names to be consistent with § 201.2, and to make editorial changes and corrections. Standards for chemically assisted hybrid barley, buckwheat, and chemically assisted hybrid wheat are added. Field standards for classes of mung bean are changed and a field standard for hybrid corn added. In addition footnotes are added corresponding to those changes in the table.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** on May 17, 1994. A hearing on the proposed rule was held in Washington, DC on June 8, 1994. At that time interested parties were given an opportunity to present views concerning the proposal. No one commented at the hearing. Interested parties were invited to submit written comments until July 8, 1994. Fourteen written comments were received.

Five comments supported the proposal. One comment supported the change providing for "melon" as a common name for *Cucumis melo*. One comment supported the proposal with exception of changes in fluorescence calculations for ryegrasses. Three comments supported the changes in the fluorescence calculations for ryegrasses. Three comments recommended that the word "weak" not be used to describe abnormal lettuce seedlings. One comment suggested different scientific and/or common names for several kinds.

The provision on the use of the fluorescence test is being adopted because there were seven comments supporting the proposal including four which specifically mentioned support of the fluorescence proposal. Only one comment opposed that provision. Also, failure to adopt the fluorescence proposal would cause a conflict between Federal and State regulations which could inhibit the interstate movement of ryegrass seed.

As suggested by the three comments, the word "weak" was removed from the description of abnormal lettuce seedlings.

The comment on scientific and common names made several recommendations. The commenter suggested that in addition to smooth brome the common name "bieberstein brome" be included for *Bromus biebersteinii* because that name was cited in a reliable reference. No other use of that name has been found and we have no indication that any seed is being marketed under the name "bieberstein brome." To avoid potential confusion the name "bieberstein brome" was not added. The comment indicated that GRIN now shows the scientific name *"Festuca brevipila"* for hard fescue in lieu of *Festuca trachphylla*. The scientific name for hard fescue was changed to *"Festuca brevipila"* as recommended. "Bluebunch wheatgrass" was recommended as a synonym for "beardless wheatgrass" because the two have the same scientific name. "Thickspike wheatgrass" was recommended as a synonym for "streambank wheatgrass" because they have the same scientific name. Although these kinds have the same scientific name they differ in several characteristics. Because these crops are currently being marketed as separate kinds, the recommendation was not incorporated into the final rule. The comment noted that GRIN shows the common name "husk tomato" for *Physalis philadelphia* and the common name "downy groundcherry" for *P. pubescens*. *P. pubescens* has been marketed for many years as "husk tomato." To change the common name to "downy groundcherry," a name which is not used in marketing the kind, would lead to confusion. Therefore, the common name "husk tomato" was retained for *P. pubescens*.

In reviewing the common and scientific names as a result of the comment, several additional changes were found in the GRIN since the original proposal was drafted. Therefore, the following changes in scientific names are also included in this rule.

The scientific names of the following agricultural seeds were changed in § 201.2(h): Glaucantha bluegrass; Nevada bluegrass; sand bluestem; carpetgrass; bird rape; turnip rape; mountain rye; smilo; beardless wheatgrass; pubescent wheatgrass; streambank wheatgrass; and western wheatgrass.

The scientific names of the following vegetable seeds were changed in

§ 201.2(i): Artichokes; Chinese cabbage; water cress; and pak-choi.

In reviewing the use of scientific names in the regulations, the various tables were easier to use with less information. Therefore, most scientific names are being removed from the tables and text of the regulations. Scientific names of all kinds subject to the FSA including all kinds in the tables are shown along with the common name in § 201.2. The common and scientific names of agricultural seeds are listed in § 201.2(h) and vegetable seeds listed in § 201.2(i). Only scientific names of the kinds shown in § 201.2 are removed from other sections of this document.

This document does not contain new collection of information requirements. Sections amended by the rule contain collection of information requirements that were previously submitted for review to the Director of Management and Budget (OMB) and assigned OMB control number 0581–0026 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

For reason set forth in the preamble, 7 CFR Part 201 is amended as follows:

PART 201—FEDERAL SEED ACT REGULATION

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

Authority: 7 U.S.C. 1592.

2. In § 201.2, paragraphs (a), (h), (i), and (ee) are revised and paragraph (q) is added to read as follows:

§ 201.2 Terms defined.

* * * * *

(a) The Act. The term "Act" means the FSA approved August 9, 1939 (53 Stat. 1275; 7 U.S.C. 1551–1611 as amended);

* * * * *

(h) Agricultural seeds. The term "agricultural seeds" means the following kinds of grass, forage, and field crop seeds, that are used for seeding purposes in the United States:

Agrotricum—*x Agrotriticum Ciferri and Giacom.*
Alfalfa—*Medicago sativa* L.
Alfilaria—*Erodium cicutarium* (L.) L'Her.
Alyceclover—*Alysicarpus vaginalis* (L.) DC.
Bahiagrass—*Paspalum notatum* Fluegge
Barley—*Hordeum vulgare* L.
Barrelclover—*Medicago truncatula* Gaertn.
Bean, adzuki—*Vigna angularis* (Willd.) Ohwi and Ohashi
Bean, field—*Phaseolus vulgaris* L.
Bean, mung—*Vigna radiata* (L.) Wilczek
Beet, field—*Beta vulgaris* L. subsp. *vulgaris*
Beet, sugar—*Beta vulgaris* L. subsp. *vulgaris*
Beggarweed, Florida—*Desmodium tortuosum* (Sw.) DC.
Bentgrass, colonial—*Agrostis capillaris* L.
Bentgrass, creeping—*Agrostis stolonifera* L. var. *palustris* (Huds.) Farw.
Bentgrass, velvet—*Agrostis canina* L.
Bermudagrass—*Cynodon dactylon* (L.) Pers. var. *dactylon*
Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *Aridus* Harlan and de Wet
Bluegrass, annual—*Poa annua* L.
Bluegrass, bulbous—*Poa bulbosa* L.
Bluegrass, Canada—*Poa compressa* L.
Bluegrass, glaucantha—*Poa glauca* Vahl
Bluegrass, Kentucky—*Poa pratensis* L.
Bluegrass, Nevada—*Poa secunda* J.S. Presl
Bluegrass, rough—*Poa trivialis* L.
Bluegrass, Texas—*Poa arachnifera* Torr.
Bluegrass, wood—*Poa nemoralis* L.
Bluejoint—*Calamagrostis canadensis* (Michx.) P. Beauv.
Bluestem, big—*Andropogon gerardii* Vitm. var. *gerardii*
Bluestem, little—*Schizachyrium scoparium* (Michx.) Nash
Bluestem, sand—*Andropogon hallii* Hack.
Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng.
Bottlebrush-squirreltail—*Elymus elymoides* (Raf.) Swezey
Brome, field—*Bromus arvensis* L.
Brome, meadow—*Bromus biebersteinii* Roem. and Schult.
Brome, mountain—*Bromus marginatus* Steud.
Brome, smooth—*Bromus inermis* Leyss.
Broomcorn—*Sorghum bicolor* (L.) Moench
Buckwheat—*Fagopyrum esculentum* Moench
Buffalograss—*Buchloe dactyloides* (Nutt.) Engelm.
Buffelgrass—*Cenchrus ciliaris* L.
Burclover, California—*Medicago polymorpha* L.
Burclover, spotted—*Medicago arabica* (L.) Huds.
Burnet, little—*Sanguisorba minor* Scop.
Buttonclover—*Medicago orbicularis* (L.) Bartal.
Canarygrass—*Phalaris canariensis* L.
Canarygrass, reed—*Phalaris arundinacea* L.
Carpetgrass—*Axonopus fissifolius* (Raddi) Kuhlm.
Castorbean—*Ricinus communis* L.
Chess, soft—*Bromus hordeaceus* L.
Chickpea—*Cicer arietinum* L.
Clover, alsike—*Trifolium hybridum* L.
Clover, arrowleaf—*Trifolium vesiculosum* Savi
Clover, berseem—*Trifolium alexandrinum* L.
Clover, cluster—*Trifolium glomeratum* L.
Clover, crimson—*Trifolium incarnatum* L.
Clover, Kenya—*Trifolium semipilosum* Fresen.
Clover, ladino—*Trifolium repens* L.
Clover, lappa—*Trifolium lappaceum* L.
Clover, large hop—*Trifolium campestre* Schreb.
Clover, Persian—*Trifolium resupinatum* L.
Clover, red or
Red clover, mammoth—*Trifolium pratense* L.
Red clover, medium—*Trifolium pratense* L.
Clover, rose—*Trifolium hirtum All.*
Clover, small hop or suckling—*Trifolium dubium* Sibth.
Clover, strawberry—*Trifolium fragiferum* L.
Clover, sub or subterranean—*Trifolium subterraneum* L.
Clover, white—*Trifolium repens* L. (also see Clover, ladino)
Clover—(also see Alyceclover, Burclover, Buttonclover, Sourclover, Sweetclover)
Corn, field—*Zea mays* L.
Corn, pop—*Zea mays* L.
Cotton—*Gossypium spp.*
Cowpea—*Vigna unguiculata (L.) Walp. subsp. unguiculata*
Crambe—*Crambe abyssinica R.E. Fries*
Crested dogtail—*Cynosurus cristatus* L.
Crotalaria, lance—*Crotalaria lanceolata* E. Mey.
Crotalaria, showy—*Crotalaria spectabilis* Roth
Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polh.
Crotalaria, striped or smooth—*Crotalaria pallida* Ait.
Crotalaria, sunn—*Crotalaria juncea* L.
Crownvetch—*Coronilla varia* L.
Dallisgrass—*Paspalum dilatatum* Poir.
Dichondra—*Dichondra repens* Forst. and Forst. f.
Dropseed, sand—*Sporobolus cryptandrus* (Torr.) A. Gray
Emmer—*Triticum dicoccon* Schrank
Fescue, chewings—*Festuca rubra* L. subsp. *commutata* Gaud.
Fescue, hair—*Festuca tenuifolia* Sibth.
Fescue, hard—*Festuca brevipila* Tracey
Fescue, meadow—*Festuca pratensis* Huds.
Fescue, red—*Festuca rubra* L. subsp. *rubra*
Fescue, sheep—*Festuca ovina* L. var. *ovina*
Fescue, tall—*Festuca arundinacea* Schreb.
Flax—*Linum usitatissimum* L.
Galletagrass—*Hilaria jamesii* (Torr.) Benth.
Grama, blue—*Bouteloua gracilis* (Kunth) Steud.
Grama, side-oats—*Bouteloua curtipendula* (Michx.) Torr.
Guar—*Cyamopsis tetragonoloba* (L.) Taub.
Guineagrass—*Panicum maximum* Jacq. var. *maximum*
Hardinggrass—*Phalaris stenoptera* Hack.
Hemp—*Cannabis sativa* L.
Indiangrass, yellow—*Sorghastrum nutans* (L.) Nash
Indigo, hairy—*Indigofera hirsuta* L.
Japanese lawngrass—*Zoysia japonica* Steud.
Johnsongrass—*Sorghum halepense* (L.) Pers.
Kenaf—*Hibiscus cannabinus* L.
Kochia, forage—*Kochia prostrata* (L.) Schrad.
Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Maesen and S. Almeida
Lentil—*Lens culinaris* Medik.
Lespedeza, Korean—*Kummerowia stipulacea* (Maxim.) Makino
Lespedeza, sericea or Chinese—*Lespedeza cuneata*
(Dum.-Cours.) G. Don
Lespedeza, Siberian—*Lespedeza juncea* (L. f.) Pers.
Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindler
Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood
Lovegrass, weeping—*Eragrostis curvula* (Schrad.) Nees
Lupine, blue—*Lupinus angustifolius* L.

Lupine, white—*Lupinus albus* L.
Lupine, yellow—*Lupinus luteus* L.
Manilagrass—*Zoysia matrella* (L.) Merr.
Meadow foxtail—*Alopecurus pratensis* L.
Medic, black—*Medicago lupulina* L.
Milkvetch or cicer milkvetch—*Astragalus cicer* L.
Millet, browntop—*Brachiaria ramosa* (L.) Stapf
Millet, foxtail—*Setaria italica* (L.) Beauv.
Millet, Japanese—*Echinochloa frumentacea* Link
Millet, pearl—*Pennisetum glaucum* (L.) R. Br.
Millet, proso—*Panicum miliaceum* L.
Molassesgrass—*Melinis minutiflora* Beauv.
Mustard, black—*Brassica nigra* (L.) Koch
Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.
Mustard, white—*Sinapis alba* L.
Napiergrass—*Pennisetum purpureum* Schumach.
Needlegrass, green—*Stipa viridula* Trin.
Oat—*Avena byzantina* C. Koch, *A. sativa* L., *A. nuda* L.
Oatgrass, tall—*Arrhenatherum elatius* (L.) J.S. Presl and K.B. Presl
Orchardgrass—*Dactylis glomerata* L.
Panicgrass, blue—*Panicum antidotale* Retz.
Panicgrass, green—*Panicum maximum* Jacq. var. *trichoglume* Robyns
Pea, field—*Pisum sativum* L.
Peanut—*Arachis hypogaea* L.
Poa trivialis—(see Bluegrass, rough)
Rape, annual—*Brassica napus* L. var. *annua* Koch
Rape, bird—*Brassica rapa* L. subsp. *rapa*
Rape, turnip—*Brassica rapa* L. subsp. *silvestris* (Lam.) Janchen
Rape, winter—*Brassica napus* L. var. *biennis* (Schubl. and Mart.) Reichb.
Redtop—*Agrostis gigantea* Roth
Rescuegrass—*Bromus catharticus* Vahl
Rhodesgrass—*Chloris gayana* Kunth
Rice—*Oryza sativa* L.
Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker
Roughpea—*Lathyrus hirsutus* L.
Rye—*Secale cereale* L.
Rye, mountain—*Secale strictum* (K.B. Presl) K.B. Presl subsp. *strictum*
Ryegrass, annual or Italian—*Lolium multiflorum* Lam.
Ryegrass, intermediate—*Lolium* x *hybridum* Hausskn.
Ryegrass, perennial—*Lolium perenne* L.
Ryegrass, Wimmera—*Lolium rigidum* Gaud.
Safflower—*Carthamus tinctorius* L.
Sagewort, Louisiana—*Artemisia ludoviciana* Nutt.
Sainfoin—*Onobrychis viciifolia* Scop.
Saltbush, fourwing—*Atriplex canescens* (Pursh) Nutt.
Sesame—*Sesamum indicum* L.
Sesbania—*Sesbania exaltata* (Raf.) A.W. Hill
Smilo—*Piptatherum miliaceum* (L.) Coss
Sorghum—*Sorghum bicolor* (L.) Moench
Sorghum almum—*Sorghum* x *almum* L. Parodi
Sorghum-sudangrass—*Sorghum* x *drummondii* (Steud.) Millsp. and Chase
Sorgrass—Rhizomatous derivatives of a johnsongrass x sorghum cross or a johnsongrass x sudangrass cross
Southernpea—(See Cowpea)
Sourclover—*Melilotus indicus* (L.) All.
Soybean—*Glycine max* (L.) Merr.
Spelt—*Triticum spelta* L.
Sudangrass—*Sorghum* x *drummondii* (Steud.) Millsp. and Chase
Sunflower—*Helianthus annuus* L.
Sweetclover, white—*Melilotus albus* Medik.
Sweetclover, yellow—*Melilotus officinalis* Lam.
Sweet vernalgrass—*Anthoxanthum odoratum* L.
Sweetvetch, northern—*Hedysarum boreale* Nutt.
Switchgrass—*Panicum virgatum* L.
Timothy—*Phleum pratense* L.
Timothy, turf—*Phleum bertolonii* DC.
Tobacco—*Nicotiana tabacum* L.
Trefoil, big—*Lotus uliginosus* Schk.
Trefoil, birdsfoot—*Lotus corniculatus* L.
Triticale—x *Triticosecale* Wittm. (*Secale* x *Triticum*)
Vaseygrass—*Paspalum urvillei* Steud.
Veldtgrass—*Ehrharta calycina* J.E. Smith
Velvetbean—*Mucuna pruriens* (L.) DC. var. *utilis* (Wight) Burck
Velvetgrass—*Holcus lanatus* L.
Vetch, common—*Vicia sativa* L. subsp. *sativa*
Vetch, hairy—*Vicia villosa* Roth subsp. *villosa*
Vetch, Hungarian—*Vicia pannonica* Crantz
Vetch, monantha—*Vicia articulata* Hornem.
Vetch, narrowleaf or blackpod—*Vicia sativa* L. subsp. *nigra* (L.) Ehrh.
Vetch, purple—*Vicia benghalensis* L.
Vetch, woollypod or winter—*Vicia villosa* Roth subsp. *varia* (Host) Corb.
Wheat, common—*Triticum aestivum* L.
Wheat, club—*Triticum compactum* Host
Wheat, durum—*Triticum durum* Desf.
Wheat, Polish—*Triticum polonicum* L.
Wheat, poulard—*Triticum turgidum* L.
Wheat x Agrotricum—*Triticum* x *Agrotriticum*
Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) A. Love
Wheatgrass, crested or fairway crested—*Agropyron cristatum* (L.) Gaertn.
Wheatgrass, crested or standard crested—*Agropyron desertorum* (Link) Schult.
Wheatgrass, intermediate—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
Wheatgrass, pubescent—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
Wheatgrass, Siberian—*Agropyron fragile* (Roth) Candargy subsp. *sibiricum* (Willd.) Meld.
Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinn.
Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. and J.G. Smith) Gould subsp. *lanceolatus*
Wheatgrass, tall—*Elytrigia elongata* (Host) Nevski
Wheatgrass, western—*Pascopyrum smithii* (Rydb.) A. Love
Wildrye, basin—*Leymus cinereus* (Scribn. and Merr.) A. Love
Wildrye, Canada—*Elymus canadensis* L.
Wildrye, Russian—*Psathyrostachys juncea* (Fisch.) Nevski
Zoysia japonica—(see Japanese lawngrass)
Zoysia matrella—(see Manilagrass)

(i) Vegetable seeds. The term "vegetable seeds" means the seeds of the following kinds that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seeds:

Artichoke—*Cynara cardunculus* L. subsp. *cardunculus*
Asparagus—*Asparagus officinalis* Baker
Asparagusbean or yard-long bean—*Vigna unguiculata* (L.)
Walp. subsp. *sesquipedalis* (L.) Verdc.
Bean, garden—*Phaseolus vulgaris* L.
Bean, lima—*Phaseolus lunatus* L.
Bean, runner or scarlet runner—*Phaseolus coccineus* L.
Beet—*Beta vulgaris* L. subsp. *vulgaris*
Broadbean—*Vicia faba* L.
Broccoli—*Brassica oleracea* L. var. *botrytis* L.
Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* DC.
Burdock, great—*Arctium lappa* L.
Cabbage—*Brassica oleracea* L. var. *capitata* L.
Cabbage, Chinese—*Brassica rapa* L. subsp. *pekinensis* (Lour.) Hanelt
Cabbage, tronchuda—*Brassica oleracea* L. var. *costata* DC.
Cantaloupe—(see Melon)
Cardoon—*Cynara cardunculus* L. subsp. *cardunculus*
Carrot—*Daucus carota* L. subsp. *sativus* (Hoffm.) Arcang.
Cauliflower—*Brassica oleracea* L. var. *botrytis* L.
Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaud.
Celery—*Apium graveolens* L. var. *dulce* (Mill.) Pers.
Chard, Swiss—*Beta vulgaris* L. subsp. *cicla* (L.) Koch
Chicory—*Cichorium intybus* L.
Chives—*Allium schoenoprasum* L.
Citron—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *citroides* (Bailey) Mansf.
Collards—*Brassica oleracea* L. var. *acephala* DC.
Corn, sweet—*Zea mays* L.
Cornsalad—*Valerianella locusta* (L.) Laterrade
Cowpea—*Vigna unguiculata* (L.) Walp. subsp. *unguiculata*
Cress, garden—*Lepidium sativum* L.
Cress, upland—*Barbarea verna* (Mill.) Asch.
Cress, water—*Rorippa nasturtium-aquaticum* (L.) Hayek
Cucumber—*Cucumis sativus* L.
Dandelion—*Taraxacum officinale* Wigg.
Dill—*Anethum graveolens* L.
Eggplant—*Solanum melongena* L.
Endive—*Cichorium endivia* L.
Gherkin, West India—*Cucumis anguria* L.
Kale—*Brassica oleracea* L. var. *acephala* DC.
Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (Bailey) Musil
Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Reichb.
Kohlrabi—*Brassica oleracea* L. var. *gongylodes* L.
Leek—*Allium porrum* L.
Lettuce—*Lactuca sativa* L.
Melon—*Cucumis melo* L.
Muskmelon—(see Melon).
Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.
Mustard, spinach—*Brassica perviridis* (Bailey) Bailey
Okra—*Abelmoschus esculentus* (L.) Moench

Onion—*Allium cepa* L.
Onion, Welsh—*Allium fistulosum* L.
Pak-choi—*Brassica rapa* L. subsp. *chinensis* (L.) Hanelt
Parsley—*Petroselinum crispum* (Mill.) A.W. Hill
Parsnip—*Pastinaca sativa* L.
Pea—*Pisum sativum* L.
Pepper—*Capsicum* spp.
Pe-tsai—(see Chinese cabbage).
Pumpkin—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poiret, and C. *maxima* Duchesne
Radish—*Raphanus sativus* L.
Rhubarb—*Rheum rhabarbarum* L.
Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Reichb.
Sage—*Salvia officinalis* L.
Salsify—*Tragopogon porrifolius* L.
Savory, summer—*Satureja hortensis* L.
Sorrel—*Rumex acetosa* L.
Southernpea—(see Cowpea).
Soybean—*Glycine max* (L.) Merr.
Spinach—*Spinacia oleracea* L.
Spinach, New Zealand—*Tetragonia tetragonioides* (Pall.) Ktze.
Squash—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poiret, and C. *maxima* Duchesne
Tomato—*Lycopersicon esculentum* Mill.
Tomato, husk—*Physalis pubescens* L.
Turnip—*Brassica rapa* L. subsp. *rapa*
Watermelon—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *lanatus*

* * * * *

(q) Coated Seed. The term "coated seed" means any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are excluded.

* * * * *

(ee) Certified seed. Certified seed is a class of certified seed which is the progeny of Breeder, Foundation, or Registered seed, except as provided in § 201.70, and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Certified class of seed, for the purpose of maintaining genetic purity and identity.

§ 201.3 [Amended]

3. Section 201.3 is amended by removing "shall" and adding in its place "may".

§ 201.10 [Amended]

4. Section 201.10(a) is amended by removing the word "hybrid".

§ 201.13 [Amended]

5. Section 201.13 is amended by removing "in", the first time it appears and adding in its place "on".

§ 201.17 [Amended]

6. Section 201.17 is amended by removing "bermuda grass" and adding its place "bermudagrass" everywhere it appears.

§ 201.20 [Amended]

7. Section 201.20 is amended by removing "for each kind or kind and variety or kind and type or kind and hybrid" and adding in its place " each kind, or kind and variety, or kind and type, or kind and hybrid".

8. In § 201.22, paragraph (c) is revised to read as follows:

§ 201.22 Date of Test.

* * * * *

(c) The following kinds shall be tested within the indicated time before interstate shipment:

Agricultural seeds and mixtures thereof	Months from test date to shipment
Bentgrass, Colonial	15
Bentgrass, Creeping	15
Bluegrass, Kentucky	15
Fescue, Chewings	15
Fescue, Hard	15
Fescue, Red	15
Fescue, Tall	15
Ryegrass, Annual	15
Ryegrass, Perennial	15

201.26 [Amended]

9. Section 201.26 is amended by removing "is" following the word "pollination" and adding in its place "in".

10. Section 201.31 is revised to read as follows:

§ 201.31 Germination standards for vegetable seeds in interstate commerce.

The following germination standards for vegetable seeds in interstate commerce, which shall be construed to include hard seed, are determined and established under section 403(c) of the act:

	Percent
Artichoke	60
Asparagus	70
Asparagusbean	75
Bean, garden	70
Bean, lima	70
Bean, runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussels sprouts	70
Burdock, great	60
Cabbage	75
Cabbage, tronchuda	70
Cardoon	60
Carrot	55
Cauliflower	75
Celeriac	55
Celery	55
Chard, Swiss	65
Chicory	65
Chinese cabbage	75
Chives	50
Citron	65
Collards	80
Corn, sweet	75
Cornsalad	70
Cowpea	75
Cress, garden	75
Cress, upland	60
Cress, water	40
Cucumber	80
Dandelion	60
Dill	60
Eggplant	60
Endive	70
Kale	75
Kale, Chinese	75
Kale, Siberian	75
Kohlrabi	75
Leek	60
Lettuce	80
Melon	75
Mustard, India	75
Mustard, spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Pak-choi	75
Parsley	60
Parsnip	60
Pea	80
Pepper	55
Pumpkin	75
Radish	75
Rhubarb	60
Rutabaga	75
Sage	60
Salsify	75
Savory, summer	55
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Tomato	75
Tomato, husk	50
Turnip	80
Watermelon	70

11. Section 201.34 is amended by revising paragraph (d)(5) and reserving paragraph (e) to read as follows:

§ 201.34 Kind, variety, and type; treatment substances; designation as hybrid.

* * * * *

(d) * * *

(5) Names of varieties which through broad general usage prior to July 28, 1956 were recognized variety names, except for hybrid seed corn, shall be considered variety names without regard to the principles stated in paragraph (d)(2) of this section.

§ 201.36b [Amended]

* * * * *

(e) * * *

12. Section 201.36b, paragraph (b) is amended by removing "pole" and adding in its place "(pole) garden".

13. Section 201.36c, paragraph (c) is revised to read as follows:

§ 201.36c Hermetically-sealed containers.

* * * * *

(c) The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

Agricultural seeds	Percent
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, crimson	8.0
Fescue, red	8.0
Mustard, India	5.0
Ryegrass, annual	8.0
Ryegrass, perennial	8.0
All others	6.0

Vegetable seeds	Percent
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussels sprouts	5.0
Cabbage	5.0
Cabbage, Chinese	5.0
Carrot	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Melon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.5
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All others	6.0

201.37 [Amended]

13. Section 201.37 is amended by removing "Consumer and Marketing Service" and adding in its place "Agricultural Marketing Service".

14. In § 201.43, paragraphs (a) through (e) are revised and a new paragraph (g) is added to read as follows:

§ 201.43 Size of Sample

* * * * *

(a) Two ounces (57 grams) of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these.

(b) Five ounces (142 grams) of red or crimson clover, alfalfa, lespedeza, ryegrass, bromegrass, millet, flax, rape, or seeds of similar size.

(c) One pound (454 grams) of sudangrass, proso millet, hemp, or seeds of similar size.

(d) Two pounds (907 grams) of cereals, sorghum, vetch, or seeds of similar or larger size.

(e) Two quarts (2.2 liters) of screenings.

* * * * *

(g) Coated seed for a purity analysis shall consist of at least 7,500 seed units. Coated seed for noxious-weed seed examination shall consist of at least 30,000 seed units. Coated seed for germination test only shall consist of at least 1,000 seed units.

16. Section 201.44 is revised to read as follows:

§ 201.44 Forwarding samples.

Before being forwarded for analysis, test, or examination, the containers of samples shall be properly sealed and identified in such manner as may be prescribed by AMS. Samples of coated seed shall be forwarded in firmly packed crush-proof and moisture-proof containers.

§ 201.45 [Amended]

17. In § 201.45, paragraph (b) is amended by removing "," after the words "damaging large seeds" and adding in its place "and coated seeds,"

18. Section 201.46 is amended by adding a new paragraph (d) and revising Table 1 to read as follows:

§ 201.46 Weight of working sample.

* * * * *

(d) Coated seed.

(1) Unmixed coated seed. Due to variation in the weight of coating materials, the size or weight of the working sample shall be determined separately for each lot. The weight of the working sample shall be determined by weighing 100 completely coated units and calculating the weight of 2,500 coated units for the purity analysis and 25,000 coated units for the noxious-weed seed examination

(2) Mixtures of coated seed The working weight shall be determined in the following manner·

(i) Calculate the weight of the working sample to be used for the mixture under consideration as though the sample were not coated by following paragraph (b) or (c) of this section.

(ii) Determine the amount of coating material on 100 coated units by weighing the coated units. Remove the coating material using the methods described in §§ 201.51b (c) and (d) Calculate the percentage of coating material using the following formulas

Weight of coating material = weight of 100 coated units − weight of 100 de-coated units;

The percentage of coating material = weight of the coating material divided by the weight of 100 coated units × 100%

(iii) The weight of the working sample shall be the product of the weight calculated in paragraph (b)(2)(i) of this section multiplied by 100%, divided by 100% minus the percentage of coating material calculated in paragraph (b)(2)(ii) of this section.

TABLE 1.—WEIGHT OF WORKING SAMPLE

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Agricultural Seed			
Agrotricum	65	500	39
Alfalfa	5	50	500
Alfilaria	5	50	440
Alyceclover	5	50	665
Bahiagrass:			
Var. Pensacola	5	50	600
All other vars.	7	50	365
Barley	100	500	30

TABLE 1.—WEIGHT OF WORKING SAMPLE—Continued

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Barrelclover	10	100	250
Bean:			
Adzuki	200	500	11
Field	500	500	4
Mung	100	500	24
Beet, field	50	500	55
Beet, sugar	50	500	55
Beggarweed, Florida	5	50	440
Bentgrass:			
Colonial	0.25	2.5	13,000
Creeping	0.25	2.5	13,515
Velvet	0.25	2.5	18,180
Bermudagrass	1	10	3,930
Bermudagrass, giant	1	10	2,950
Bluegrass:			
Annual	1	10	2,635
Bulbous	4	40	585
Canada	0.5	5	5,050
Glaucantha	1	10	.....
Kentucky	1	10	3,060
Nevada	1	10	2,305
Rough	0.5	5	4,610
Texas	1	10	2,500
Wood	0.5	5	4,330
Bluejoint	0.5	5	8,461
Bluestem:			
Big	7	70	320
Little	5	50	525
Sand	10	100	215
Yellow	1	10	1,945
Bottlebrush-squirreltail	9	90	300
Brome:			
Field	5	50	465
Meadow	13	130	190
Mountain	20	200	140
Smooth	7	70	315
Broomcorn	40	400	60
Buckwheat	50	500	45
Buffalograss:			
(Burs)	20	200	110
(Caryopses)	3	30	740
Buffelgrass:			
(Fascicles)	6	66	365
(Caryopses)	2	20	1,940
Burclover, California:			
(in bur)	50	500	.....
(out of bur)	7	70	375
Burclover, spotted			
(in bur)	50	500	50
(out of bur)	5	50	550
Burnet, little	25	250	110
Buttonclover	7	70	365
Canarygrass	20	200	150
Canarygrass, reed	2	20	1,185
Carpetgrass	1	10	2,230
Castorbean	500	500	5
Chess, soft	5	50	555
Chickpea	500	500	2
Clover:			
Alsike	2	20	1,500
Arrowleaf	4	40	705
Berseem	5	50	455
Cluster	1	10	2,925
Crimson	10	100	330
Kenya	2	20	
Ladino	2	20	1,935
Lappa	2	20	1,500
Large hop	1	10	5,435

TABLE 1.—WEIGHT OF WORKING SAMPLE—Continued

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Persian	2	20	1,415
Red	5	50	600
Rose	7	70	360
Small hop	2	20	1 950
Strawberry	5	50	635
Sub	25	250	120
White	2	20	1,500
Corn:			
Field	500	500	3
Pop	500	500	3
Cotton	300	500	8
Cowpea	300	500	8
Crambe	25	250	
Crested dogtail	2	20	1,900
Crotalaria:			
Lance	7	70	375
Showy	25	250	80
Slenderleaf	10	100	205
Striped	10	100	215
Sunn	75	500	35
Crownvetch	10	100	305
Dallisgrass	4	40	620
Dichondra	5	50	470
Dropseed, sand	0.25	2.5	12,345
Emmer	100	500	25
Fescue:			
Chewings	3	30	900
Hair	1	10	
Hard	2	20	1,305
Meadow	5	50	495
Red	3	30	900
Sheep	2	20	1 165
Tall	5	50	455
Flax	15	150	180
Galletagrass:			
(Other than caryopses)	10	100	260
(Caryopses)	5	50	580
Grama:			
Blue	2	20	1,595
Side-oats:			
(Other than caryopses)	6	60	350
(Caryopses)	2	20	1 605
Guar	75	500	35
Guineagrass	2	20	2,205
Hardinggrass	3	30	750
Hemp	50	500	45
Indiangrass, yellow	7	70	395
Indigo, hairy	7	70	435
Japanese lawngrass	2	20	1,325
Johnsongrass	10	100	265
Kenaf	50	500	
Kochia, forage	2	20	1,070
Kudzu	25	250	80
Lentil	120	500	14–23
Lespedeza:			
Korean	5	50	525
Sericea	3	30	820
Siberian	3	30	820
Striate	5	50	750
Lovegrass, sand	1	10	3,585
Lovegrass, weeping	1	10	3,270
Lupine:			
Blue	500	500	7
White	500	500	7
Yellow	300	500	9
Manilagrass	2	20	
Meadow foxtail	3	30	893
Medic, black	5	50	585

TABLE 1.—WEIGHT OF WORKING SAMPLE—Continued

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Milkvetch	9	90	270
Millet:			
Browntop	8	80	315
Foxtail	5	50	480
Japanese	9	90	315
Pearl	15	150	180
Proso	15	150	185
Molassesgrass	0.5	5	7,750
Mustard:			
Black	2	20	1,255
India	5	50	625
White	15	150	160
Napiergrass	5	50	.....
Needlegrass, green	7	70	370
Oat	75	500	35–50
Oatgrass, tall	6	60	417
Orchardgrass	3	30	945
Panicgrass, blue	2	20	1,370
Panicgrass, green	2	20	1,305
Pea, field	500	500	4
Peanut	500	500	1–3
Rape:			
Annual	7	70	345
Bird	7	70	425
Turnip	5	50	535
Winter	10	100	230
Redtop	0.25	2.5	10,695
Rescuegrass	20	200	115
Rhodesgrass	1	10	4,725
Rice	50	500	65
Ricegrass, Indian	7	70	355
Roughpea	75	500	40
Rye	75	500	40
Rye, mountain	28	280	90
Ryegrass:			
Annual	5	50	420
Intermediate	8	80	338
Perennial	5	50	530
Wimmera	5	50	.....
Safflower	100	500	30
Sagewort, Louisiana	0.5	5	8,900
Sainfoin	50	500	50
Saltbush, fourwing	15	150	165
Sesame	7	70	360
Sesbania	25	250	105
Smilo	2	20	2,010
Sorghum	50	500	55
Sorghum almum	15	150	150
Sorghum-sudangrass	65	500	38
Sorgrass [1]	15	150	135
Sourclover	5	50	660
Soybean	500	500	6–13
Spelt	100	500	25
Sudangrass	25	250	100
Sunflower	100	500	.....
Sweetclover:			
White	5	50	570
Yellow	5	50	570
Sweet vernalgrass	2	20	1,600
Sweetvetch, northern	19	190	130
Switchgrass	4	40	570
Timothy	1	10	2,565
Timothy, turf	1	10	2,565
Tobacco	0.5	5	[1]5,625
Trefoil:			
Big	2	20	1,945
Birdsfoot	3	30	815
Triticale	100	500	.....

TABLE 1.—WEIGHT OF WORKING SAMPLE—Continued

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Vaseygrass	3	30	970
Veldtgrass	4	40	655
Velvetbean	500	500	2
Velvetgrass	1	10	3,360
Vetch:			
Common	150	500	19
Hairy	75	500	35
Hungarian	100	500	24
Monantha	100	500	.....
Narrowleaf	50	500	60
Purple	100	500	22
Woollypod	100	500	25
Wheat:			
Common	100	500	25
Club	100	500	25
Durum	100	500	25
Polish	100	500	25
Poulard	100	500	25
Wheat x Agrotricum	65	500	38
Wheatgrass:			
Beardless	8	80	275
Fairway crested	4	40	685
Standard crested	5	50	425
Intermediate	15	150	175
Pubescent	15	150	180
Siberian	5	50	.....
Slender	7	70	295
Streambank	10	50	370
Tall	15	150	165
Western	10	100	250
Wildrye:			
Basin	8	80	317
Canada	11	110	190
Russian	6	60	360
Vegetable Seed			
Artichoke	100	500	24
Asparagus	100	500	25
Asparagusbean	300	500	8
Bean:			
Garden	500	500	4
Lima	500	500	2
Runner	500	500	1
Beet	50	300	60
Broadbean	500	500	.....
Broccoli	10	50	315
Brussels sprouts	10	50	315
Burdock, great	15	150	.....
Cabbage	10	50	315
Cabbage, Chinese	5	50	635
Cabbage, tronchuda	10	100	.....
Cardoon	100	500	.....
Carrot	3	50	825
Cauliflower	10	50	315
Celeriac	1	25	2,520
Celery	1	25	2,520
Chard, Swiss	50	300	60
Chicory	3	50	940
Chives	5	50	
Citron	200	500	11
Collards	10	50	315
Corn, sweet	500	500	..
Cornsalad:			
Vars. Fullhearted and Dark Green Fullhearted	5	50	.....
All other vars	10	50	380
Cowpea	300	500	8
Cress:			
Garden	5	50	425

TABLE 1.—WEIGHT OF WORKING SAMPLE—Continued

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Upland	2	35	1,160
Water	1	25	5,170
Cucumber	75	500	40
Dandelion	2	35	1,240
Dill	3	50	800
Eggplant	10	50	230
Endive	3	50	940
Gherkin, West India	16	160	153
Kale	10	50	315
Kale, Chinese	10	50	.....
Kale, Siberian	8	80	325
Kohlrabi	10	50	315
Leek	7	50	395
Lettuce	3	50	890
Melon	50	500	45
Mustard, India	5	50	625
Mustard, spinach	5	50	535
Okra	100	500	19
Onion	7	50	340
Onion, Welsh	10	50	.....
Pak-choi	5	50	635
Parsley	5	50	650
Parsnip	5	50	430
Pea	500	500	3
Pepper	15	150	165
Pumpkin	500	500	5
Radish	30	300	75
Rhubarb	50	300	60
Rutabaga	5	50	430
Sage	25	150	120
Salsify	50	300	65
Savory, summer	2	35	1,750
Sorrel	2	35	1,080
Soybean	500	500	6–13
Spinach	25	150	100
Spinach, New Zealand	200	500	13
Squash	200	500	14
Tomato	5	50	405
Tomato, husk	2	35	1,240
Turnip	5	50	535
Watermelon	200	500	11

[1] Rhizomatous derivatives of a johnsongrass x sorghum cross or a johnsongrass x sudangrass cross.

19. Section 201.47 is amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 201.47 Separation.

* * * * *

(e) The Uniform Blowing Procedure described in § 201.51a(a) shall be used for the separation of pure seed and inert matter in seeds of Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, side-oats grama, and blue grama.

(f) Procedures for purity analysis for coated seed are given in § 201.51b.

20. Section 201.47a is amended by revising paragraphs (b)(3), (b)(4), and (g) to read as follows:

§ 201.47a Seed unit.

* * * * *

(b) * * *

(3) Entire spikelets in bahiagrass, bentgrasses, dallisgrass, guineagrass, browntop millet, foxtail millet, proso millet, panicgrasses, redtop, rice, switchgrass, and vaseygrass. Entire spikelets which may have attached rachis segments, pedicels, and sterile spikelets in big bluestem, little bluestem, sand bluestem, yellow bluestem, bottlebrush-squirreltail, broomcorn, yellow indiangrass, johnsongrass, sorghum, sorghum-sudangrass, sorghum almum, sorgrass, and sudangrass;

(4) Spikelet groups:

(i) Spikelet groups that disarticulate as a unit in galletagrass;

(ii) Spikelet groups that disarticulate as units with attached rachis and internodes bluestems, side-oats grama, and yellow indiangrass;

* * * * *

(g) "Seed balls" or portions thereof in multigerm beets, and fruits with accessory structures such as occur in other Chenopodiaceae and New Zealand spinach. For forage kochia refer to § 201.48(j) and § 201.51(a)(7).

21. In § 201.48, paragraphs (g)(2), (g)(3), (h), and (i) are revised and a new paragraph (j) is added to read as follows.

§ 201.48 Kind or variety considered pure seed.

* * * * *

(g) * * *

(2) The Uniform Blowing Procedure described in § 201.51a(a) shall be used to determine classification of florets into pure seed or inert matter for Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, side-oats grama, blue grama, and orchardgrass.

(3) Special purity procedures for smooth brome, chewings fescue, red fescue, orchardgrass, fairway crested wheatgrass, standard crested wheatgrass, intermediate wheatgrass, pubescent wheatgrass, tall wheatgrass, and western wheatgrass are listed in § 201.51a(b).

* * * * *

(h) Seed units with nematode galls, fungal bodies (i.e. ergot, other sclerotia, and smut) and spongy or corky caryopses that are entirely enclosed within the seed unit. Refer to § 201.51(c)(1) for inert matter classification.

(i) Seed units of beet and other Chenopodiaceae, and New Zealand spinach. Refer to § 201.47a(g) and § 201.51(a)(6) for definitions of seed units and inert matter, respectively.

(j) Seed units of forage kochia that are retained on a 1 mm opening square-hole sieve, when shaken for 30 seconds. For inert matter, refer to § 201.51(a)(7).

22. Section 201.49 is amended by revising paragraph (a) and reserving paragraph (b) to read as follows:

§ 201.49 Other crop seed.

(a) Seeds of plants grown as crops (other than the kind(s) and variety(ies) included in the pure seed) shall be considered other crop seeds, unless recognized as weed seeds by applicable laws, or regulations, or by general usage. All interpretations and definitions for "pure seed" in § 201.48 shall also apply in determining whether seeds are "other crop seed" or "inert matter" with the following two exceptions which may be applied as acceptable alternatives:

(1) Uniform Blowing Procedure in § 201.51a(a) for kinds listed in § 201.47(e) may be disregarded. If disregarded, all seed units (as defined in § 201.47a) for these kinds found in the working sample shall be manually separated into pure seed and inert matter. Only units containing at least one caryopsis with some degree of endosperm development which can be detected either by slight pressure or by examination over light are considered other crop seed.

(2) Multiple Unit Procedure in § 201.51a(b) for kinds listed in § 201.48(g)(3) may be disregarded. If disregarded, all multiple units and single units (as defined in § 201.51a(b)) for these kinds found in the working sample shall be manually separated into single florets. Each floret containing a caryopsis with some degree of endosperm development, which can be detected either by slight pressure or examination over light, is considered other crop seed. Empty florets and glumes, if present, are considered inert matter. Refer to § 201.51(a)(4).

(b) [Reserved]

23. In § 201.50, paragraph (c) is revised to read as follows:

§ 201.50 Weed seed.

* * * * *

(c) Wild onion and wild garlic (*Allium* spp.) bulblets that have any part of the husk remaining and are not damaged at the basal end are considered weed seeds regardless of size. Bulblets that are completely devoid of husk, and are not damaged at the basal end, and are retained by a 1/13-inch (1.9 mm) round-hole sieve are considered weed seeds. For wild onion and wild garlic (*Allium* spp.) bulblets classed as inert matter, refer to § 201.51(b)(5).

24. In § 201.51, paragraphs (a)(5), (a)(6), and (c)(2) are revised and new paragraphs (a)(7), (a)(8), and (c)(3) are added to read as follows:

§ 201.51 Inert matter.

(a) * * *

(5) Seed units with nematode galls or fungal bodies (smut, ergot, and other sclerotia) that are not entirely enclosed within the seed unit. Refer to § 201.48(h) for pure seed classification.

(6) Broken seed units of Chenopodiaceae and fruit portions or fragments of monogerm beets, New Zealand spinach, buffalograss, and families in which the seed unit is a dry indehiscent one-seeded fruit that visibly do not contain a seed. Refer to § 201.48 (f), (g)(1), (i), and (j) for pure seed classification.

(7) Seed units of forage kochia that pass through a 1 mm opening, square-hole sieve, when shaken for 30 seconds.

(8) The thin pericarp (fruit wall), if present on seeds of northern sweetvetch.

* * * * *

(c) * * *

(2) Soil particles, sand, stone, chaff, stems, leaves, flowers, loose coating material, and any other foreign material.

(3) Coating material removed from coated seed by washing. Refer to § 201.51b(c).

25. Section § 201.51a is revised to read as follows:

§ 201.51a Special procedures for purity analysis.

(a) The Uniform Blowing Procedure shall be used for the separation of pure seed and inert matter in the following: Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, blue grama, and side-oats grama.

(1) When kinds listed in this section appear in mixtures they shall be separated from other kinds before using the Uniform Blowing Procedure.

(2) To determine the blowing point for these procedures, individual calibration samples for Kentucky bluegrass, orchardgrass, and Pensacola variety of bahiagrass shall be used. The calibration sample for Kentucky bluegrass shall be used for Canada bluegrass, rough bluegrass, blue grama, and side-oats grama.

(i) The blowing point for Canada bluegrass shall be the same as the blowing point determined for Kentucky bluegrass.

(ii) The blowing point for rough bluegrass shall be a factor of 0.82 (82 percent) of the blowing point determined for Kentucky bluegrass. The 0.82 factor is restricted to the General-type seed blower.

(iii) The blowing point for blue grama shall be a factor of 1.157 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each blown separately. The 1.157 factor is restricted to the General-type seed blower.

(iv) The blowing point for side-oats grama shall be a factor of 1.480 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each part blown separately. The 1.480 factor is restricted to the General-type seed blower.

(3) Calibration samples and instructions are available on loan through the Seed Regulatory and Testing Branch, LS, AMS, Building 306, Room 213, Beltsville, Maryland 20705.

(4) The calibration samples shall be used to establish a blowing point prior to proceeding with the separation of pure seed and inert matter for these kinds. After completing the blowing procedure, remove all weed and other crop seeds from the light portion and add these to the weed or other crop separation, as appropriate. The remainder of the light portion shall be considered inert matter. Remove all weed and other crop seeds and other inert matter (stems, leaves, dirt) from the heavy portion and add these to the

weed seed, other crop seed, or inert matter separations, as appropriate. The remainder of the heavy portion shall be considered pure seed.

(5) With orchardgrass, after the blowing, proceed with the multiple unit procedure.

(b) The Multiple Unit Procedure of determining the pure seed fraction shall be used only for the kinds included in the following table when multiple units are present in a sample. These methods are applicable to the kinds listed when they occur in mixtures or singly. Any single unit without attached structures, as described below, shall be considered a single unit. Multiple units and single units for the kinds listed shall remain intact. The attached glumes and fertile or sterile florets shall not be removed from the fertile floret.

(1) A multiple unit is a seed unit that includes one or more structures as follows (the length of the awn shall be disregarded when determining the length of a fertile floret or an attached structure):

(i) An attached sterile or fertile floret that extends to or beyond the tip of a fertile floret;

(ii) A fertile floret with basally attached glume, glumes, or basally attached sterile floret of any length;

(iii) A fertile floret with two or more attached sterile and/or fertile florets of any length.

(2) Procedure for determination of multiple units:

(i) For the single kind: determine the percentage of single units present, based on the total weight of single units and multiple units. Apply the appropriate factor, as determined from the following table, to the weight of the multiple units and add that portion of the multiple unit weight to the weight of the single units. The remaining multiple unit weight shall be added to the weight of the inert matter.

(ii) For mixtures that include one or more of the kinds in the following table, determine the percentage of single units, based on the total weight of single units and multiple units, for each kind. Apply the appropriate factor as determined from the following table, to the weight of multiple units of each kind.

TABLE OF FACTORS TO APPLY TO MULTIPLE UNITS [a]

Percent of single units of each kind	Chewings fescue	Red fescue	Orchardgrass	Crested wheatgrass [b]	Pubescent wheatgrass	Intermediate wheatgrass	Tall wheatgrass [c]	Western wheatgrass [c]	Smooth brome
50 or below	91	80	80	70	66	72	—	—	72
50.01–55.00	91	81	81	72	67	74	—	—	74
55.01–60.00	91	82	81	73	67	75	—	—	75
60.01–65.00	91	83	82	74	67	76	—	—	76
65.01–70.00	91	84	82	75	68	77	—	60	78
70.01–75.00	91	86	82	76	68	78	—	66	79
75.01–80.00	91	87	83	77	69	79	50	67	81
80.01–85.00	91	88	83	78	69	80	55	68	82
85.01–90.00	91	89	83	79	69	81	65	70	83
90.01–100.00	91	90	84	79	70	82	70	74	85

[a] The factors represent the percentages of the multiple unit weights which are considered pure seed. The remaining percentage is regarded as inert matter.
[b] Includes both standard crested wheatgrass and fairway crested wheatgrass.
[c] Dashes in table indicate that no factors are available at the levels shown.

26. New § 201.51b is added to read as follows:

§ 201.51b Purity procedures for coated seed.

(a) The working sample for coated seed is obtained as described in § 201.46(d) (1) and (2), and weighed in grams to four significant figures.

(b) Any loose coating material shall be sieved, weighed, and included with the inert matter component.

(c) Coating material is removed from the seed by washing with water or other solvents such as, but not limited to, dilute sodium hydroxide (NaOH). Use of fine mesh sieves is recommended for this procedure, and stirring or shaking the coated units may be necessary to obtain de-coated seed.

(d) Spread de-coated seed on blotters or filter paper in a shallow container. Air dry overnight at room temperature.

(e) Separation of component parts:

(1) Kind or variety considered pure seed.

(2) Other crop seed.

(3) Inert matter

(4) Weed seed.

(f) The de-coated seed shall be separated into four components in accordance with §§ 201.48 through 201.51. §§ 201.51a (a) and (b) shall not be followed. The weight of the coating material is determined by subtracting the sum of the weights of the other four components from the original weight of the working sample. The percentage of coating material shall be included with the inert matter percentage. Calculate percentages of all components based on the original weight of the working sample (see paragraph (a) of this section).

27. Section 201.52 is revised to read as follows:

§ 201.52 Noxious-weed seeds.

(a) The determination of the number of seeds, bulblets, or tubers of individual noxious weeds present per unit weight should be made on at least the minimum quantities listed in § 201.46 Table 1: *Provided*, That if the following indicated numbers of a single kind of seed, bulblet, or tuber are found in the pure seed analysis (or noxious-weed seed examination of a like amount) the occurrence of that kind in the remainder of the bulk examined for noxious-weed seeds need not be noted ½-gram purity working sample, 16 or more seeds; 1-gram purity working sample, 23 or more seeds; 2-gram purity working sample or larger, 30 or more seeds. The seeds per unit weight shall be based on the number of single seeds. The number of individual seeds shall be determined in burs of sandbur (*Cenchrus* spp.) and cocklebur (*Xanthium* spp.); in capsules of dodder (*Cuscuta* spp.); in berries of groundcherry, horsenettle, and nightshade (Solanaceae); and in the fruits of other noxious weeds that contain more than one seed. Refer to §§ 201.50 and 201.51(b)(4) for the classification of weed seeds and inert matter, respectively.

(b) A noxious-weed seed examination of coated seed samples shall be made by examining approximately 25,000 units obtained in accordance with § 201.46(d)

and which have been de-coated by the method described in § 201.51b(c).

28. Section 201.54 is revised to read as follows:

§ 201.54 Number of seeds for germination.

At least 400 seeds shall be tested for germination; except that in mixtures, 200 seeds of each of those kinds present to the extent of 15 percent or less may be used in lieu of 400, in which case an additional 2 percent is to be added to the regular germination tolerances. The seeds shall be tested in replicate tests of 100 seeds or less.

29. In § 201.56, paragraphs (a) and (e) are revised to read as follows:

§ 201.56 Interpretation.

(a) A seed shall be considered to have germinated when it has developed those essential structures which, for the kind of seed under consideration, are indicative of its ability to produce a normal plant under favorable conditions. In general, the following are considered to be essential structures necessary for the continued development of the seedling (although some structures may not be visible in all kinds at the time of seedling evaluation). Seedlings possessing these essential structures are referred to as normal seedlings: Root system (consisting of primary, secondary, seminal, or adventitious roots); hypocotyl; epicotyl; cotyledon(s); terminal bud; primary leaves; and coleoptile and mesocotyl (in the grass family). Abnormal seedlings consist of those with defects to these structures, as described in the abnormal seedling descriptions, and are judged to be incapable of continued growth. The seedling descriptions assume that test conditions were adequate to allow proper assessment of the essential seedling structures.

* * * * *

(e) Standard guides for seedling interpretation shall include the following descriptions for specific kinds and groups. The "General Description" for each group of crop kinds describes a seedling without defects. While such a seedling is clearly normal, seedlings with some defects may also be classified as normal, provided the defects do not impair the functioning of the structure. The "Abnormal seedling description" is to be followed when judging the severity of defects.

30. Sections 201.56–1 through 201.56–12 are revised to read as follows:

§ 201.56–1 Goosefoot family, Chenopodiaceae, and Carpetweed family, Aizoaceae.

Kinds of seed: Beet, Swiss chard, fourwing saltbush, spinach, New Zealand spinach, and forage kochia.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Leaf-like cotyledons and perisperm.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root; secondary roots may develop within the test period.

(5) Seedling: Frequent counts should be made on multigerm beet since the growing seedlings will separate from the cluster making it difficult to identify the source. Any cluster which produces at least one normal seedling is classified as normal; only one normal seedling per cluster is to be counted (see § 201.56(d)). Toxic substances from the clusters of beet and Swiss chard may cause discoloring of the hypocotyl and/or root. Seedlings which are slightly discolored are to be classified as normal; however, if there is excessive discoloration, retest by the method in § 201.58(b)(3).

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(iii) Watery.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(iii) For discolored roots of beet and Swiss chard, see § 201.58(b)(3).

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection. (For discolored seedlings of beet and Swiss chard, see § 201.58(b)(3).)

(ii) Albino.

§ 201.56–2 Sunflower family, Asteraceae (Compositae).

Kinds of seed: Artichoke, cardoon, chicory, dandelion, endive, great burdock, lettuce, safflower, salsify, Louisiana sagewort, and sunflower.

(a) Lettuce.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons which expand and become thin, leaf-like, and photosynthetic. The cotyledons of some varieties develop elongated petioles.

(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(iv) Root system: A long primary root.

(v) Seedling: The interpretations of lettuce seedlings are made only at the end of the test period.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) Less than half of the original cotyledon tissue remaining attached.

(B) Less than half of the original cotyledon tissue free of necrosis or decay. (Remove attached seed coat for evaluation of cotyledons. Physiological necrosis is manifested by discolored areas on the cotyledons and should not be confused with natural pigmentation of some lettuce varieties.)

(ii) Epicotyl:

(A) Missing. (May be assumed to be present if cotyledons are intact.)

(B) Any degree of necrosis or decay.

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue.

(B) Severely twisted or grainy.

(C) Watery.

(iv) Root:

(A) Stubby or missing primary root. (Secondary roots will not compensate for a defective primary root.)

(B) Primary root tip blunt, swollen, or discolored. (Toxic materials in the substratum may cause short, blunt roots; see § 201.58(a)(9).)

(C) Primary root with splits or lesions.

(v) Seedling:

(A) Swollen cotyledons associated with extremely short or vestigial hypocotyl and root.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(b) Other kinds in the sunflower family: Artichoke, cardoon, chicory, dandelion, endive, great burdock, safflower, salsify, Louisiana sagewort, and sunflower.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons which expand and become thin, leaf-like, and photosynthetic.

(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(iv) Root system: A long primary root with secondary roots usually developing within the test period.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) Less than half of the original cotyledon tissue remaining attached.

(B) Less than half of the original cotyledon tissue free of necrosis or decay. (Remove any attached seed coats at the end of the test period for evaluation of cotyledons.)

(ii) Epicotyl:

(A) Missing. (May be assumed to be present if cotyledons are intact.)

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue.

(B) Malformed, such as markedly shortened, curled, or thickened.

(C) Watery.

(iv) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (Seedlings with roots bound within tough seed coats should be left in the test until the final count to allow for development.)

(v) Seedling:

(A) One or more essential structures impaired as a result of decay from primary infection.

(B) Albino.

§ 201.56–3 Mustard family, Brassicaceae (Cruciferae).

Kinds of seed: Broccoli, brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, garden cress, upland cress, water cress, kale, Chinese kale, Siberian kale, kohlrabi, mustard, pakchoi, radish, rape, rutabaga, and turnip.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons which expand and become thin, leaf-like and photosynthetic. In *Brassica, Sinapis,* and *Raphanus,* the cotyledons are bi-lobed and folded, with the outer cotyledon being larger than the inner.

(3) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface; the epicotyl usually does not show any development within the test period.

(4) Root system: A long primary root.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Decayed at point of attachment.

(ii) Less than half of the original cotyledon tissue remaining attached.

(iii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if the cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(iii) Watery.

(4) Root:

(i) Weak, stubby, or missing primary root. (Secondary roots will not compensate for a defective root.)

(5) Seedling:

(i) One or more essential structures impaired as result of decay from primary infection.

(ii) Albino.

§ 201.56–4 Cucurbit family, Cucurbitaceae.

Kinds of seed: Citron, cucumber, West India gherkin, melon, pumpkin, squash, and watermelon.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons which are large and fleshy; they expand, become photosynthetic, and usually persist beyond the seedling stage.

(3) Shoot system: The hypocotyl elongates and the cotyledons are pulled free of the seed coat, which often adheres to a peg-like appendage at the base of the hypocotyl. The epicotyl usually does not show any development within the test period.

(4) Root system: A long primary root with numerous secondary roots.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay. (Remove any attached seed coats at the end of the test period for evaluation of cotyledons.)

(2) Epicotyl:

(i) Missing. (May be assumed to be present if the cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root, with less than two strong secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

§ 201.56–5 Grass family, Poaceae (Gramineae).

Kinds of seed: Bentgrasses, bluegrasses, bluestems, bromes, cereals, fescues, millets, orchardgrass, redtop, ryegrasses, sorghums, timothy, turf timothy, wheatgrasses, and all other grasses listed in § 201.2(h).

(a) Cereals: Agrotricum, barley, oat, rye, mountain rye, wheat, wheat x agrotricum, and triticale.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface; the mesocotyl may elongate depending on the variety and light intensity, but may not be discernible. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A primary root and seminal roots. The primary root is not readily distinguishable from the seminal roots; therefore, all roots arising from the seed are referred to as seminal roots.

(2) Abnormal seedling description.

(i) Shoot:

(A) Missing.

(B) No leaf.

(C) Leaf extending less than halfway up into the coleoptile.

(D) Leaf extensively shredded or split.

(E) Spindly or watery.

(F) Grainy, spirally twisted, shredded, and weak.

(G) Deep open cracks in the mesocotyl.

(ii) Root:

(A) Less than one strong seminal root.

(iii) Seedling:

(A) Decayed at point of attachment to the scutellum.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(D) Endosperm obviously detached from the root-shoot axis (e.g. kernel lifted away by the growing shoot).

(E) Thickened and shortened roots and/or shoots.

(b) Rice.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil or water surface; the mesocotyl may elongate depending on the variety and environmental conditions. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: Strong primary root and seminal roots. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period. If the mesocotyl elongates, the adventitious roots will be carried above the grain.

(2) Abnormal seedling description.

(i) Shoot:

(A) Missing.

(B) No leaf.

(C) Leaf extending less than halfway up into the coleoptile.

(D) Leaf extensively shredded or split.

(E) Spindly or watery.

(F) Deep open cracks in the mesocotyl.

(ii) Root:

(A) None.

(B) Weak primary root with insufficient seminal or adventitious roots.

(iii) Seedling:

(A) Decayed at point of attachment to the scutellum.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(c) Corn.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface. The mesocotyl usually elongates. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves. A twisted and curled shoot bound by a tough seed coat may be considered normal, provided the shoot is not decayed.

(iv) Root system: Strong primary root and seminal roots. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period.

(2) Abnormal seedling description.

(i) Shoot:

(A) Missing.

(B) Thickened and shortened.

(C) No leaf.

(D) Leaf extending less than halfway up into the coleoptile.

(E) Leaf extensively shredded or split.

(F) Spindly or watery.

(G) Deep open cracks in the mesocotyl.

(ii) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak seminal roots.

(iii) Seedling:

(A) Decayed at point of attachment to the scutellum.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(d) Johnsongrass, sorghum, sorgrass, sorghum almum, sudangrass, and sorghum-sudangrass.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface; the mesocotyl usually elongates. Areas of natural, reddish pigmentation may develop on the mesocotyl and coleoptile. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A long primary root, usually with secondary roots developing within the test period. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period. Areas of natural, reddish pigmentation may develop on the root.

(2) Abnormal seedling description.

(i) Shoot:

(A) Missing.

(B) Thickened and shortened.

(C) No leaf.

(D) Leaf extending less than halfway up into the coleoptile.

(E) Leaf extensively shredded or split.

(F) Spindly or watery.

(G) Deep open cracks in the mesocotyl.

(ii) Root:

(A) None.

(B) Damaged or weak primary root with less than two strong secondary roots.

(iii) Seedling:

(A) Decayed at point of attachment to the scutellum.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(e) Grasses and millets.

(1) General description.

(i) Germination habit: Hypegeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface. The mesocotyl may or may not elongate significantly, depending on the kind. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A long primary root. Secondary or adventitious roots may develop within the test period. In certain kinds (e.g. bermudagrass) the primary root may not be readily visible because it is coiled inside the tightly fitting lemma and palea. At the time of evaluation, the glumes should be removed and the root observed. Such seedlings are classified as normal if the primary root has developed. For Kentucky bluegrass, a primary root 1/16 inch (1.6 mm) or more in length is classified as normal.

(2) Abnormal seedling description.

(i) Shoot:

(A) Missing.

(B) Short, thick, and grainy.

(C) No leaf.

(D) Leaf extending less than halfway up into the coleoptile.

(E) Leaf extensively shredded or split.

(F) Spindly or watery.

(G) Deep open cracks in the mesocotyl.

(ii) Root:

(A) Missing or defective primary root even if other roots are present.

(B) Spindly, stubby, or watery primary root.

(iii) Seedling:

(A) Decayed at point of attachment to the scutellum.

(B) One or more essential structures impaired as a result of decay from primary infection.

(C) Albino.

(D) Yellow (when grown in light).

(E) Endosperm obviously detached from the root-shoot axis (e.g. kernel lifted away by the growing shoot).

§ 201.56–6 Legume or pea family, Fabaceae (Leguminosae).

Kinds of seed: Alfalfa, alyceclover, asparagusbean, beans (*Phaseolus* spp.), Florida beggarweed, black medic, broadbean, burclovers, buttonclover, chickpea, clovers (*Trifolium* spp.), cowpea, crotalarias, crownvetch, guar, hairy indigo, kudzu, lentil, lespedezas, lupines, northern sweetvetch, peas, peanut, roughpea, sainfoin, sesbania, sourclover, soybean, sweetclovers, trefoils, velvetbean, and vetches.

(a) Field bean, garden bean, lima bean, mung bean, asparagusbean, and cowpea.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons which are large and fleshy.

(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl elongates, causing the terminal bud to emerge from between the cotyledons; the primary leaves expand rapidly.

(iv) Root system: A long primary root with secondary roots.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) For garden bean (*Phaseolus vulgaris* in part), remove any attached seed coats at the end of the test period for evaluation of cotyledons:

(*1*) Less than half of the original cotyledon tissue remaining attached.

(*2*) Less than half of the original cotyledon tissue free of necrosis or decay.

(B) All other kinds:

(*1*) Both missing and the seedling generally weak.

(ii) Epicotyl:

(A) Missing.

(B) Deep open cracks.

(C) Malformed, such as markedly curled or thickened.

(D) Less than one primary leaf.

(E) Primary leaves too small in proportion to the rest of the seedling, usually associated with visible defects of, or damage to, the main stem of the epicotyl.

(F) Terminal bud missing or damaged. (If a few seedlings with total or partial decay to the epicotyl are found, they may be classified as normal, provided the hypocotyl and root are normal. The epicotyl on such seedlings usually does not decay when grown in a fairly dry environment and exposed to light. A retest, preferably in soil or sand, will aid in interpretation of such seedlings.)

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue. (A healed break, sometimes referred to as a "knee," is considered normal.)

(B) Malformed, such as markedly shortened, curled, or thickened. (Hypocotyl stunting or curling may be caused by seedling orientation or constriction on or in the substratum.) (Hypocotyl collar rot is the breakdown of hypocotyl tissue initially characterized by a watery appearance and collapse of the hypocotyl below the cotyledonary node. The area later becomes discolored, shrivelled, and necrotic. The condition is caused by insufficient calcium available to the seedling. If hypocotyl collar rot is observed on seedlings of garden bean, the sample involved shall be retested in accordance with § 201.58(b)(12).)

(iv) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (A root bound within a tough seed coat is considered normal.)

(v) Seedling:

(A) One or more essential structures impaired as the result of decay from primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens, such as *Fusarium*, *Phomopsis*, and *Rhizoctonia*, can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are to be classified as normal. A retest in sand or soil may be advisable.)

(B) Albino.

(b) Adzuki bean, broadbean, chickpea, field pea, lentil, pea, roughpea, runner bean, velvetbean, and vetches.

(1) General description.

(i) Germination habit: Hypogeal dicot.

(ii) Food reserves: Cotyledons which are large and fleshy, and remain enclosed within the seed coat beneath the soil surface. They are usually not photosynthetic.

(iii) Shoot system: The epicotyl elongates and carries the terminal bud and primary leaves above the soil surface. The stem bears one or more scale leaves and, prior to emergence, is arched near the apex, causing the terminal bud to be pulled through the soil; after emergence, the stem straightens. For practical purposes, the hypocotyl is not discernible and is not an evaluation factor. Buds in the axils of each cotyledon and scale leaf usually remain dormant unless the terminal bud is seriously damaged. In this case, one or more axillary buds may start to develop into a shoot. If the axillary shoot is well-developed, it may be considered normal.

(iv) Root system: A long primary root with secondary roots.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) Less than half of the original tissue remaining attached.

(B) Less than half of the original tissue free of necrosis or decay.

(ii) Epicotyl:

(A) Missing.

(B) Less than one primary leaf.

(C) Malformed such as markedly shortened, curled, or thickened.

(D) Severely damaged (e.g. terminal bud missing or damaged) with only a weak shoot developing from the axil of a cotyledon or scale leaf.

(E) Two weak and spindly shoots.

(F) Deep open cracks extending into the conducting tissue.

(iii) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak secondary roots.

(iv) Seedlings:

(A) One or more essential structures impaired as a result of decay from primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are classified as normal. A retest in sand or soil may be advisable.)

(B) Albino.

(c) Soybean and lupine.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons, which are large and fleshy; they expand and become photosynthetic.

(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The primary leaves usually increase in size and the epicotyl may elongate within the test period.

(iv) Root system: A long primary root with secondary roots.

(2) Abnormal seedling description.

(i) Cotyledons.

(A) Less than half of the original cotyledon tissue remaining attached.

(B) Less than half of the original cotyledon tissue free of necrosis or decay.

(ii) Epicotyl.

(A) Missing.

(B) Less than one primary leaf.

(C) Deep open cracks.

(D) Terminal bud damaged, missing, or decayed. (If a few seedlings with partial decay of the epicotyl are found, they may be classified as normal, provided the hypocotyl and root are normal. The epicotyl on such seedlings usually does not decay when grown in a fairly dry environment and is exposed to light. A retest, preferably in soil or sand, will aid in interpretation of such seedlings.)

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue. (Adventitious

roots may occur at the site of injury, particularly on the hypocotyl and near the base of the cotyledons. The seedling is classified as normal if the injury is healed over and other essential structures are normal.)

(B) Malformed, such as markedly shortened, curled, or thickened. (Hypocotyl development is slow until the roots start functioning. Caution should be exercised to ensure slow seedlings are not classified as abnormal. Hypocotyl stunting or curling also may be caused by seedling orientation or constriction on or in the substratum.)

(iv) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (Roots of seedlings on "Kimpak" with insufficient moisture may not become established and hypocotyl elongation may appear to be abnormal. There may be curling of the root and hypocotyl. When a number of seedlings are observed with this condition, the sample should be retested.)

(v) Seedlings:

(A) One or more essential structures impaired as a result of decay from primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens, such as *Fusarium*, *Phomopsis*, and *Rhizoctonia*, can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are to be classified as normal. A retest in sand or soil may be advisable.)

(B) Albino.

(d) Peanut.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons, which are large and fleshy.

(iii) Shoot system: The cotyledons are carried to the soil surface by the hypocotyl which is very thick, narrowing abruptly at the root. Elongation of the hypocotyl stops when the epicotyl is exposed to light at the soil surface. The primary leaves are compound and usually expand during the test period.

(iv) Root system: A long primary root with secondary roots. Adventitious roots develop from the base of the hypocotyl if the primary root is damaged.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) Less than half of the original cotyledon tissue remaining attached.

(B) Less than half of the original cotyledon tissue free of necrosis or decay.

(ii) Epicotyl:

(A) Missing.

(B) Less than one primary leaf.

(C) Deep open cracks.

(D) Terminal bud damaged, missing, or decayed.

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue.

(B) Malformed, such as markedly shortened or curled. (Hypocotyls remain somewhat thickened and may appear to be stunted. Light, depth of planting, and substratum moisture all contribute to the length of the hypocotyl. Hypocotyl stunting or curling may be caused by seedling orientation or constriction in the substratum. Seedlings planted in a soil test with the radicle too close to the surface may send roots above the soil and appear to exhibit negative geotropism and a distorted, U-shaped hypocotyl.

(iv) Root:

(A) None.

(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(v) Seedling:

(A) One or more essential structures impaired as a result of primary infection.

(B) Albino.

(e) Alfalfa, alyceclover, Florida beggarweed, black medic, burclovers, buttonclover, milkvetch, clovers, crotalarias, crownvetch, guar, hairy indigo, kudzu, lespedezas, northern sweetvetch, sainfoin, sesbania, sourclover, sweetclovers, and trefoils.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserve: Cotyledons, which are small and fleshy; they expand and become photosynthetic. The cotyledons of sub clover develop elongated petioles.

(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(iv) Root system: A long, tapering primary root, usually with root hairs. Secondary roots may or may not develop within the test period, depending on the kind.

(2) Abnormal seedling description.

(i) Cotyledons:

(A) Less than half of the original cotyledon tissue remaining attached. (Breaks at the point of attachment of the cotyledons to the hypocotyl are common in seeds which have been mechanically damaged. It is important that seedlings not be removed during preliminary counts unless development is sufficient to allow the conditions of the cotyledons to be determined. If the point of attachment of the cotyledons cannot be seen at the end of the test, the seed coat should be peeled back to determine whether a break has occurred.)

(B) Less than half of the original cotyledon tissue free of necrosis or decay.

(ii) Epicotyl:

(A) Missing. (May be assumed to be present if both cotyledons are intact.)

(iii) Hypocotyl:

(A) Deep open cracks extending into the conducting tissue.

(B) Malformed, such as markedly shortened, curled, or thickened. (Seedlings of sainfoin which have been constricted by growing through the netting of the pod, but which are otherwise normal, are classified as normal.)

(C) Weak and watery

(iv) Root:

(A) None.

(B) Primary root stubby. (The roots of sweetclovers may be stubby when grown on artificial substrata due to the presence of coumarin in the seed; since this condition usually does not occur in soil, such seedlings are classified as normal. Roots may appear stubby as a result of being bound by the seed coat; such seedlings are classified as normal. Crownvetch produces phytotoxic effects similar to sweetclovers.)

(C) Split extending into the hypocotyl.

(v) Seedling:

(A) One or more essential structures impaired as a result of decay from primary infection.

(B) Albino.

§ 201.56–7 Lily family, Liliaceae.

Kinds of seed: Asparagus, chives, leek, onion, and Welsh onion.

(a) Asparagus.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm which is hard, semi- transparent, and non-starchy; minor reserves in the cotyledon. The endosperm surrounds the entire embryo.

(iii) Cotyledon: A single cylindrical cotyledon; following germination, all but the basal end remains embedded in the endosperm to absorb nutrients.

(iv) Shoot system: The epicotyl elongates and carries the terminal bud above the soil surface. The epicotyl may bear several small scale leaves. A short hypocotyl is barely distinguishable, joining the root to the basal end of the cotyledon. More than one shoot may arise simultaneously, and the seedling may be considered normal if at least one shoot is well- developed and has a terminal growing point, provided other essential structures are normal.

(v) Root system: A long slender primary root.

(2) Abnormal seedling description.

(i) Cotyledon:

(A) Detached from seedling.

(B) Deep open cracks at basal end.

(ii) Epicotyl:

(A) Missing.

(B) Terminal bud missing or damaged.

(C) Deep open cracks.

(D) Malformed, such as markedly shortened, curled, or thickened.

(E) Spindly.

(F) Watery.

(iii) Hypocotyl:

(A) Deep open cracks.

(iv) Root:

(A) No primary root.

(B) Stubby primary root with weak secondary roots.

(v) Seedling:

(A) One or more essential structures impaired as a result of decay from primary infection.

(B) Albino.

(b) Chives, leek, onion, Welsh onion.

(1) General description.

(i) Germination habit: Epigeal monocot.

(ii) Food reserves: Endosperm which is hard, semi-transparent, and non-starchy; minor reserves in the cotyledon.

(iii) Cotyledon: A single cylindrical cotyledon. The cotyledon emerges with the seed coat and endosperm attached to the tip. A sharp bend known as the "knee" forms; continued elongation of the cotyledon on each side of this knee pushes it above the soil surface. The cotyledon tip is pulled from the soil and straightens except for a slight kink which remains at the site of the knee.

(iv) Shoot system: The first foliage leaf emerges through a slit near the base of the cotyledon, but this does not usually occur during the test period. The hypocotyl is a very short transitional zone between the primary root and the cotyledon, and is not distinguishable for purposes of seedling evaluation.

(v) Root system: A long slender primary root with adventitious roots developing from the hypocotyl. The primary root does not develop secondary roots.

(2) Abnormal seedling description.

(i) Cotyledon:

(A) Short and thick.

(B) Without a definite bend or "knee"

(C) Spindly or watery.

(ii) Epicotyl:

(A) Not observed during the test period.

(iii) Hypocotyl:

(A) Not evaluated.

(iv) Root:

(A) No primary root.

(B) Short, weak, or stubby primary root.

(v) Seedling:

(A) One or more essential structures impaired as a result of decay from primary infection.

(B) Albino.

§ 201.56–8 Flax family, Linaceae.

Kind of seed: Flax.

(a) General description.

(1) Germination habit: Epigeal dicot. (Due to the mucilaginous nature of the seed coat, seedlings germinated on blotters may adhere to the blotter and appear to be negatively geotropic.)

(2) Food reserves: Cotyledons which expand and become photosynthetic.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root, with secondary roots usually developing within the test period.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

§ 201.56–9 Mallow family, Malvaceae.

Kinds of seed: Cotton, kenaf, and okra.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserve: Cotyledons, which are convoluted in the seed; they expand and become thin, leaf-like, and photosynthetic.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period. Areas of yellowish pigmentation may develop on the hypocotyl in cotton.

(4) Root system: A primary root, with secondary roots usually developing within the test period. Areas of yellowish pigmentation may develop on the root in cotton.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay. (Remove any attached seed coats at the end of the test period for evaluation of cotyledons.)

(2) Epicotyl:

(i) Missing. (May be assumed to be present if both cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks or grainy lesions extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection. (A cotton seedling with yellowish areas on the root or hypocotyl is classified as normal, provided the cotyledons are free of infection.)

(ii) Albino.

§ 201.56–10 Spurge family, Euphorbiaceae.

Kind of seed: Castorbean.

(a) General description.

(1) Germination habit: Epigeal dicot

(2) Food reserves: Cotyledons, which are thin and leaf-like; endosperm (fleshy food-storage organs) usually persisting in the laboratory test.

(3) Shoot system: The hypocotyl lengthens, carrying the cotyledons, endosperm, and epicotyl above the soil surface.

(4) Root system: A primary root, with secondary roots usually developing within the test period.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Endosperm:

(i) Missing.

(3) Epicotyl:

(i) Missing.

(ii) Damaged or missing terminal bud.

(4) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(5) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(6) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

§ 201.56–11 Knotweed family, Polygonaceae.

Kinds of seed: Buckwheat, rhubarb, and sorrel.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons, starchy endosperm.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root, with secondary roots developing within the test period for some kinds.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if cotyledons are intact.)

(3) Hypocotyl:

(i) Deep open cracks or grainy lesions extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(iii) Watery.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

§ 201.56–12 Miscellaneous plant families.

Kinds of seed by family:

Carrot family, Apiaceae (Umbelliferae)—carrot, celery, celeriac, dill, parsley, parsnip;

Hemp family, Cannabaceae—hemp;

Dichondra family, Dichondraceae—dichondra;

Geranium family, Geraniaceae—alfilaria;

Mint family, Lamiaceae (Labiatae)—sage, summer savory; benne family, Pedaliaceae—sesame;

Rose family, Rosaceae—little burnet;

Nightshade family, Solanaceae—eggplant, tomato, husk tomato, pepper, tobacco; and

Valerian family, Valerianaceae—cornsalad.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons; endosperm may or may not be present, depending on the kind.

(3) Shoot system: The hypocotyl elongates, carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root; secondary roots may or may not develop within the test period, depending on the kind.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if the cotyledons are intact.)

(3) Hypocotyl:

(i) Malformed, such as markedly shortened, curled, or thickened.

(ii) Deep open cracks extending into the conducting tissue.

(iii) Watery.

(4) Root:

(i) None.

(ii) Missing or stubby primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

31. In § 201.57a, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 201.57a Dormant Seeds.

* * * * *

(b) The percentage of dormant seed, if present, shall be determined in addition to the percentage of germination for the following kinds: Bahiagrass, basin wildrye, big bluestem, little bluestem, sand bluestem, yellow bluestem, bottlebrush-squirreltail, buffalograss, buffelgrass, galletagrass, forage kochia, blue grama, side-oats grama, Indian ricegrass, johnsongrass, sand lovegrass, weeping lovegrass, mountain rye, sand dropseed, smilo, switchgrass, veldtgrass, western wheatgrass, and yellow indiangrass.

(c) For green needlegrass, if the test result of method 2 is less than the result of method 1, subtract the result of method 2 from method 1 and report the difference as the percentage of dormant seed. Refer to § 201.58(b)(7).

32. Section 201.58 is amended by revising the introductory text, paragraphs (a)(5), (b)(1) through (b)(4), adding a new paragraph (b)(7); revising paragraphs (b)(10), (b)(12), Table 2, and adding a new paragraph (c) to read as follows:

§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

Specific germination requirements are set forth in table 2 to which the following paragraphs (a), (b), and (c) are applicable.

* * * * *

(a) * * *

(5) *Prechill.* The term "prechill" means a cold, moist treatment applied to seeds to overcome dormancy prior to the germination test. The prechill method varies among kinds, but is usually performed by holding imbibed seeds at a low temperature for a specified period of time. The prechill period is not included in the duration of tests given in table 2, unless otherwise specified.

* * * * *

(b) * * *

(1) *Alyceclover*; swollen seeds. At the conclusion of the 21-day test period, carefully pierce the seed coat with a sharp instrument and continue the test for 5 additional days. Alternate method: The swollen seeds may be placed at 20° C for 48 hours and then at 35° C for 3 additional days.

(2) *Bahiagrass*; removal of glumes. On all varieties except "Pensacola," remove the enclosing structures (glumes, lemma, and palea) from the caryopsis with the aid of a sharp scalpel. If the seed is fresh or dormant, lightly scratch the surface of the caryopsis.

(3) *Beet, Swiss chard*; preparation of seed for test. Before the seeds are placed on the germination substratum, they shall be soaked in water for 2 hours, using at least 250 ml of water per 100 seeds, then washed in running water and the excess water blotted off. The temperature of the soaking and washing water should be no lower than 20 °C. Samples producing excessive discoloration of the hypocotyl or root should be retested in soil or by washing in running water for 3 hours and testing on "Kimpak," keeping the seed covered with slightly moist blotters. Sugar beets may require 16 hours soaking in water at 25 °C, followed by rinsing and then drying for 2 hours at room temperature.

(4) *Buffelgrass*; alternate method for dormant seed. The caryopses shall be removed from the fascicles and placed on blotters moistened with a 0.2 percent solution of KNO_3, in petri dishes. The seeds from a fascicle should be arranged so they will not be confused with seeds from other fascicles during the test. The

seeds are then prechilled at 5 °C for 7 days and tested at 30 °C in light for 21 additional days. Firm ungerminated seeds remaining at the conclusion of the test should be scratched lightly and left in test for 7 additional days.

* * * * *

(7) *Green needlegrass*; two test methods as prescribed in table 2 shall be used on each sample:

(i) For method 1, acid scarify 400 seeds for 10 minutes in concentrated sulfuric acid (95 to 98 percent H_2SO_4). Rinse seeds and dry on blotters for 16 hours, then place seeds on blotters moistened with a solution of 0.055 percent (500 ppm gibberellic acid GA_3) and 0.46 percent (3,000 ppm) thiram and germinate 14 days.

(ii) For method 2, plant 400 seeds on blotters moistened with a 0.2 percent solution of KNO_3 and germinate 14 days. Refer to § 201.57a(c).

(iii) Report the results of method 2 as the percentage germination. If the number in method 2 is less than method 1, subtract the results of method 2 from method 1 and report the difference as dormant seed.

* * * * *

(10) *Ryegrass*; fluorescence test. The germination test for fluorescence of ryegrass shall be conducted in light [not to exceed 100 foot candles (1,076 lux)] with white filter paper as the substratum. The white filter paper should be nontoxic to the roots of ryegrass and of a texture that will resist penetration of ryegrass roots. Distilled or deionized water shall be used to moisten the filter paper. The test shall be conducted in a manner that will prevent the contact of roots of different seedlings. Roots of some seedlings produce fluorescent lines on white filter paper when viewed under ultraviolet light. First counts shall not be made before the eighth day; at that time remove only normal fluorescent seedlings. Evaluation of fluorescence shall be made under F15T8–BLB or comparable ultraviolet tubes in an area where light from other sources is excluded. If there are over 75 percent normal fluorescent seedlings present at the time of the first count, break the contact of the roots of the nonfluorescent seedlings from the substratum and reread the fluorescence at the time of the final count. At the final count, lift each remaining seedling, observing the path of each root since sometimes faint fluorescence will show on the substratum as the root is lifted. Abnormal seedlings and dead seeds are not evaluated for fluorescence. See § 201.58a(a).

* * * * *

(12) *Garden bean*; use of calcium nitrate. If hypocotyl collar rot is observed on seedlings, the sample involved shall be retested using a 0.3 to 0.6 percent solution of calcium nitrate ($CaNO_3$) to moisten the substratum.

* * * * *

(c) Procedures for coated seed:

(1) Germination tests on coated seed shall be conducted in accordance with methods in paragraphs (a) and (b) of this section. However, kinds for which soaking or washing is specified in paragraph (b) shall not be soaked or washed in the case of coated seed.

(i) Coated seed units shall be placed on the substratum in the condition in which they are received without rinsing, soaking, or any other pretreatment.

(ii) Coated seed units in mixtures which are color coded or can otherwise be separated by kinds shall be germinated as separate kinds without removing the coating material.

(iii) Coated seed units in mixtures which cannot be separated by kinds without removing the coating material shall be de-coated and germinated as separate kinds. The coating material shall be removed in a manner that will not affect the germination capacity of the seeds.

(2) The moisture level of the substratum is important. It may depend on the water-absorbing capacity of the coating material. A retest may be necessary before satisfactory germination of the sample is achieved.

(3) Phytotoxic symptoms may be evident when germinating coated seeds in paper substrata. In such cases a retest in sand or soil may be necessary.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
AGRICULTURAL SEED						
Agrotricum	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days.
Alfalfa	B, T, S	20	4	[1]7	See ¶ (b)(11)	
Alfilaria	B, T	20–30	3	14	Clip seeds	
Alyceclover	B, T	35	4	[1]21	See ¶ (b)(1) for swollen seeds.	
Bahiagrass:						
Var. Pensacola.	P, S	20–35	7	28	Light; see ¶ (b)(2)	See § 201.57a
All other vars.	P	30–35	3	21	Light; remove glumes; see ¶ (b)(2).	Scratch caryopses; KNO_3; see § 201.57a
Barley	B, T, S	20; 15	4	7		Prechill 5 days at 5° or 10 °C or predry
Barrelclover	B, T	20	4	[1]14	Remove seeds from bur; see ¶ (b)(11).	
Bean:						
Adzuki	B, T, S	20–30	4	[1]10		
Field	B, T, S, TC	20–30; 25	5	[1]8		
Mung	B, T, S	20–30	3	[1]7		
Beet, field	B, T, S	20–30	3	14	See ¶ (b)(3)	
Beet, sugar	B, T, S	20–30; 20	3	10	See ¶ (b)(3)	
Beggarweed, Florida.	B, T	30	5	[1]28		
Bentgrass:						
Colonial	P	15–30; 10–30; 15–25	7	28	Light; KNO_3	Prechill at 5° or 10 °C for 7 days.
Creeping	P	15–30; 10–30; 15–25	7	28	Light; KNO_3	Prechill at 5° or 10 °C for 7 days.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Velvet	P	15–25; 20–30	7	21	Light; KNO_3	
Bermudagrass	P	20–35	7	21	Light; KNO_3; see ¶ (a)(9).	
Bermudagrass, giant.	P	20–35	7	21	Light; KNO_3; see ¶ (a)(9)	Prechill at 10 °C for 7 days and then test at 20–35 °C; continue tests of hulled seed for 14 days and of unhulled seed for 21 days.
Bluegrass:						
Annual	P	20–30	7	21	Light	
Bulbous	P, S	10	10	35	KNO_3 or soil	Prechill all samples at 5 °C for 7 days.
Canada	P	15–25; 15–30	10	28	Light; KNO_3	10–30 °C.
Glaucantha	P	15–25; 15–30	10	28	Light; KNO_3	
Kentucky	P	15–25; 15–30	10	28	Light; KNO_3	Prechill at 10 °C for 5 days.
Nevada	P	20–30	7	21	Light; KNO_3	
Rough	P	20–30	7	21	Light	
Texas	P	20–30	7	28	Light; KNO_3	Prechill at 5 °C for 2 weeks.
Wood	P	20–30	7	28	Light	
Bluejoint	TB, P	15–25	10	21	Light and KNO_3 optional.	Prechill at 5 °C for 5 days
Bluestem:						
Big	P, TS	20–30	7	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see §201.57a.
Little	P, TS	20–30	7	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see §201.57a.
Sand	P, TS	20–30	7	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see §201.57a.
Yellow	P, TS	20–30	5	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see §201.57a.
Bottlebrush-squirreltail.	P, B	20; 15	10	14		See §201.57a.
Brome:						
Field	P, TB	15–25; 20–30	6	14	Light	Prechill at 10 °C for 5 days.
Meadow	B, T, TB	20–30	6	14	Light optional	
Mountain	P	20–30	6	14	Light.	
Smooth	P, B, TB	20–30	6	14	Light optional	Prechill at 5° or 10°C for 5 days, then test at 30°C for 9 additional days.
Broomcorn	B, T, S	20–30	3	10		
Buckwheat	B, T	20–30	3	6		
Buffalograss:						
(Burs)	P, TB, TS	20–35	7	28	Light; KNO_3	Prechill at 5°C for 6 weeks; test 14 additional days; see §201.57a.
(Caryopses)	P	20–35	5	14	Light; KNO_3	See §201.57a.
Buffelgrass	S	30	7	28	Light; press fascicles into well-packed soil and prechill at 5°C for 7 days.	See ¶ (b)(4); see §201.57a.
Burclover, California.	B, T	20	4	[1]14	Remove seeds from bur; see ¶ (b)(11).	
Burclover, spotted	B, T	20	4	[1]14	Remove seeds from bur; see ¶ (b)(11).	
Burnet, littler	B, T	15	5	14		
Buttonclover	B, T	20	4	[1]10	See ¶ (b)(11)	15°C.
Canarygrass	B, T	20–30	3	7		
Canarygrass, reed.	P	20–30	5	21	Light; KNO_3	
Carpetgrass	P	20–35	10	21	Light	KNO_3.
Castorbean	T, S	20–30	7	14	Remove caruncle if mold interferes with test.	
Chess, soft	P	20–30	7	14	Light	Prechill at 5° or 10°C for 7 days.
Chickpea	T,S	20–30	3	[1]17		
Clover:						
Alsike	B, T, S	20	3	[1]7	See ¶ (b)(11)	15°C.
Arrowleaf	B, T	20; 15	4	[1]14	See ¶ (b)(11)	
Berseem	B, T, S	20	3	[1]7	See ¶ (b)(11)	15°C.
Cluster	B, T	20	4	[1]10	See ¶ (b)(11)	15°C.
Crimson	B, T, S	20	4	[1]7	See ¶ (b)(11)	15°C.
Kenya	B, T, S	20	3	17		
Ladino	B, T, S	20	3	[1]7	See ¶ (b)(11)	15°C.
Lappa	B, T	20	3	[1]7	See ¶ (b)(11)	15°C.
Large hop	B, T	20	4	[1]14	See ¶ (b)(11)	15°C.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Persian	B, T	20	3	[1]7	See ¶ (b)(11)	15°C.
Red	B, T, S	20	4	[1]7	See ¶ (b)(11)	15°C.
Rose	B, T	20	4	[1]10	See ¶ (b)(11)	15°C.
Small hop	B, T	20	4	[1]14	See ¶ (b)(11)	15°C.
Strawberry	B, T	20	3	[1]7	See ¶ (b)(11)	15°C.
Sub	B, T	20	4	[1]14	See ¶ (b)(11)	15°C.
White	B, T, S	20	3	[1]7	See ¶ (b)(11)	15°C.
Corn:						
Field	B, T, S, TC	20–30; 25	4	7		
Pop	B, T, S, TC	20–30; 25	4	7		
Cotton	B, T, S	20–30; 30	4	[1]12		Test by alternate method; see ¶ (b)(5).
Cowpea	B, T, S	20–30	5	[1]8		
Crambe	T	25	3	7		
Crested dogtail	P	20–30	10	21	Light	Prechill at 5° or 10°C for 3 days.
Crotalaria:						
Lance	B, T, S	20–30	4	[1]10		
Showy	B, T, S	20–30	4	[1]10		
Slenderleaf	B, T, S	20–30	4	[1]10		
Striped	B, T, S	20–30	4	[1]10		
Sunn	B, T, S	20–30	4	[1]10		
Crownvetch	B, T, S	20	7	[1]14		
Dallisgrass	P	20–35	7	21	Light; KNO_3	
Dichondra	B, T	20–30	7	[1]28		
Drop seed, sand	P	5–35; 15–35	5	14	Light; KNO_3	Prechill at 5 °C for 4 weeks; see §201.57a.
Emmer	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days or predry.
Fescue:						
Chewings	P	15–25	7	21	Light and KNO_3 optional.	Prechill at 5° or 10 °C for 5 days.
Hair	P	10–25	10	28	KNO_3	
Hard	P	15–25	7	21	Light and KNO_3 optional.	
Meadow	P	15–25; 20–30	5	14	Light and KNO_3 optional.	
Red	P	15–25	7	21	Light and KNO_3 optional.	
Sheep	P	15–25	7	21	Light and KNO_3 optional.	
Tall	P	15–25; 20–30	5	14	Light and KNO_3 optional.	Prechill at 5° or 10 °C for 5 days and test for 21 days.
Flax	B, T, S	20–30	3	7		
Galletagrass	P, B	20; 25; 20–30	4	10		See §201.57a
Grama:						
Blue	P, TB	20–30	7	14	Light	KNO_3; see §201.57a.
Side-oats	P	15–30	7	14	Light; KNO_3	See §201.57a.
Guar	B, T, S	30; 20–30	5	[1]14		
Guineagrass	P	15–35	10	28	Light; KNO_3 optional	
Hardinggrass	P	10–30	7	28	Light	KNO_3.
Alternate method.	P	15–25	7	14	Light; presoak at 15 °C for 24 hrs.	
Hemp	B, T	20–30	3	7		
Indiangrass, yellow.	P, TS	20–30	7	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see §201.57a.
Indigo, hairy	B, T	20–30	5	[1]14		
Japanese lawngrass.	P	35–20	10	28	Light; KNO_3	
Johnsongrass	P	20–35	7	35	Light	KNO_3; see §201.57a.
Kenaf	T, B	20–30	4	[1]8		
Kochia, forage	P	20	4	14		See §201.57a.
Kudzu	B, T	20–30	5	[1]14		
Lentil	B, T	20	5	[1]10		
Lespedeza:						
Korean	B, T, S	20–35	5	[1]14		
Sericea	B, T, S	20–35	7	[1]21		
Siberian	B, T, S	20–35	7	[1]21		
Striate	B, T, S	20–35	7	[1]14		
Lovegrass, sand	P	20–30	5	14	Light; KNO_3	Prechill at 5° or 10 °C for 6 weeks; see §201.57a.
Lovegrass, weeping.	P	20–35	5	14	Light	KNO_3; see §201.57a.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Lupine:						
Blue	B, T, S	20	4	[1]10		
White	B, T	20	3	[1]10		
Yellow	B, T	20	7	[1]10		
Manilagrass	P	35–20	10	28	Light; KNO_3	
Meadow foxtail	P	20–30	7	14	Light	
Medic, black	B, T, S	20	4	[1]7	See ¶ (b)(11)	
Milkvetch	B, T	20	6	[1]14		
Alternate method.	B, TB, T	15–25	10	[1]21		
Millet:						
Browntop	B, P, T	20–30; 30	4	14	Light and KNO_3 optional.	Predry at 35° or 40 °C for 7 days and test at 30 °C.
Alternate method.	B, P, T	5–35	4	14	Light; KNO_3	
Foxtail	B, T	15–30; 20–30	4	10		
Japanese	B, T	20–30	4	10		
Pearl	B, T	20–30	3	7		
Proso	B, T	20–30	3	7		
Molassesgrass	P	20–30	7	21	Light	
Mustard:						
Black	P	20–30	3	7	Light	KNO_3 and prechill at 10 °C for 3 days.
India	P	20–30	3	7	Light	Prechill at 10 °C for 7 days and test for 5 days; KNO_3
White	P	20–30	3	5	Light	
Napiergrass	B, T	20–30	3	10		
Needlegrass, green:						
Method 1	P	15–30	7	14	H_2SO_4,GA_3 and thiram; dark; see ¶(b)(7).	
Method 2	P	15–30	7	14	KNO_3, dark; see ¶(b)(7).	
Oat	B, T, S	20; 15	5	10	Prechill at 5° or 10 °C for 5 days and test for 7 days or predry and test for 10 days..	
Oatgrass, tall	P	20–30	6	14	Light	
Orchardgrass	P, TS	15–25	7	21	Light; germination more rapid on soil.	Prechill at 5° or 10 °C for 7 days.
Panicgrass, blue	P, TS	20–30	7	28	Light	
Panicgrass, green	P	15–35	10	28	Light; KNO_3 optional	
Pea, field	B, T, S	20	3	[1]8		
Peanut	B, T, S	20–30; 25	5	[1]10	Remove shells	Ethephon or ethylene; see ¶ (a) (10) and (11).
Rape:						
Annual	B, T	20–30	3	7		
Bird	P	20–30	3	10	Light	KNO_3
Turnip	B, T	20–30	3	7		
Winter	B, T	20–30	3	7		
Redtop	P, TB	20–30	5	10	Light	KNO_3
Rescuegrass	P, S	10–30	7	28	Light; see ¶ (b)(8) for alternate method.	In soil at 15°C.
Rhodesgrass	P	20–30	6	14	Light; KNO_3	
Rice	T, S	20–30; 30	5	14	See ¶ (b)(9) for alternate method.	Presoak; see ¶ (b)(9).
Ricegrass, Indian	P	15	7	42		Prechill at 5 °C for 4 weeks and test for 21 additional days; see §201.57a.
Alternate method.	S	5–15; 15; 15–25	7	28		Dark; prechill in soil at 5 °C for 4 weeks, see §201.57a.
Roughpea	B, T	20	7	[1]14		
Rye	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days or predry
Rye, mountain	B, T	20; 15	4	7		See §201.57a.
Ryegrass:						
Annual	P, TB	15–25	5	14	Light optional; see ¶ (b)(10) for fluorescence test.	Light; KNO_3, prechill at 5° or 10°C for 5 days and test at 15–25 °C; if still dormant prechill for 3 days and continue test at 15–25 °C an additional 4 days.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Intermediate	P, TB	15–25	7	14	Light	KNO_3 and prechill at 5° or 10 °C for 5 days and test at 15–25°C; if still dormant rechill for 3 days and continue test at 15–25 °C an additional 4 days.
Perennial	P, TB	15–25	5	14	Light optional; see ¶ (b)(10) for fluorescence test.	Light; KNO_3; prechill at 5° or 10 °C for 5 days and test at 15–25 °C; if still dormant rechill for 3 days and continue test at 15–25° C an additional 4 days.
Wimmera	P, TB	15–25; 20–30	5	14	Light optional	Light; KNO_3; prechill at 5° or 10 °C for 5 days and test at 15–25 °C; if still dormant rechill for 3 days and continue test at 15–25 °C an additional 4 days.
Safflower	P, B, T, S	15; 20	4	14	Light at 15 °C	
Sagewort, Louisiana.	P	15–25	7	14	Light	
Sainfoin	B, T	20–30	4	[1] 14		
Saltbush, fourwing.	B	20	5	14	See ¶ (b)(13)	Prechill at 5 °C for 7 days.
Alternate method.	B	15		21		
Sesame	B, T, TB	20–30	3	6		
Sesbania	B, T	20–30	5	[1] 7		
Smilo	P	20–30	7	42	Light	Prechill at 5 °C for 2 weeks; see § 201.57a.
Sorghum	B, T, S	20–30	4	10		Prechill grain vars. at 5° or 10 °C for 5 days; test sweet vars. at 30–45 °C, maintaining 45 °C for 2–4 hours per day.
Sorghum almum	T, S	20–35; 15–35	5	21		Prechill at 5 °C for 5 days; on the 10th day of test, clip or pierce the distal end of ungerminated seeds.
Sorghum-sudangrass.	B, T, S	20–30; 25	4	10		Prechill at 5° or 10 °C for 5 days.
Sorgrass [2]	B, T, S	15–35; 20–35	5	21		Prechill at 5° or 10 °C for 7 days.
Sourclover	B, T	20	3	[1] 14	See ¶ (b)(11)	
Soybean	B, T, S, TC	20–30; 25	5	[1] 8		
Spelt	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry
Sudangrass	B, T, S	20–30; 15–30	4	10		Prechill at 10 °C for 5 days.
Sunflower	T, B	20–30	3	7		
Sweetclover:						
White	B, T, S	20	4	[1] 7	See ¶ (b)(11)	
Yellow	B, T, S	20	4	[1] 7	See ¶ (b)(11)	
Sweet vernalgrass.	P	20–30	6	14	Light	
Sweetvetch, northern.	B, TB, T	15–25; 20	14	[1] 28		
Switchgrass	P, TS	15–30	7	14	Light; KNO_3	Prechill at 5 °C for 2 weeks; see § 201.57a.
Timothy	P, TB	15–25; 20–30	5	10	Light; see ¶ (a)(9)	KNO_3 and prechill at 5° or 10 °C for 5 days.
Timothy, turf	P, TB	15–25; 20–30	5	10	Light	KNO_3 and prechill at 5° or 10 °C for 5 days.
Tobacco	P, TB	20–30	7	14	Light	
Trefoil:						
Big	B, T	20	5	[1] 12		
Birdsfoot	B, P, T	20	5	[1] 12		
Triticale	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry
Vaseygrass	P	20–35	7	21	Light	KNO_3.
Veldtgrass	P	10–30	7	28	Light	See § 201.57a.
Velvetbean	B, T, S, C	20–30	3	[1] 14		
Velvetgrass	P	20–30	6	14	Light	
Vetch:						
Common	B, T	20	5	[1] 10		
Hairy	B, T	20	5	[1] 14		
Hungarian	B, T	20	5	[1] 10		
Monantha	B, T	20	5	[1] 10		
Narrowleaf	B, T	20	5	[1] 14		
Purple	B, T	20	5	[1] 10		
Woollypod	B, T	20	5	[1] 14		Prechill at 10 °C for 5 days, test at 15 °C.
Wheat:						
Common	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry.
Club	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Durum	B, T, S	20; 15	4	10		Prechill at 5° or 10 °C for 5 days, or predry
Polish	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry
Poulard	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry
Wheat Agrotricum	B, T, S	20; 15	4	7		Prechill at 5° or 10 °C for 5 days, or predry
Wheatgrass:						
Beardless	P, TB	15–25	7	14	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Fairway crested.	P, TB	15–25; 20–30	5	14	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Standard crested.	P, TB	15–25; 20–30	5	14	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Intermediate	P	15–25	5	28	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Alternate method.	P	20–30	5	28	Light	
Pubescent	P	15–25	5	28	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Alternate method.	P	20–30	5	28	Light	
Siberian	P, TB	15–25	7	14	Light and KNO_3 optional.	KNO_3 and prechill at 5° or 10 °C for 7 days.
Slender	P, TB	15–25; 10–30	5	14	Light and KNO_3 optional.	Prechill at 5° or 10 °C for 5 days; if still dormant on the 10th day, rechill 2 days, then place at 20–30° C for 4 days.
Streambank	P, TB	15–25	5	14	Light and KNO_3 optional.	Prechill at 5° or 10 °C for 5 days.
Tall	P	15–25	5	21	Light and KNO_3 optional.	Prechill at 5° or 10 °C for 5 days.
Alternate method.	P	20–30	5	21	Light	Prechill at 5° or 10 °C for 5 days.
Western	B, P, T	15–30	7	28	Dark	KNO_3 or soil; see §201.57a.
Wildrye:						
Basin	P	15–25	10	21		See §201.57a.
Canada	P	15–30	7	21	Light	Prechill at 5 °C for 2 weeks.
Russian	P	20–30	5	14	Light	Prechill at 5° or 10 °C for 5 days.
VEGETABLE SEED						
Artichoke	B, T	20–30	7	21		
Asparagus	B, T, S	20–30	7	21		
Asparagusbean	B, T, S	20–30	5	[1]8		
Bean:						
Garden	B, T, S, TC	20–30; 25	None	[1]8		See ¶ (b)(12).
Lima	B, T, C, S	20–30	5	[1]9		
Runner	B, T, S	20–30	5	[1]9		
Beet	B, T, S	20–30	3	14	See ¶ (b)(3)	
Broadbean	S, C	20	4	[1]14	See ¶ (b)(11)	Prechill at 10 °C for 3 days.
Broccoli	B, P, T	20–30	3	10		Prechill at 5° or 10 °C for 3 days; KNO_3 and light.
Brussels sprouts	B, P, T	20–30	3	10	Prechill at 5° or 10 °C for 3 days; KNO_3 and light.	
Burdock, great	B, T	20–30	7	14		
Cabbage	B, P, T	20–30	3	10		Prechill at 5° or 10° C for 3 days, KNO_3 and light.
Cabbage, Chinese.	B, T	20–30	3	7		
Cabbage, tronchuda.	B, P	20–30	3	10		Prechill at 5° or 10 °C for 3 days, KNO_3 and light.
Cardoon	B, T	20–30	7	21		
Carrot	B, T	20–30	6	14		
Cauliflower	B, P, T	20–30	3	10		Prechill at 5° or 10 °C for 3 days; KNO_3 and light
Celeriac	P	5–25; 20	10	21	Light; see ¶ (a)(9)	
Celery	P	15–25; 20	10	21	Light; see ¶ (a)(9)	
Chard, Swiss	B, T, S	20–30	3	14	See ¶ (b)(3)	
Chicory	P, TS	20–30	5	14	Light; KNO_3 or soil; see ¶ (a)(9)	
Chives	B, T	20	6	14		
Citron	B, T	20–30	7	14	Soak seeds 6 hrs	Test at 30° C

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Collards	B, P, T	20–30	3	10		Prechill at 5° or 10° C for 3 days; KNO_3 and light
Corn, sweet	B, T, S, TC	20–30; 25	4	7		
Cornsalad	B, T	15	7	28	Test at 10° C..	
Cowpea	B, T, S	20–30	5	[1]8		
Cress:						
Garden	B, P, T	15	4	10		Light.
Upland	P, TB	20–35	4	7	Light; KNO_3	
Water	P	20–30	4	14	Light	
Cucumber	B, T, S	20–30	3	7	Keep substratum on dry side; see ¶ (a)(3).	
Dandelion	P, TB	20–30	7	21	Light; see ¶ (a)(9)	
Dill	B, T	20–30	7	21		
Eggplant	P, TB, RB, T	20–30	7	14	Light; KNO_3..	
Endive	P, TS	20–30	5	14	Light; KNO_3 or soil	See ¶ (b)(6).
Gherkin, West India.	B, T, S	20–30	3	7	Test at 30° C..	
Kale	B, P, T	20–30	3	10		Prechill at 5° or 10° C for 3 days; KNO_3 and light.
Kale, Chinese	B, P, T	20–30	3	10		Prechill at 5° or 10° C for 3 days; KNO_3 and light.
Kale, Siberian	B, P, T	20–30; 20	3	7		
Kohlrabi	B, P, T	20–30	3	10		Prechill at 5° or 10° C for 3 days; KNO_3 and light.
Leek	B, T	20	6	14		
Lettuce	P	20	None	7	Light	Prechill at 10° C for 3 days or test at 15° C.
Melon	B, T, S	20–30	4	10	Keep substratum on dry side; see ¶ (a)(3).	
Mustard, India	P	20–30	3	7	Light	Prechill at 10° C for 7 days and test for 5 additional days; KNO_3.
Mustard, spinach	B, T	20–30	3	7		
Okra	B, T	20–30	4	[1]14		
Onion	B, T	20	6	10		
Alternate method.	S	20	6	12		
Onion, Welsh	B, T	20	6	10		
Pak-choi	B, T	20–30	3	7		
Parsley	B, T, TS	20–30	11	28		
Parsnip	B, T, TS	20–30	6	28		
Pea	B, T,S	20	5	[1]8		
Pepper	TB, RB, T	20–30	6	14		Light and KNO_3.
Pumpkin	B, T, S	20–30	4	7	Keep substratum on dry side; see ¶ (a)(3).	
Radish	B, T	20	4	6		
Rhubarb	TB, TS	20–30	7	21	Light	
Rutabaga	B, T	20–30	3	14		
Sage	B, T, S	20–30	5	14		
Salsify	B, T	15	5	10	Prechill at 10° C for 3 days..	
Savory, summer	B, T	20–30	5	21		
Sorrel	P, TB, TS	20–30	3	14	Light	Test at 15° C.
Soybean	B, T, S, TC	20–30; 25	5	[1]8		
Spinach	TB, T	15;10	7	21	Keep substratum on dry side; see ¶ (a)(3).	
Spinach, New Zealand.	T	15; 20	5	21	Soak fruits overnight (16 hrs), air dry 7 hrs; plant in very wet towels; do not rewater unless later counts exhibit drying out.	On 21st day scrape fruits and test for 7 additional days.

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Alternate method	B, T	15	5	21	Remove pulp from basal end of fruit.	
Squash	B, T, S	20–30	4	7	Keep substratum on dry side; see ¶ (a)(3).	
Tomato	B, P, RB, T	20–30	5	14		Light; KNO_3.
Tomato, husk	P, TB	20–30	7	28	Light; KNO_3	
Turnip	B, T	20–30	3	7		
Watermelon	B, T, S	20–30; 25	4	14	Keep substratum on dry side; see ¶ (a)(3).	Test at 30° C.

[1] Hard seeds may be present. (See § 201.57)
[2] Rhizomatous derivatives of a johnsongrass sorghum cross or a johnsongrass sudangrass cross.

33. Section 201.58a is revised to read as follows:

§ 201.58a Indistinguishable seeds.

When the identification of the kind, variety, or type of seed or determination that seed is hybrid is not possible by seed characteristics, identification may be based upon the seedling, growing plant or mature plant characteristics according to such authentic information as is available.

(a) *Ryegrass.* In determining the pure seed percentage of perennial ryegrass and annual ryegrass, 400 seeds shall be grown on white filter paper and the number of fluorescent seedlings determined under ultraviolet light at the end of the germination period (see § 201.58(b)(10)).

(1) Fluorescence results are to be determined as test fluorescence level (TFL) to two decimal places as follows

$$\% \text{ TFL} = \frac{\text{Number of normal fluorescent seedlings}}{\text{Total number of normal seedlings}} \times 100$$

(2) The percentage of perennial ryegrass is calculated as follows:

$$\% \text{ Perennial ryegrass} = \frac{\% \text{ VFL (annual)} - \% \text{ TFL}}{\% \text{ VFL (annual)} - \% \text{ VFL (perennial)}} \times \% \text{ Pure ryegrass}$$

where VFL=Variety fluorescence level.

(3) Using results from the above formula, the percentage of annual ryegrass is calculated as follows:

% Annual Ryegrass = % Pure Ryegrass − % Perennial Ryegrass

(4) If the test fluorescence level (TFL) of a perennial ryegrass is equal to or less than the variety fluorescence level (VFL) described for the variety, all pure ryegrass is considered to be perennial ryegrass and the formula is not applied.

(5) If the test fluorescence level (TFL) of an annual ryegrass is equal to or greater than the variety fluorescence level (VFL) described for the variety, all pure ryegrass is considered to be annual ryegrass and the formula is not applied.

(6) A list of variety fluorescence level (VFL) descriptions for perennial ryegrass varieties which are more than 0 percent fluorescent and annual ryegrass varieties which are less than 100 percent fluorescent is maintained and published by the National Grass Variety Review Board of the Association of Official Seed Certifying Agencies (AOSCA). If the variety being tested is not stated or the fluorescence level has not been described, the fluorescence level shall be considered to be 0 percent for perennial ryegrass and 100 percent for annual ryegrass. Both VFL (annual) and VFL (perennial) values must always be entered in the formula. If a perennial ryegrass variety is being tested, the VFL (annual) value is 100 percent. If an annual ryegrass variety is being tested, the VFL (perennial) value is 0 percent. For blends the fluorescence level shall be interpolated according to the portion of each variety claimed to be present.

(b) *Sweetclover.* To determine the presence of yellow sweetclover in samples of white sweetclover, at least 400 seeds shall be subjected to the chemical test as follows:

(1) Preparation of test solution: Add 3 grams of cupric sulfate ($CuSO_4$) to 30 ml of household ammonia (NH_4OH, approximately 4.8 percent) in a stoppered bottle to form tetraamminecopper sulfate ($[Cu(NH_3)_4]SO_4$) solution used for this test. After mixing, a light blue precipitate of cupric hydroxide ($Cu(OH)_2$) should form. If no precipitate forms, add additional $CuSO_4$ until a precipitate appears. Since the strength of household ammonia can vary, formation of a precipitate indicates that a complete reaction has taken place between $CuSO_4$ and NH_4OH; otherwise fumes from excess ammonium hydroxide may cause eye irritation.

(2) Preparation of seeds: To insure imbibition, scratch, prick, or otherwise scarify the seed coats of the sweetclover seeds being tested. Soak seeds in water for 2 to 5 hours in a glass container

(3) Chemical reaction: When seeds have imbibed, remove excess water and add enough test solution to cover the seeds. Seeds coats of yellow sweetclover will begin to stain dark brown to black.

seed coats of white sweetclover will be olive or yellow-green. Make the separation within 20 minutes, since the seed coats of white sweetclover will eventually turn black also.

(4) Calculation of results: Count the number of seeds which stain dark brown or black and divide by the total number of seeds tested; multiply by the pure seed percentage for Melilotus spp., the result is the percentage of yellow sweetclover in the sample. The percentage of white sweetclover is found by subtracting the percentage of yellow sweetclover from the percentage of Melilotus spp. pure seed.

(c) *Wheat.* In determining varietal purity, the phenol test may be used. From the pure seed sample count four replicates of 100 seeds each. Soak the seed in distilled water for 16 hours; then flush with tap water and remove the excess water from the surface of the seeds. Place two layers of filter paper in a container and moisten with a 1 percent phenol (C_6H_5OH) solution. Place the seed, palea side down, on the two layers of filter paper and cover the container. A preliminary observation may be made at 2 hours. At 4 hours, record the number of seeds in each of the following color categories:

(1) Ivory.

(2) Fawn.

(3) Light Brown.

(4) Brown.

(5) Brown Black.

(d) *Soybean.* In determining the varietal purity, the peroxidase test may be used. Remove and place the dry seed coat from seeds into individual test tubes or suitable containers. Add 10 drops (0.5–1.0 ml) of 0.5 percent guaiacol ($C_7H_8O_2$) to each test tube. After waiting 10 minutes add one drop (about 0.1 ml) of 0.1 percent hydrogen peroxide (H_2O_2). One minute after adding hydrogen peroxide, record the seed coat as peroxidase positive (high peroxidase activity) indicated by a reddish-brown solution or peroxidase negative (low peroxidase activity) indicated by a colorless solution in the test tube. Various sample sizes may be used for this test. Test results shall include the sample size tested.

(e) *Oat.* In determining the varietal purity, the fluorescence test may be used. Place at least 400 seeds on a black background under a F15T8–BLB or comparable ultraviolet tube(s) in an area where light from other sources is excluded. Seeds are considered fluorescent if the lemma or palea fluoresce or appear light in color "Partially fluorescent" seeds shall be considered fluorescent. Seeds are considered nonfluorescent if the lemma and palea do not fluoresce and appear dark in color under the ultraviolet light.

34. A new § 201.58d is added to read as follows:

§ 201.58d Fungal endophyte test.

A fungal endophyte test may be used to determine the amount of fungal endophyte (*Acremonium* spp.) in certain grasses.

(a) Method of preparation of aniline blue stain for use in testing grass seed and plant material for the presence of fungal endophyte:

(1) Prepare a 1 percent aqueous aniline blue solution by dissolving 1 gram aniline blue in 100 ml distilled water.

(2) Prepare the endophyte staining solution of one part of 1 percent aniline blue solution with 2 parts of 85 percent lactic acid ($C_3H_6O_3$).

(3) Use stain as-is or dilute with water if staining is too dark.

(b) Procedure for determining levels of fungal endophyte in grass seed:

(1) Take a sub-sample of seed (1 gram is sufficient) from the pure seed portion of the kind under consideration.

(2) Digest seed at room temperature for 12–16 hours in a 5 percent sodium hydroxide (NaOH) solution or other temperature/time combination resulting in adequate seed softening.

(3) Rinse thoroughly in running tap water.

(4) De-glume seeds and place on a microscope slide in a drop of endophyte staining solution. Slightly crush the seeds. Use caution to prevent carryover hyphae of fungal endophyte from one seed to another.

(5) Place coverglass on seed and apply gentle pressure.

(6) Examine with compound microscope at 100–400x magnification, scoring a seed as positive if any identifiable hyphae are present.

(7) Various sample sizes may be used for this test. Precision changes with sample size; therefore, the test results must include the sample size tested.

(c) Procedure for determining levels of fungal endophyte in seedlings from seed samples suspected to contain fungal endophyte:

(1) Select seeds at random and germinate.

(2) Examine seedlings from the sample germinated after growing for a minimum of 48 days.

(3) Remove the outermost sheath from the seedling. Tissue should have no obvious discoloration from saprophytes and should have as little chlorophyll as possible.

(4) Isolate a longitudinal section of leaf sheath approximately 3–5 mm in width.

(5) Place the section on a microscope slide with the epidermis side down.

(6) Stain immediately with the endophyte staining solution as prepared in paragraph (a) (2) and (3) of this section. Allow dye to remain at least 15 seconds but no more than one minute.

(7) Blot off the excess dye with tissue paper. Sections should remain on the slide, but may adhere to the tissue paper; if so, remove and place in proper position on the slide.

(8) Place a coverglass on the sections and flood with water.

(9) Proceed with evaluation as described in paragraph (b) (6) and (7) of this section.

35. In § 201.60, paragraphs (a)(1) and (c) are revised to read as follows:

§ 201.60 Purity percentages.

(a)(1) The tolerance for a given percentage of the purity components is the same whether for pure seed, other crop seed, weed seed, or inert matter Wider tolerances are provided when 33 percent or more of the sample is composed of seed plus empty florets and/or empty spikelets of the following chaffy kinds: bentgrasses, bermudagrasses, bluegrasses, bluestems, bottlebrush- squirreltail, bromes, buffalograss, buffelgrass, carpetgrass, soft chess, dallisgrass, fescues, meadow foxtail, galletagrass, guineagrass, gramas, molassesgrass, tall oatgrass, orchardgrass, redtop, rescuegrass, rhodesgrass, Indian ricegrass, ryegrasses, sweet vernalgrass, vaseygrass, veldtgrass, wheatgrasses, wildryes, and yellow indiangrass. The wider tolerances do not apply to seed devoid of hulls.

* * * * *

(c) Tolerances calculated by the following formula shall be used for either chaffy or nonchaffy mixtures when the average particle-weight ratio is 1.5:1 to 20:1 and beyond:

The symbols used in the formula are as follows:

T=tolerance being calculated.

A=percent which the weight of the component with the heavier average particle-weight is of the weight of both components.

B=percent which the weight of the component with the lighter average particle-weight is of the weight of both components.

H=average particle-weight for the component with the heavier average particle-weight.

L=average particle-weight for the component with the lighter average particle-weight.

R=ratio of the average particle-weight for the component with the heavier

average particle-weight to the average particle-weight for the component with the lighter average particle-weight. R=H/L.

$$T = A - \frac{100\,R[(100\,A/R)/(B+A/R)-T1]}{[(100\,B)/(B+A/R)+T1]+R[(100\,A/R)/(B+A/R)-T1]}$$

T1=regular tolerance for the kind of seed (chaffy or nonchaffy) and for (100B)/(B+A/R).

In determining the values for A and B in the formula, the sample shall be regarded as composed of two parts:

(1) The kind, type, or variety under consideration, and

(2) All other components. Values for H and L shall be obtained from the last column of Table 1, § 201.46, or by laboratory tests for inert matter, weed seeds, or crop seeds where such values are not obtainable from Table 1. In computing tolerances for nonchaffy kinds the values for T1 are taken from column C of Table 3, and for chaffy kinds the values for T1 are taken from column D of Table 3.

§ 201.61 [Amended]

36. Section 201.61 is amended by removing "2.4" following the number "3" in the first table and adding "2.8" in its place and removing "2.8" following the number "2" and adding "2.4" in its place.

§ 201.62 [Amended]

37. In § 201.62, Table 4 is amended by removing in the "100" column "4.0" and adding "4.6" in its place.

38. Section 201.76 and Table 5 are revised to read as follows:

§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.

In the following Table 5 the figures in the "Land" column indicate the number of years that must elapse between the destruction of a stand of a kind and establishment of a stand of a specified class of a variety of the same kind. A certification agency may grant a variance in the land cropping history in specific circumstances where cultural practices have been proven adequate to maintain genetic purity. The figures in "Isolation" column indicate the distance in feet from any contamination source. The figures in the "Field" column indicate the minimum number of plants or heads in which one plant or head of another variety is permitted. The figure in the "Seed" column indicate the maximum percentage of seed of other varieties of off-types permitted in the cleaned seed.

TABLE 5

Crop	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Alfalfa:												
Non hybrid	[1]4	[44, 48]600 ([59]182.88m)	1,000	0.1	[1]3	[3, 44, 48]300 ([59]91.44m)	400	0.25	[1, 2]1	[44, 49]165 ([59]50.29m)	100	1.0
Hybrid	[1]4	[43]1,320 ([59]402.34m)	[42]1,000	0.1	.....	.....	.....	.....	[1, 2]1	[3, 43, 44]165 ([59]50.29m)	[42]100	1.0
Barley:												
Non hybrid	[7]1	[23]0	3,000	0.05	[7]1	[23]0	2,000	0.1	[7]1	[23]0	1,000	0.2
Hybrid	[30]1	[21, 32]660 ([59]201.17m)	3,000	0.05	[30]1	[21, 32]660 ([59]201.17m)	2,000	0.1	[30]1	[21, 32]330 ([59]100.59m)	1,000	[55]0.2
Hybrid (Chemically assisted)	.....	.....	.....	.....	.....	.....	.....	.....	[57]0	[52, 53]330 ([59]100.59m)	[54]1,000	0.2
Bean:												
Field and garden	[7]1	[23]0	2,000	0.05	[7]1	[23]0	1,000	0.1	[7]1	[23]0	400	0.2
Mung	[7]1	[23]0	1,000	0.1	[7]1	[23]0	500	0.2	[7]1	[23]0	200	0.5
Broad bean	[7]1	[23]0	2,000	0.05	[7]1	[23]0	1,000	0.1	[7]1	[23]0	500	0.2
Buckwheat	[7]1	660 ([59]201.17m)	3,000	0.05	[7]1	660 ([59]201.17m)	2,000	0.1	[7]1	660 ([59]201.17m)	1,000	0.2
Clover all kinds	[1, 9]5	[5, 18, 44]600 ([59]182.88m)	1,000	0.1	[1, 9]3	[5, 18, 44]300 ([59]91.44m)	400	0.25	[1, 9]2	[18, 44]165 ([59]50.29	100	1.0
Corn:												
Back cross	0	[10, 11]660 ([59]201.17m)	[13, 46]1,000	[15]0.1	.....	.....	.....	.....	.....	.....	.....	.....
Inbred	0	[10, 11]660 ([59]201.17m)	[13, 46]1,000	[15]0.1	.....	.....	.....	.....	.....	.....	.....	.....
Foundation single cross	0	[10, 11]660 ([59]201.17m)	[13, 46]1,000	[15]0.1	.....	.....	.....	.....	.....	.....	.....	.....
Hybrid	.....	.....	.....	.....	.....	.....	.....	.....	0	[11, 12]660 ([59]201.17m)	1,000	0.5
Open-pollinated	.....	.....	.....	.....	.....	.....	.....	.....	0	[11, 12]660 ([59]201.17m)	200	0.5
Sweet	.....	.....	.....	.....	.....	.....	.....	.....	0	[11, 14]600 ([59]201.17m)	.....	0.5
Cotton	0	[19]0	10,000	0.03	0	[19]0	5,000	0.05	0	[19]0	1,000	0.1
Cowpea	[7]1	[23]0	2,000	0.1	[7]1	[23]0	1,000	0.2	[7]1	[23]0	500	0.5
Crambe	[7]1	660 ([59]201.17m)	2,000	0.05	[7]1	[24]660 ([59]201.17m)	1,000	0.1	[7]1	[24]660 ([59]201.17m)	500	0.25
Crownvetch	[1]5	[5, 44]600 ([59]182.88m)	1,000	0.1	[1]3	[5, 44]300 ([59]91.44m)	400	0.25	[1]2	[6, 44]165 ([59]50.29)	100	1.0
Flatpea	[1]4	[5, 44]600 ([59]182.88m)	1,000	0.1	[1]3	[3, 5, 44]300 ([59]91.44m)	400	0.25	[1, 2]1	[3, 44]165 ([59]50.29m)	100	1.0
Flax	[7]1	[23]0	5,000	0.05	[7]1	[23]0	2,000	0.1	[7]1	[23]0	1,000	0.2
Grasses:												
Cross-pollinated	[57]5	[4, 18, 20]900 ([59]274.32m)	1,000	0.1	[8, 57]1	[4, 18, 20]300 ([59]91.44m)	100	1.0	[8, 57]1	[4, 18, 20, 58]165 ([59]50.29)	50	[47, 50]2.0
Strains at least 80 percent apomictic and highly self-fertile species	[57]5	[4, 18, 20]60 ([59]18.29m)	1,000	0.1	[8, 57]1	[4, 18, 20]30 ([59]9.14m)	100	1.0	[9, 57]1	[4, 18, 20, 58]15 ([59]4.57m)	50	[16]2.0
Lespedeza	[1]5	[4]10 ([59]3.05m)	1,000	0.1	[1]3	[4]10 ([59]3.05m)	400	0.25	[1]2	[4]10 ([59]3.05m)	100	1.0
Millet:												
Cross-pollinated	[8]1	[40]1,320 ([59]402.34m)	[27]20,000	0.005	[8]1	[40]1,320 ([59]402.34m)	[27]10,000	0.01	[8]1	[40]660 ([59]201.17m)	[27]5,000	0.02

TABLE 5—Continued

Crop	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Self-pollinated	[8] 1	[23] 0	3,000	0.05	[8] 1	[23] 0	2,000	0.1	[8] 1	[23] 0	1,000	0.2
Mustard	4	1,320 ([59] 402.34m)	2,000	0.05	.....	.....	.....	.....	2	[24] 660 ([59] 201.17m)	500	0.25
Oat	[7] 1	[23] 0	3,000	0.2	[7] 1	[23] 0	2,000	0.3	[7] 1	[23] 0	1,000	0.5
Okra	[7] 1	1,320 ([59] 402.34m)	[27] 0	0.0	[7] 1	1,320 ([59] 402.34m)	[27] 2,500	0.5	[7] 1	825 ([59] 251.46m)	[27] 1,250	1.0
Onion	[7] 1	5,280 ([59] 1,609.36m)	[22] 200	0.0	[7] 1	2,640 ([59] 804.66m)	[22] 200	[22] 0.5	[7] 1	1,320 ([59] 402.34m)	[22] 200	[22] 1.0
Pea, field	[7] 1	[23] 0	2,000	0.05	[7] 1	[23] 0	1,000	0.1	[7] 1	[23] 0	500	0.2
Peanut	[7] 1	[23] 0	1,000	0.1	[7] 1	[23] 0	500	0.2	[7] 1	[23] 0	200	0.5
Pepper	[7] 1	[25] 200 ([59] 60.96m)	0	0.0	[7] 1	[25] 100 ([59] 30.48m)	300	0.5	[7] 1	[25] 30 ([59] 9.14m)	150	1.0
Rape:												
Cross-pollinated	4	[24] 1,320 ([59] 402.34m)	2,000	0.05	.....	.....	.....	.....	2	[24] 330 ([59] 100.59m)	500	0.25
Self-pollinated	4	[24] 660 ([59] 201.17m)	2,000	0.05	.....	.....	.....	.....	2	[24] 330 ([59] 100.59m)	500	0.25
Rice	[7] 1	[39] 10 ([59] 3.05m)	10,000	0.05	[7] 1	[39] 10 ([59] 3.05m)	5,000	0.1	[7] 1	[39] 10 ([59] 3.05)	1,000	0.2
Rye	[7] 1	[18] 660 ([59] 201.17m)	3,000	0.05	[7] 1	[18] 660 ([59] 201.17m)	2,000	0.1	[7] 1	[18] 660 ([59] 201.17m)	1,000	0.2
Safflower	[7] 2	1,320 ([59] 402.34m)	10,000	0.01	[7] 2	1,320 ([59] 402.34m)	2,000	0.05	[7] 2	1,320 ([59] 402.34m)	1,000	0.1
Sainfoin	[1] 5	[5, 44] 600 ([59] 182.88m)	1,000	0.1	[1] 3	[5, 44] 300 ([59] 91.44m)	400	0.25	[1] 2	[6, 44] 165 ([59] 50.29m)	100	1.0
Sorghum:												
Nonhybrid	[7] 1	900 ([59] 301.76m)	[27] 50,000	0.005	[7] 1	990 ([59] 301.76m)	[27] 35,000	0.01	[7] 1	[29] 660 ([59] 201.17m)	[27] 20,000	0.05
Hybrid seedstock	[7] 1	990 ([59] 301.76m)	[27] 50,000	0.005	.....	.....	.....	.....	.....	.....	.....	.....
Commercial hybrid	.....	.....	.....	.....	.....	.....	.....	.....	[7] 1	[21, 29, 31] 660 ([59] 201.17m)	[27] 20,000	0.1
Soybean	[23] 1	[23] 0	1,000	0.1	[33] 1	[23] 0	500	0.2	[33] 1	[23] 0	200	0.5
Sunflower:												
Nonhybrid	1	[41, 45] 2,640 ([59] 804.66m)	200	0.02	1	[41, 45] 2,640 ([59] 804.66m)	200	0.02	1	[41, 45] 2,640 ([59] 804.66m)	200	[34] 0.1
Hybrid	1	[41, 45] 2,640 ([59] 804.66m)	[35] 250	[56] 0.02	.....	.....	.....	.....	1	[41, 45] 2,640 ([59] 804.66m)	[35] 250	[34, 56] 0.1
Tomato	[7] 1	[25] 200 ([59] 60.96m)	0	0	[7] 1	[25] 100 ([59] 30.48m)	300	0.5	[7] 1	[25] 30 ([59] 9.14m)	150	1.0
Tobacco:												
Nonhybrid	[36] 0	[37] 150 ([59] 45.72m)	0	0.01	[36] 0	[37] 150 ([59] 45.72m)	0	0.01	[36] 0	[37] 150 ([59] 45.72m)	0	0.01
Hybrid	.....	.....	.....	.....	.....	.....	.....	.....	[36] 0	[38] 150 ([59] 45.72m)	0	0.01
Trefoil, birdsfoot	[1] 5	[5, 44] 600 ([59] 182.88m)	1,000	0.1	[1] 3	[5, 44] 300 ([59] 91.44m)	400	0.25	[1] 2	[6, 44] 165 ([59] 50.29m)	100	1.0
Triticale	[7] 1	[23] 0	3,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Vetch	[1, 7] 5	[17, 44] 10 ([59] 3.05m)	1,000	0.1	[1, 7] 3	[17, 44] 10 ([59] 3.05m)	400	0.25	[1, 7] 2	[17, 44] 10 ([59] 3.05m)	100	1.0
Vetch, milk	[1] 5	[5, 44] 600 ([59] 182.88m)	2,000	0.05	[1] 3	[5, 44] 300 ([59] 91.44m)	1,000	0.1	[1] 2	[44] 165 ([59] 50.29m)	200	0.5

Watermelon	[7] 1	[26] 2,640 ([59] 804.66m)	[28] 0	0	[7] 1	[26] 2,640 ([59] 402.34m)	[28] 0	0.5	[7] 1	[26] 1,320	[28] 500	1.0
Wheat:												
Nonhybrid	[7] 1	[23] 0	3,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Hybrid	[30] 1	[21, 32] 660 ([59] 201.17m)	3,000	0.05	[30] 1	[21, 32] 660 ([59] 201.17m)	2,000	0.1	[30] 1	[21, 32] 330 ([59] 100.59m)	1,000	0.2
Hybrid (Chemically assisted)	.....	.....	.....	.....	.....	.....	.....	.....	[51] 0	[52, 53] 330 ([59] 100.58m)	[54] 1,000	[55] 0.2

[1] The land must be free of volunteer plants of the crop kind during the year immediately prior to establishment and no manure or other contaminating material shall be applied the year previous to seeding or during the establishment and productive life of the stand.
[2] At least 2 years must elapse between destruction of indistinguishable varieties or varieties of dissimilar adaptation and establishment of the stand for the production of the Certified class of seed.
[3] Isolation distance for certified seed production shall be at least 500 feet (152.07m) from varieties of dissimilar adaptation.
[4] Isolation between classes of the same variety may be reduced to 25 percent of the distance otherwise required.
[5] This distance applies when fields are 5 acres (2ha) or larger in area. For smaller fields, the distances are 900 feet (274.32m) and 450 feet (137 16m) for the Foundation and Registered classes, respectively.
[6] Fields of less than 5 acres (2ha) require 330 feet (100.59m).
[7] Requirement is waived if the previous crop was grown from certified seed of the same variety.
[8] Requirement is waived if the previous crop was of the same variety and of a certified class equal or superior to that of the crop seeded.
[9] Reseeding varieties of crimson clover may be allowed to volunteer back year after year on the same ground. If a new variety is being planted where another variety once grew, the field history requirements apply.
[10] No isolation is required for the production of hand-pollinated seed.
[11] When the contaminant is the same color and texture, the isolation distance may be modified by (1) adequate natural barriers or (2) differential maturity dates, provided there are no receptive silks in the seed parent at the time the contaminant is shedding pollen. In addition, dent sterile popcorn requires no isolation from dent corn.
[12] Where the contaminating source is corn of the same color and texture as that of the field inspected or white endosperm-corn optically sorted, the isolation distance is 410 feet (124.97m) and may be modified by the planting of pollen parent border rows according to the following table:

Minimum distance from contaminant	Minimum Numbers of Border Rows Required	
	Field size, up to 20 acres (8ha)	Field size, 20 acres (8ha) or more
410 (124.97m)	0	0
370 (112.78m)	2 (0.8ha)	1 (0.4ha)
330 (100.59m)	4 (1.6ha)	2 (0.8ha)
290 (88.39m)	6 (2.4ha)	3 (1.2ha)
245 (74.68m)	8 (3.2ha)	4 (1.6ha)
205 (62.48m)	10 (4.0ha)	5 (2.0ha)
165 (50.29m)	12 (4.8ha)	6 (2.4ha)
125 (38.10m)	14 (5.6ha)	7 (2.8ha)
85 (25.91m)	16 (6.4ha)	8 (3.2ha)
0	Not permitted	10 (4.0ha)

[13] Refers to off-type plants in the pollen parent that have shed pollen or to the off-type plants in the see parent at the time of the last inspection.
[14] The required minimum isolation distance for sweet corn is 660 feet (201.17m) from the contaminating source, plus four border rows when the field to be inspected is 10 acres (4.0ha) or less in size. This distance may be decreased by 15 feet (4.57m) for each increment of 4 acres (1.6ha) in the size of the field to a maximum of 40 acres (16ha) and further decreased 40 feet (12.19m) for each additional border row to a maximum of 16 rows. These border rows are for pollen-shedding purposes only.
[15] Refers to off-type ears. Ears with off-colored or different textured kernels are limited to 0.5 percent, or a total of 25 off-colored or different textured kernels per 1,000 ears.
[16] The Merion variety of Kentucky bluegrass is allowed 3 percent.
[17] All cross-pollinating varieties must be 400 feet (121.92m) from any contaminating source.
[18] Isolation between diploids and tetraploids shall be at least 15 feet (4.57m).
[19] Minimum isolation shall be at least 100 feet (30.48m) if the cotton plants in the contaminating source differ by easily observable morphological characteristics from the field to be inspected. Isolation distance between upland and Egyptian types shall be at least 1,320 feet (402.34m), 1,320 feet (402.34m), and 660 feet (182.88m) for Foundation, Registered, and Certified classes, respectively.
[20] These distances apply when there is no border removal. Border removal applies only to fields of 5 acres (2ha) or more. Removal of a 9-foot (2.7m) border (after flowering) decreases the required distance for Foundation, Registered, and Certified seed classes to 600 feet (182.88m), 225 feet (68.58m), and 100 feet (30.48m), respectively, for cross-pollinated species, and to 30 feet (9.14m), 15 feet (4.57m), and 15 feet (4.57m), respectively, for apomictic and self-pollinated species. Removal of a 15 foot (4.57m) border (after flowering) allows a further decrease to 450 feet (136.16m), 150 feet (45.72m), and 75 feet (22.86m), respectively, for cross-pollinated species.
[21] Isolation distances between 2 fields of the same kind may be reduced to a distance adequate to prevent mechanical mixture, if the sum of percentages of plants in bloom in both fields does not exceed 5 percent at a time when more than 1 percent of the plants in either field are in bloom.
[22] Refers to bulbs.
[23] Distance adequate to prevent mechanical mixture is necessary.
[24] Required isolation between classes of the same variety is 10 feet (3.05m).
[25] The minimum distance may be reduced by 50 percent if different classes of the same variety are involved.
[26] The minimum distance may be reduced by 50 percent if the field is adequately protected by natural or artificial barriers.
[27] These ratios are for definite other varieties. The ratios for doubtful other varieties are:

	Foundation	Registered	Certified
Millet	1:10,000	1:5,000	1:2,500
Sorghum:			
Nonhybrid	1:20,000	1:10,000	1:1,000

	Foundation	Registered	Certified
Hybrid	1:20,000	NA	1.1,000
Okra	None	1:750	1:500

[28] Whiteheart fruits may not exceed 1 per 100, 40, and 20 for Foundation, Registered, and Certified classes, respectively Citron or hard rind is not permitted in Foundation or Registered classes and may not exceed 1 per 1,000 fruits in the Certified class.

[29] This distance applies if the contaminating source does not genetically differ in height from the pollinator parent or has a different chromosome number. If the contaminating source does (genetically) differ and has the same chromosome number the distance shall be 990 feet (301.76m). The minimum isolation from grass sorghum or broomcorn with the same chromosome number shall be 1,320 feet (402.34m).

[30] Requirement is waived for the production of pollinator lines if the previous crop was grown from a certified class of seed of the same variety. Sterile lines and crossing blocks must be on land free of contaminating plants.

[31] If the contaminating source is similar to the hybrid in all important characteristics, the isolation may be reduced by 66 feet (20.12m) for each pair of border rows of the pollinator parent down to a minimum of 330 feet (100.59m). These rows must be located directly opposite or diagonally to the contaminating source. The pollinator border rows must be shedding pollen during the entire time 5 percent or more of the seed parent flowers are receptive.

[32] An unplanted strip at least 2 feet (0.61m) in width shall separate male sterile plants and pollinator plants in inter-planted blocks.

[33] Unless the preceding crop was another kind or unless the preceding soybean crop was planted with a class of certified seed of the same variety, or unless the preceding soybean crop and the variety being planted have an identifiable character difference, in which case, no time need elapse.

[34] May include not more than 0.04 percent purple or white seeds.

[35] Standards apply equally to seed parents and pollen parents which may include up to 1 1,000 plants each of the wild-type branching, purple, or white-seeded plants.

[36] A new plant bed must be used each year unless the bed is properly treated with a soil sterilant prior to seeding.

[37] This distance is applied between varieties of the same type and may be waived if four border rows of each variety are allowed to bloom and set seed between the two varieties but are not harvested for seed. Isolation between varieties of different types shall be 1,320 feet (402.34m) except if protected by bagging or by topping all plants in the contaminating source before bloom.

[38] When male sterile and male fertile plants of the same type are planted adjacent in a field, this requirement may be waived; provided, four border rows of male sterile plants are allowed to bloom and set seeds. The seed from these border rows shall not be harvested as part of the certified lot of seed produced by the male sterile plants. When plants are of different types, the distance shall be 1,320 feet (402.34m) except if protected by bagging or by topping all plants in the contaminating source before bloom.

[39] Isolation between varieties or non-certified fields of the same variety shall be 100 feet (30.48m) if aerial seeded and 50 feet (15.24m) if ground broadcast, and 10 feet (3.05m) is ground drilled.

[40] Isolation between millets of different genera shall be 6 feet (1.83m).

[41] Does not apply to *Helianthus similes, H. ludens,* or *H. agrestis.*

[42] The ratio of male sterile (A) strains and pollen (B or C) strains shall not exceed 2:1

[43] Parent lines (A and B) in a crossing block, or seed and pollen lines in a hybrid seed production field, shall be separated by at least 6 feet (1.83m) and shall be managed and harvested in a manner to prevent mixing.

[44] Distance between fields of certified classes of the same variety may be reduced to 10 feet (3.05m) regardless of the class or size of the fields.

[45] An isolation distance of 5,280 feet (1609.36m) is required between oil and non-oil sunflower types and between either type and other volunteers or wild types.

[46] Detasseling, cutting, or pulling of the cytoplasmic male-sterile seed parent is permitted.

[47] All varieties of perennial ryegrass seed are allowed 3.0 percent.

[48] This distance applies for fields over 5 acres (2ha) For alfalfa fields of 5 acres (2ha) or less that produce the Foundation and Registered seed classes, the minimum distance from a different variety or a field of the same variety that does not meet the varietal purity requirements for certification shall be 900 feet (274.32m) and 450 feet (137 16m), respectively

[49] There must be at least 10 feet (3.05m) or a distance adequate to prevent mechanical mixture between a field of another variety (or non-certified area within the same field) and the area being certified. The 165 feet (50.29m) isolation requirement is waived if the area of the "isolation zone" is less than 10 percent of the field eligible for the Certified class The "isolation zone" is that area calculated by multiplying the length of the common border(s) with other varieties of alfalfa by the average width of the field (being certified) falling within the 165 feet (50.29m) isolation Areas within the isolation zone nearest the contamination source shall not be certified.

[50] Seed of Critana thickspike wheatgrass may contain up to 30 percent slender wheatgrass types

[51] Crossing blocks must be planted on land free of volunteer contaminating plants.

[52] This distance applies to the seed parent when the contaminating source is wheat of another market class If the contaminating source is the same market class as the seed parent, the distance may be modified by the planting of pollen parent border according to the following table

Minimum distance from contaminant		Pollen (parent border)	
Feet	Meters	Feet	Meters
330	100.59	0	0
275	83.82	15	4.57
215	65.53	25	7 62
160	48 77	35	10.67
100	30 48	50	15.24

[53] Interplanted blocks of seed parent and pollinator shall be separated by an unplanted strip a minimum of one foot (0.31m) in width and be clearly identifiable

[54] If Foundation or Registered the ratio shall be 1 3000 (Foundation) and 1 2000 (Registered)

[55] Does not include seed of the female parent

[56] Pre-Control Test Standards If field inspection shows one or more of the following, the applicant may request that seed certification be based on the results of a pre-certification grow-out test approved by the certification agency a inadequate isolation, b too few male parent plants shedding pollen when female plants are receptive, c excess off-types not to include wild types In such cases, at least 2,000 plants must be observed and meet the following standards before seed can be certified from fields with problems listed above

[For non-oil types, seed which contains not more than 15 percent sterile plants may be certified. If it contains 85 percent-95 percent hybrid plants, the percentage of hybrid shall be shown on the certification label]

Factor	Maximum Permitted	
	Hybrid (percent)	Inbred (percent)
Sterile Plants	5.0	.....
Sterile or Fertile Plants	.....	5.0
Morphological Variants	0.5	0.5
Wild Types	0.2	0.2
Total (including above types)	5.0	5.0

[57] Application to establish the pedigree must be made within one year of seeding. The crop will remain under supervision of the certifying agency as long as the field is eligible for certification.

[58] These distances apply when there is no border removal. Varieties that are 95 percent or more apomictic, as defined by the originating breeder, shall have the isolation distance reduced to a mechanical separation only. Varieties less than 95 percent apomictic and all other cross pollinating species that have an "isolation zone" of less than 10 percent of the entire field, no isolation is required. (Isolation zone is calculated by multiplying the length of the common border with other varieties of grass by the average width of the certified field falling within the isolation distance required.)

[59] Indicates metric equivalent in meters.

Dated: December 2, 1994

Lon Hatamiya,

Administrator

[FR Doc. 94–30367 Filed 12–13–94, 8:45 am]

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Wednesday
December 14, 1994

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1001, et al.
Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

[Docket Nos. AO–14–A67, etc.; DA–94–02]

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1001 ..	New England	AO–14–A67
1002 ..	New York-New Jersey.	AO–71–A82
1004 ..	Middle Atlantic	AO–160–A70
1005 ..	Carolina	AO–388–A7
1006 ..	Upper Florida	AO–356–A31
1007 ..	Georgia	AO–366–A37
1011 ..	Tennessee Valley	AO–251–A38
1012 ..	Tampa Bay	AO–347–A34
1013 ..	Southeastern Florida	AO–286–A41
1030 ..	Chicago Regional	AO–361–A32
1032 ..	Southern Illinois-Eastern Missouri.	AO–313–A41
1033 ..	Ohio Valley	AO–166–A64
1036 ..	Eastern Ohio-Western Pennsylvania.	AO–179–A59
1040 ..	Southern Michigan ..	AO–225–A46
1044 ..	Michigan Upper Peninsula.	AO–299–A29
1046 ..	Louisville-Lexington-Evansville.	AO–123–A65
1049 ..	Indiana	AO–319–A42
1050 ..	Central Illinois	AO–355–A29
1064 ..	Greater Kansas City	AO–23–A62
1065 ..	Nebraska-Western Iowa.	AO–86–A51
1068 ..	Upper Midwest	AO–178–A49
1075 ..	Black Hills, South Dakota.	AO–248–A23 (corr.)
1076 ..	Eastern South Dakota.	AO–260–A33
1079 .	Iowa	AO–295–A45
1093 ..	Alabama-West Florida.	AO–386–A15
1094 ..	New Orleans-Mississippi.	AO–103–A57
1096	Greater Louisiana	AO–257–A44
1099 ..	Paducah, Kentucky .	AO–183–A48
1106 ..	Southwest Plains	AO–210–A55
1108 .	Central Arkansas	AO–243–A47
1124 ..	Pacific Northwest	AO–368–A23 (corr.)
1126 ..	Texas	AO–231–A63
1131 ..	Central Arizona	AO–271–A33
1134 ..	Western Colorado ...	AO–301–A24
1135 ..	Southwestern Idaho-Eastern Oregon.	AO–380–A13 (corr.)
1137 .	Eastern Colorado ...	AO–326–A28
1138 ..	New Mexico-West Texas.	AO–335–A39
1139 ..	Great Basin	AO–309–A33

SUMMARY: This final decision adopts a formula to price Class II milk under all Federal orders. The Class II milk price would be the basic formula price for the second preceding month plus a fixed differential of $0.30. The Class II price would, like the Class I price in all Federal orders, be announced on or before the fifth day of the month and apply to milk marketed during the following month. This final decision would also eliminate the "add-back" provision which requires that the difference between the Class II price and the Class III price be added to the subsequent month's Class II price when the Class II price for the month falls below the Class III price. Referenda will be conducted in six markets and dairy farmers cooperatives will be polled in the other markets to determine whether dairy farmers approve the issuance of the orders as proposed to be amended.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

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

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

Prior documents in this proceeding:

Notice of Hearing: Issued December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision: Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England and other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–647), and the applicable rules of practice (7 CFR Part 900), at Alexandria, Virginia, on January 6 and 7, 1994. Notice of such hearing was issued on December 14, 1993, and published December 21, 1993 (58 FR 67380).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 22, 1994, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modification:

1. Eleven paragraphs are added at the end of the findings on issue 1.

The material issues on the record of the hearing relate to:

1. Replacing the current Class II pricing formula used to establish the Class II milk price in all Federal milk orders.

2. Determining whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)).

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Class II Milk Price

A proposal to replace the Class II milk price formula with the basic formula price for the second preceding month plus a fixed differential of $0.30 should be adopted. Further, this price will be announced by the fifth day of the preceding month. Thus, for example, the Class II price for Class II milk delivered by producers in September would be announced on August 5, and would be the M-W price for July plus $0.30. Adoption of this proposal will result in the Class II milk price and the Class I milk price being announced at the same time and being applicable for all Federal milk orders. Adoption of this proposal would eliminate the need to retain in Federal milk orders the section providing for the basic Class II formula price. Adoption of this proposal also eliminates the "add-back" provision of current Class II pricing where, for a given month, if the Class II price is less than the Class III price for the same month, the difference between these prices is "added-back" in computing the second succeeding month's Class II price.

For most Federal milk orders, the current Class II milk price is the Minnesota-Wisconsin (M-W) price for the second preceding month as adjusted by an "updating" product price formula (the basic Class II formula price provisions of those orders), plus an amount by which the simple average of the basic formula prices (M-W prices) for the most recent 12-month period, plus ten cents, exceeds the same 12-month period's average of the basic Class II formula prices. The Class II milk price is announced by the 15th of the previous month. However, if the announced Class II price for a given month is less than the Class III price for the same month, the difference between these prices is "added-back" in computing the second succeeding month's Class II price. This feature is often referred to as the "add-back" provision.

The purpose of the basic Class II formula price (Section 51a in most orders) is to provide a mechanism for updating the M-W price for the second preceding month so that the Class II price for the current month can be based on the M-W price but still reflect more current marketing conditions that might indicate forthcoming changes in the M-W price. This updating is done by comparing movements of wholesale prices for butter, nonfat dry milk, and Cheddar cheese during the first 15 days of the preceding month with such prices during the same period a month earlier.

The current Class II differential, which is included in the Class II milk price, in most orders is 10 cents. A 15-cent differential applies under the three Florida orders, and a 25-cent differential applies under the Pacific Northwest order.

The proposal recommended for adoption was proposed by the Milk Industry Foundation and International Ice Cream Association (MIF/IICA) and the National Milk Producers Federation (NMPF), Proposal One as published in the hearing notice. The MIF/IICA are national trade associations for processors of fluid milk, cultured dairy products, and manufacturers of frozen desert products. The MIF comprises some 220 member companies who operate nearly 500 plants nationwide and process about 80 percent of all the Class II cultured dairy products in the United States. The IICA comprises some 186 member companies who operate about 350 plants nationwide that manufacture, as well as distribute, approximately 85 percent of the ice cream and related frozen products consumed in the United States. The NMPF is the national farm commodity organization that represents dairy producers and the dairy cooperative marketing associations they own and operate. The Federation's members produce a substantial majority of the U.S. milk supply and market milk in all Federal milk order areas.

A second proposal, Proposal Two as published in the hearing notice, was offered by Friendship Dairies, Inc. Like the proposal recommended for adoption, this proposal would replace the Class II price formula with the basic formula price for the second preceding month, but would add a fixed differential of $0.10 instead of $0.30. Announcement of the Class II milk price under this proposal would also be by the fifth day of the preceding month. Friendship Dairies, Inc. (Friendship), is a family owned and operated cultured dairy products manufacturer regulated under the New York-New Jersey (Order 2) marketing area and processes most of the 250 million pounds of milk which it receives annually from about 175 independent producers and milk marketing cooperatives in Class II products such as cottage cheese and yogurt.

A third proposal, Proposal Three as published in the hearing notice, was offered by Women Involved in Farm Economics (WIFE). This proposal would replace the Class II price formula with the basic formula plus a fixed differential of $0.50. No witness from WIFE testified. However, testimony was received by a witness from the National Farmers Organization (NFO) in support of a $0.50 Class II differential. The NFO represents about 4,000 member dairy farmers and others who market their milk through NFO in at least 13 Federal milk orders.

A fourth proposal, Proposal Four as published in the hearing notice, would replace the Class II price formula with a Class II price of $0.60 above the Class III or Class III-A price, whichever was higher. This proposal received no evidence or testimony at the hearing and is considered abandoned.

The fifth proposal, Proposal Five as published in the hearing notice, proposed including the "add-back" provision in the Class II price calculation. Retention of the "add-back" provision was proposed by the Central Milk Producers Cooperative (CMPC), a federation of milk cooperatives with operations in the Chicago Regional (Order 30) marketing area. Its membership includes: Associated Milk Producers, Inc., Bongards' Creameries, Inc., Golden Guernsey Dairy Cooperative, Independent Milk Producers Cooperative, Land O'Lakes, Inc., Manitowoc Milk Producers Cooperative, Mid-America Dairymen, Inc., Midwest Dairymen's Company, Milwaukee Cooperative Milk Producers, National Farmers Organization, Southern Milk Sales, Inc., Wisconsin Dairies Cooperative, Wisconsin Milk Producers Cooperative, Inc., and the Woodstock Progressive Milk Producers Association. Members of CMPC supply milk to bottlers with Class I and Class II utilization in Federal Orders 30, 32, 40, 50, 68, and 79. They also supply milk to primarily "stand alone" Class II plants in Federal Orders 30, 33, and 49. Certain CMPC members also operate plants processing Class I and Class II products.

Testimony in support of adopting Proposal One, which would replace the Class II price formula with the basic formula price for the second preceding month plus a fixed differential of $0.30 and be announced by the fifth day of the preceding month, included:

a. The proponents MIF/IICA and NMPF;

b. Prairie Farms Dairy, a large regional dairy cooperative that processes and distributes a full line of Grade A dairy products, wholly owns 15 dairy plants, manages one plant for Mid-America Dairymen, Inc., and jointly owns 11 plants with other cooperatives;

c. The Kroger Company, which operates seven fluid distributing plants regulated under six Federal Orders. Kroger Company also operates two nonpool ice cream manufacturing plants that distribute dairy products in 22 Federal orders;

d. Crowley Foods, a major dairy products manufacturer that operates six plants in Federal Orders 1, 2, and 4, four of which are involved in the manufacture of Class II products; and

e. Dean Foods Company, which operates 34 fluid milk plants in 17 Federal orders, processing in excess of 4.5 billion pounds of milk per year.

Except for supporting the fifth proposal, which would retain the "add-back" provision, the CMPC offered testimony in support of replacing the Class II price formula with the basic price formula for the second preceding month plus a fixed differential of $0.30, with this price being announced by the fifth day of the preceding month.

Testimony offered by the proponent witness for the MIF/IICA cited that price volatility in Federal order markets in the past few years has resulted in the movement of Class II prices in a magnitude and direction too often in the opposite direction of Class I and Class III prices. The witness indicated that these more volatile and opposite-moving price relationships have acted to severely limit Class II processors in their ability to sell products on a forward contract basis and have caused confusion to their customers who possess a relatively limited knowledge of milk procurement and pricing. This witness maintains that for efficient marketing and efficient pricing of milk, both Class I and Class II prices should be reflecting movements in the M-W price at the same time, in the same magnitude, and in the same direction.

The MIF/IICA proponent witness offered testimony that revisited a proposal that they submitted at the National Hearing in the fall of 1990 to change the method for establishing advance notice of the price paid for Class II milk under Federal orders. At that hearing, the proposal offered was to establish a Class II price by using the M-W price for the second preceding month plus a fixed differential of $0.15, explaining that the rationale for establishing a 15-cent differential was based on a comparison of the Class II price with the basic formula price over the decade of the 1980's. The proponent witness observed that for the 10-year period of 1980 through 1990 the Class II price averaged about $0.15 above the M-W price.

The witness also testified that because of the Food Security Act of 1985, and the subsequent 1990 Farm Bill, the groundwork was laid for basing milk prices on market forces more than had been done in the past. The MIF/IICA witness contends that the result has been more volatile milk pricing which has rendered the current Class II price formula ineffective in tracking the Class I price, and that the spread between the Class II and the M-W price has increased from its longer-term average.

The proponent witness testified that the Class II price has on average approximated the basic formula price for the second preceding month plus 30 cents. It is on this basis that, according to the proponent witness, they are endorsing a Class II price based on the basic formula price for the second preceding month plus a 30-cent fixed differential. They maintain that this approach has the advantage of being easily understood and is revenue-neutral when compared to the current Class II price computation. They noted that it also allows for the announcement of the Class II price for the month to be made a full ten days earlier than under the current Class II pricing and announcement structure.

From an economic point of view, the MIF/IICA proponent witness stressed that while revising the price computation for determining the Class II price is certainly needed, it is imperative not to have a Class II price which would increase the probability of reducing an already declining market for Class II product sales. Because the Class II price has averaged nearly 30 cents above the basic formula price for the second preceding month over the past six years, the witness asserted that the level of the Class II price for raw milk to both processors and producers would be maintained. The witness offered and cited Federal order statistics that supported their position that Class II product sales are steady-to-declining. The witness said this underscores the economic need to maintain the cost of Class II milk at its current level relative to the basic formula price.

Lastly, the MIF/IICA proponent witness testified that the changing cost structure of milk components under Federal orders reinforces their position of a fixed 30-cent differential added to the second preceding month's basic formula price in determining the Class II milk price. The witness noted that since 1990, the butter price has been reduced under the Federal price support program while the cost of nonfat dry milk has risen. Noting also that the butterfat differential computation was changed in mid-1990, these two developments have significantly increased the cost structure for Class II products, particularly for lower to nonfat Class II products.

The NMPF witness offered testimony and evidence in support of the testimony of the MIF/IICA position. The witness compared the actual Class II price each month under the Chicago Regional order with what the Class II price would have been under their alternative proposal for the six-year period from 1988 to 1993. These comparisons on average, the witness said, would neither have increased handler's costs nor have changed prices received by dairy farmers. This proponent witness maintained that this alternative proposal would have generated more stable prices over the past six years and that the range between monthly high and low prices would have been less than the actual Class II price range. According to the witness, their proposal assures that monthly fluctuations in Class I and Class II prices will be identical. Also, according to the NMPF witness, under the current Class II pricing formula, Class I and Class II prices could, and often did, move in opposite directions in the same month. They maintained that consistent movements in Class I and Class II prices would lessen confusion and mitigate marketing problems that arise when Class I and Class II prices move in opposite directions in the same month.

The NMPF proponent witness testified that their proposed alternative for determining the Class II milk price is simple, easy to understand, and can be calculated as soon as the basic formula price is announced by the USDA. In addition to joining the MIF/IICA position in support of Proposal One, this witness asserted that based on data for the past six years, adoption of their proposal would result in no changes in either Class II prices paid by handlers or prices received by producers. Additionally, this witness observed that there would be little overall price impact, but prices would be more stable, and market conditions would improve.

A joint brief filed by the MIF/IICA and the NMPF reiterated their testimony calling for adoption of Proposal One. The witness for Prairie Farms Dairy, Inc., offered testimony in support of the need to adopt the MIF/IICA and NMPF's Class II pricing proposal. This witness offered testimony supporting the proponents' observations of the pricing problems and business impacts that occur when Class I and Class II prices move in different directions in the same month. This witness attributes, in part, the decline in sales of Class II products to the wide price swings of the Class II

price and how retailers have reacted to these swings. The Prairie Farms witness asserted that adoption of the MIF/IICA and NMPF proposal would not negatively affect farmers, that returns to processors would be more constant, and that consumers would see a more stable average price on Class II products, which might result in increased sales.

The Prairie Farms witness viewed the 10-cent differential as a "nuisance" differential and summarized their opinion in four major points in support of Proposal One: (1) That the proposal is supported by the majority of the dairy industry; (2) the proposal would result in a 10-day earlier announcement of the Class II price along with the Class I price, which would simplify price changes to customers in a more timely manner; (3) that Class I and Class II prices will move in the same direction and at the same magnitude; and (4) that Class II price swings will be more moderate, resulting in more stable consumer prices that hopefully will increase Class II product sales.

The witness representing Kroger Company testified to their support for the MIF/IICA and NMPF proposal, offering that adoption of the proposal will enable processors to intelligently inform their customers of changes in costs for Class I and Class II products simultaneously. This witness similarly expressed concern of a declining Class II products market. In support of the fixed 30-cent differential feature for Class II pricing, the Kroger witness maintained that the value of Class II milk to dairy farmers is greater than the intended target differential of ten cents contained in the current Class II pricing formula. This witness also asserted that it is important to establish a pricing level which recognizes these market realities. He maintained that a 30-cent Class II differential added to the basic formula price recognizes the increased value of Class II milk and establishes a competitive price level for Class II products. The Kroger witness testified that this proposal would, over time, establish revenue neutrality with the current Class II pricing method.

The witness for Crowley Foods, testifying in support of the MIF/IICA and NMPF proposal, voiced identical concerns about Class I and Class II price relationships and went further to mention that the 30-cent fixed differential also offers a happy medium between the price concerns of producers and processors. Additionally, the Crowley Foods witness said that announcing the Class II price an additional ten days in advance of the current Class II price announcement would afford improved promotional planning and ensure that Class II prices move in tandem with fluid prices.

Testimony by the witness for Dean Foods offered his organization's support for the MIF/IICA and NMPF proposal.

The witness representing the CMPC offered testimony in support of Proposal One. However, CMPC sees the need to retain the "add-back" feature of Class II milk pricing. Hence, their support as proponents for Proposal Five.

The CMPC witness emphasized the role of Class II products in the market place, offering evidence that customers demand the same basic product and equal service levels (and costs) for their Class II milk as with Class I milk. However, this witness testified, the current Class II pricing system does not generate adequate returns to pay for the costs of service so closely associated with Class I.

This witness offered evidence in support for a 30-cent differential, indicating it is the minimum justifiable differential level. However, the witness tempered support for this level with concern that in no event should such apparent increase in the Class II differential be permitted to result in no real price increase, hence their support for the fifth proposal for retention of the "add-back." The impetus for retaining the add-back provision offered by the CMPC witness drew from the Recommended Decision of October 31, 1989 (54 FR 33709) that concluded that Class II milk should not be less than the value for Class III milk. Although the CMPC witness acknowledged that a Class II differential increase without an add-back feature would lessen the risk of loss to producers, they continue to assert that the add-back provision provides the necessary guaranty against such loss.

The brief filed by CMPC elaborated further on their support for retention of the add-back provision. In their view, the add-back provides the month-to-month guaranty against lost revenue to producers. This is necessary to retain, stated the CMPC brief, because producer and handler prices are computed on a month-to-month basis and not on the basis of annual, or three year or six year average prices.

Support for Proposal One was offered in a brief filed on behalf of the Southern Foods Group, Inc. (SFG), and Anderson-Erickson Dairy Company (AE). The SFG owns and operates six fluid processing plants in Texas and Louisiana and processes Class II products. The AE operates a fluid processing plant and an ice cream plant in Des Moines, Iowa. In the opinion of SFG/AE, only Proposal One provides the changes necessary to correct the problems currently associated with Class II milk pricing.

The SFG/AE brief points to producer and handler agreement that Class II pricing needs to move in the same direction and at the same rate as Class I prices and that advance pricing of Class II milk is critical to the ability of the industry to sell finished Class II products. They also point out that there is universal agreement that the existing Class II price formula is unacceptable and that Class II pricing should be based on the Minnesota-Wisconsin (M–W) price series. On the basis of the record, the SFG/AE concludes that the Class II price must be based on the second prior month's M–W plus a differential of not more than thirty cents without an add-back.

Testimony offered in support of Proposal Two, which would establish the Class II price as the basic formula price for the second preceding month plus a fixed differential of $0.10 and have this price announced by the fifth day of the preceding month, was received from:

a. The proponent, Friendship Dairies, Inc.;

b. Kraft General Foods, a large handler of producer milk that operates plants that process Class II and Class III products in many states; and

c. Galloway Company, a regulated handler under Federal Order 30 that primarily produces sweetened condensed milk, and ice cream mixes.

The proponent witness representing Friendship Dairies, Inc., offered testimony on the need for the Class II differential to be set at ten cents, and for the "add-back" provision of current Class II milk pricing to be eliminated. The testimony offered in support of their proposal rested largely on prior decisions issued by the Department which had determined that ten cents above the basic formula price was the appropriate price (differential) level for Class II milk. Additionally, this proponent witness agreed with other testimony that eliminating the Class II product price formula and using the second preceding month's basic formula price would more accurately reflect the true direction or magnitude in the movement of the Class III price and simplify the pricing of Class II milk. This witness emphasized that this distortion was most attributable to the "add-back" provision.

The Friendship witness offered testimony that demonstrated that the add-back provision resulted in price enhancement of the Class II price above the intended 10-cent target differential. Additionally, this witness testified that when the Class II price is dramatically

higher than the Class III–A price, the economic incentive exists for using nonfat dry milk (NFDM) in place of fresh fluid milk. According to this witness, while increasing the price of Class II milk may increase the blend price producers receive in the short term, the long-term effect will be to promote the use of NFDM for manufacturing Class II products.

Even if the Class II price had not increased, said the Friendship witness, the decreasing value placed on butterfat has had the effect of increasing the cost of a hundredweight of Class II skim milk. Because the cost of milk is the single most significant factor affecting the price of most finished Class II products, especially cottage cheese, this absolute increase in cost is staggering and sales have declined, said the witness. According to the witness, any resulting decline in the use of milk for skim-based Class II products would yield a lower price to dairy farmers and would compound the continuing shift of milk value from the fat to skim component.

While the Friendship witness applauded the advance pricing feature of Class II milk, he asserted that the add-back provision of current Class II pricing effectively obliterates any benefits of advance pricing, citing that prices have become volatile. This volatility has caused confusion in the marketplace because Class II prices too often move completely independent of the Class III and Class I price, according to this witness. The result of this confusion, said the witness, is manufacturers attempting to quote a price based upon a forecast, only to rescind because of a large movement in prices due to the add-back feature of current Class II milk pricing. This reality, said the witness, has implications at the consumer level because special featured prices on products that are offered to supermarket chains to promote sales must be guaranteed well in advance so that advertising and related promotional business can be planned. The witness sees the result of current pricing practices as lower Class II product sales and lower returns to dairy farmers.

The Friendship witness testified that their proposal achieves the Department's intent that the Class II price be Class III plus ten cents. The witness said that adoption of any other proposal would deviate from this intent. Further, said the witness, supply and demand conditions, at least in Order 2, do not warrant any increase in the Class II price.

Support for the 10-cent differential level for Class II milk was offered from Kraft General Foods (Kraft). The Kraft witness testified that current Class II pricing has not achieved the targeted Class II differential of ten cents above the Class III price. Rather, it has exceeded the intended differential, and the difference has been compounded in recent years. On a month-to-month basis, said Kraft, the advance Class II price formula has resulted in gross distortions between the Class II and Class III price in the amount of difference and the direction of price movements.

The Kraft witness expressed disagreement with the MIF/IICA and NMPF proposal only from the view that the appropriate differential level should be ten cents and not thirty cents. The witness noted that current Class II pricing has resulted in an effective Class II differential level of almost thirty cents. This is not what should be adopted as the Class II differential because the effective thirty cents is a result of the failure of the formula used to compute the Class II price, he said. According to the Kraft witness, it is one thing to achieve enhancement of the minimum regulated price by mistake and quite another to do so by design. Like the Friendship witness, the Kraft witness drew heavily on previous decisions that reiterated that the appropriate Class II price be the Class III price plus ten cents. This witness was of the opinion that supply and demand conditions did not warrant any increase in the current target differential.

Like the Friendship witness, the Kraft witness joined in the concern that if the Class II differential level is increased above the current intended 10-cent level, there would likely be increased substitution of NFDM for fluid milk in Class II products. Kraft also agreed with Friendship that the add-back provision should be eliminated.

The witness from Galloway Company offered testimony in support of Proposal Two. Much of this witness's testimony supported testimony of the Friendship and Kraft witnesses and further elaborated on the concern for the substitution of NFDM for fluid milk in the manufacture of Class II products. Noting the wide price disparity between Class III–A and Class II, this witness said that processors will make their ingredient selection based on arbitrary and capricious pricing regulations if the Class II price is increased. Increasing the Class II price would not enhance producer revenue because of the ability to substitute lower-priced ingredients in the manufacture of Class II products.

A brief filed on behalf of Friendship, Kraft, Galloway Company, and the Sorrento Cheese Company, Buffalo, New York, expressed opposition to the 30-cent differential of Proposal One. This brief maintained that the appropriate differential should be ten cents and that placing the differential at thirty cents would be undue price enhancement of the Class II price and would only institutionalize an unintended aberration from the target differential. They contend that testimony of the proponents of Proposal One is flawed because it is based on the Class II prices that prevailed in 1990 when the M–W price recorded some of its lowest prices in a decade and because of the effects of the add-back provision.

This brief cites past decisions that affirm that the current target 10-cent differential is appropriate, although because of the add-back provision, the target differential could not be met and this resulted in high Class II prices. It further revisits past decisions wherein concern was expressed that producer milk may not be made available for Class II use if the price falls below the Class III price. While experience has not borne this out, they say, caution still needs to be exercised in the relationship of Class II prices to Class III–A prices and substitution of powder for producer milk in the manufacture of Class II products. Increasing the differential would only provide additional stimulus to reduce handler purchases of producer milk. This brief also counters arguments on the role of over-order premiums, maintaining that such payments reflect the cost of services incurred by producers (such as balancing and transportation) and not the value of milk. They contend that such premiums should not be relevant to the raw product value of milk.

Lastly, the brief asserts that Proposal One's differential of thirty cents is an undue enhancement of the Class II price and has no basis from an economic point-of-view. The view presented is that thirty cents represents a differential of convenience between divergent views and is not arrived at on the basis of supply and demand considerations which, they say, any price change must be predicated upon.

In support of Proposal Three, a witness representing NFO testified that in addition to supporting a 50-cent Class II differential, they were also supporting the CMPC proposal that the add-back provision of current Class II pricing be retained. This witness testified that the record of the previous 43-day National Hearing in 1990 clearly supported a Class II differential of at least fifty cents. The witness indicated that if the classified pricing structure of Federal orders is to be of value, then there has to be meaningful price differences

between classes. A class price break of only ten cents between Class III and Class II was not meaningful in the view of this witness. Additionally, said the NFO witness, handlers are already paying much more than the effective 30-cent Class II differential to secure Class II milk supplies, perhaps as much as $0.70 to $0.80 cents above Class III is regularly being paid. According to this witness, this indicates that the value of Class II milk is worth at least 50 cents over the Class III price. The NFO brief further emphasized that 50 cents establishes a differential level which is at least minimally significant in a classified price sense. Since Federal milk orders have three classes, then there should be a difference in the use value among the three categories of products sufficient enough to justify separate classes, said NFO.

Another reason offered by the NFO witness for a 50-cent Class II differential is the devaluation of butterfat relative to the nonfat component of milk. Because Class II products have a significant butterfat content when viewed across all Class II products, Class II milk producers have suffered losses in milk used in this class, and this represents a reduction in costs to processors. This argument was reiterated in their brief.

The NFO witness testified that even though they would like to see a $1.00 Class II differential, a 50-cent level should be sufficient, provided that the add-back be retained to maintain the intent that Class II prices be equal to or above Class III prices. If the differential level were set at $1.00, the NFO witness testified that this would negate the need for an add-back because of the unlikelihood that the Class III price would exceed the Class II price.

In their brief, the NFO revisited past decisions that affirmed the establishment and intended role of the add-back provision. The NFO reasserted that the add-back provides reinforcement to the principle that Class II prices by definition should not be less than Class III prices. The culprit in the volatility of Class II prices, according to NFO, is the basic Class II formula price and not the add-back. However, NFO did acknowledge that the add-back does play a role, albeit a minor one, in Class II price volatility.

Opponents to retaining the add-back provision argued in submitted briefs that it should be eliminated for a number of reasons. All opponents agreed that if the Class II milk pricing method adopts using the second preceding month's basic formula price and adding a fixed differential, then the add-back can only serve to enhance the Class II price.

The SFG/AE brief dismisses concern that producers won't deliver milk for Class II use if the Class II price falls below the Class III price. In addition to this not happening in the marketplace, SFG/AE points out, it is also a function of when the price is announced. Producers don't know until the month is over that the Class II price was below the Class III price. Therefore, no purpose beyond price enhancement is served by an add-back provision.

This theme is further developed in a brief filed on behalf of Friendship. While CMPC views a "loss" to producer revenues without retaining the add-back, there is in effect no "loss" Friendship argues. Class II prices below Class III prices arise only during months in which the cheese-driven M-W price is increasing, said Friendship. In periods of falling M-W prices, the Class II differential will exceed the target differential. Producers will not be denied the benefit of the Class II differential—rather its payment is delayed by two months, they said. In periods of M-W price volatility, the fact that Class I and Class II differentials would be added to the M-W prices for the second preceding month will actually serve to restrain, they said, the extent to which such volatility is reflected in producer prices. Further, the Friendship brief finds it inconsistent to call Class II prices below Class III prices a "loss" because it is not balanced against any concept of gain or a "pay-back" in months of a declining M-W and the effective Class II differential at windfall levels above the M-W.

It is clear from the record that there is universal endorsement for changing how Class II milk is priced under Federal orders. The record supports the conclusion that the basic Class II price formula that "updates" the second preceding month's M-W in establishing the Class II price is not functioning as intended; is no longer necessary and contributes, in part, to price volatility; and results in a distorted relationship with other class prices. The record is also clear on the unanimous support for retaining the advance-pricing of Class II milk and that the Class II price should be announced at the same time as Class I prices by using the second preceding month's M-W price and adding a fixed differential. The only issues of disagreement regarding Class II milk pricing are what is the appropriate Class II differential and whether or not the "add-back" provision should be retained.

Class II Differential

Most handlers and producers agree that the appropriate differential value for Class II milk is at least thirty cents above the Class III price. The record testimony and evidence supports this conclusion on the basis that this differential value is representative of the additional value of milk used in this class; that it has been the effective differential paid for Class II milk on average since 1987; and that handlers regularly pay over-order premiums to secure milk for Class II uses above and beyond the service feature of over-order premiums.

Past decisions regarding the pricing of Class II milk concluded that the basic Class II formula price and target differential of ten cents should not be changed. The most recent past decision concluded that the target differential of ten cents should be maintained because supply and demand conditions revealed that there were adequate reserves of Class III milk to meet Class II needs. That decision on the 43-day National Hearing of 1990 recognized that many in the industry believed that Class II prices should move in the same magnitude and direction as Class I. That decision and this hearing clearly reveal that Class I and Class II products are frequently processed together and marketed by handlers in common distribution channels. However, with a basic differential of ten cents, the decision on the 1990 43-day National Hearing continued the existing theory of coordinating the Class II price with the current month's Class III price because Class III products could be used as a source of ingredients for Class II products. In this regard, the need to coordinate the Class II price with the Class III price was the operative principle in the pricing of Class II milk. It was for these reasons that the updating product price formula (represented by the basic Class II formula price) was intended and retained.

This decision makes a clear break from the past in that Class II milk pricing will function in a manner consistent with Class I pricing largely in recognition of the similarity of the distribution and marketing channels shared by milk used in both classes. The record testimony and evidence in this hearing support the conclusion that current Class II pricing results in prices that do not always move in the same direction and magnitude as Class I prices even though both products tend to move in the same marketing channels. Linking the Class II pricing method to that of Class I should better

reflect and respond to market conditions as well as simplify the procedure.

As indicated in the brief by CMPC, the Class II price is driven largely by changes in the basic formula price—the M-W price. As this price changes through movements in the hard product price markets, so will the Class II price. Therefore, any change in the Class II price is due primarily to hard product market forces, and not due to the level of the differential which will not change from month-to-month.

By establishing the Class II milk price at the second preceding month's M-W and adding a fixed differential, as with Class I prices, the intent of providing coordination with Class I prices is achieved. Additionally, a consistent and predictable relationship between Class I and Class II prices is also achieved. However, because of the need to retain advance pricing for orderly marketing, there may be times when the current month's Class III price will be greater than the Class II price. Inversely, it is also true, that there may be times when the Class II price is more than 30-cents greater than the current month's Class III price. Nevertheless, the intended target differential is maintained, as with Class I pricing, albeit with a lag as exists with Class I pricing. This is a reality that both producers and handlers must accept with the retention of advanced pricing and have accepted with regard to the Class I price for many years.

The record on this hearing expressed concern for the substitution of NFDM for fresh producer milk used to make Class II products because the price relationship between the Class II price and, for most Federal orders, the Class III–A price, may provide the economic incentive to do so. In this regard, there was a call on one hand to have the Class II price be coordinated with the movement in Class I price and at the same time have the Class II price also be coordinated with lower-class prices. The impossibility of this is clear. In addition, both handlers and producers will know, in advance, the prices for both Class I and Class II milk at the same time. Delivery, procurement, and processing decisions can be made with surety of what prices will be. However, the Class III or Class III–A price will not be known until after the month has ended. It would seem that without knowing what the Class III or Class III–A price will be in advance, the argument that NFDM will substitute for producer milk is weakened. This is not to say that substitution will not occur, because the record reveals that it does. Substitution may occur if a handler predicts the future price relationship between the Class II price and Class III or Class III–A price, and predicts that the future relationship will provide the economic incentive for substitution. Economic prediction, in and of itself, is not a proper basis for determining the appropriate value the milk has in Class II uses.

Significantly different conclusions were reached between the proponents of retaining the current 10-cent target differential, the proponents for a 30-cent differential, and the proponents for a 50-cent differential on the basis of the changing value of milk components. The 10-cent proponents argue that the increasing value of skim to butterfat effectively has raised the costs of Class II products. The 30-cent proponents argue that the changing cost structure provides, in part, the rationale for maintaining what the recent past's average differential has been. The proponents for a 50-cent differential argue that because the utilization of butterfat to manufacture Class II products is relatively high, processors enjoy a price decrease. The arguments presented on the changing cost structure of milk components is not an issue for the purposes of establishing the Class II price. Rather, it is a butterfat differential issue that has already been decided upon in other rulemaking decisions.

As indicated in the brief submitted by SFG/AE, Federal order statistics reveal that there is an abundant supply of milk for all class uses of producer milk. As indicated in this brief, and in the brief filed on behalf of Friendship, Kraft, Sorrento Cheese Company, and Galloway Company, a price increase must be predicated upon supply and demand considerations. Establishing the Class II differential for any given month at thirty cents above the second preceding month's basic formula price is not intended to effectuate a price increase or a price decrease for Class II milk. Rather it is a recognition of the effective differential that has been functioning for a long period of time. The record provides no evidence on any difficulty in procuring milk for Class II use under the current pricing structure. However, the record does indicate that the pricing structure creates problems regarding the timing and certainty of prices, in part, because of its reliance on the basic Class II pricing formula used to update the M-W.

An analysis of the record evidence and officially noticed materials does point to the fact that the Class II price has averaged nearly thirty cents above the basic formula price for the second preceding month since 1987. Additionally, an analysis of the effective differential (the difference between the current month's Class III price and Class II price since adoption of the add-back provision) for the four-year period of 1990 through 1993 indicates that the Class II differential has averaged thirty cents above the Class III price. It is because of these market realities that there exists so strong an agreement between producers and processors that the true differential level of thirty cents for Class II milk is warranted. Some describe this differential level as the appropriate level, some the minimum justifiable differential, and by some, a differential level that represents the maximum that can be called for on the basis of supply and demand considerations.

The Add-Back Provision

Only two proponents, CMPC who supported a 30-cent differential, and NFO, who advocated a 50-cent differential, called for retention of the add-back provision. The add-back provision of current Class II milk pricing was established in December 1989 as part of a decision to have true advanced pricing for Class II milk. Prior to that time, the Class II milk price that was announced was a tentative price which could be retroactively updated when the Class III price for the month was greater than the tentative Class II price. In this way, the Class II price was "floored" by the Class III price. The intent of the add-back provision was to maintain in principle this relationship between Class II and Class III prices.

The decision on the 43-day National Hearing of 1990 recognized that, at the time of the hearing, the effective Class II differential had averaged about 4 cents higher than the intended differential of ten cents per hundredweight. This decision also affirmed the intent of the add-back was to ensure that producers not receive less than the Class III value for Class II milk in the blend price when the basic formula price exceeded the announced Class II price so that returns to producers would not be reduced. In this way, the Class II price was coordinated with the current month's Class III price.

Now that there exists much more pricing data under the current Class II pricing method, it is clear that the effect of the add-back provision resulted in a Class II price that can never achieve the intended target differential. While the goal of the add-back was to provide a degree of coordination with the Class III price, it did not attempt price coordination with the Class III price in months when the effective Class II differential was well above the targeted differential. Retention of the add-back feature for any proposal presented at this hearing would have similar results.

The add-back provision similarly does not balance prices paid by handlers in months when producers receive more (and at times much more) than the intended target differential. In this view, the add-back feature only works to the price advantage of the producer who, because of the unintended effect of a pricing provision, enjoys all protection from market price changes that handlers do not.

To retain the add-back provision under the proposal recommended for adoption herein could only result in increasing the minimum Class II milk price. An analysis of what the Class II price would have been with and without an add-back provision reveals that in 1990 the add-back would have enhanced the effective Class II differential by 19 cents; for 1991 it would have enhanced the Class II differential by 24 cents; for 1992 it would have enhanced the Class II differential by 15 cents; and for 1993 the Class II differential would have been enhanced by 34 cents. Additionally, because this decision makes a clear break from the past in that Class II prices are more importantly coordinated with the Class I price, there remains no rational argument for its retention. The need for advance pricing, as well as the need for coordination with Class I price movements, means moving away from price coordination with the current month's Class III price. Both objectives cannot be simultaneously satisfied.

Comments and exceptions received on the recommended decision indicate overwhelming support and concurrence for changing the Class II milk pricing method. In total, nine commenting entities indicated that the decision correctly recommends that the Class II milk price should be coordinated with the Class I milk price. In light of this, all submitted comments and exceptions similarly supported the finding that the "add-back" provision is no longer warranted because it was intended to coordinate the Class II price with the Class III price.

Save the exceptions received from Friendship, Kraft General Foods, Sorrento Cheese Company, and Galloway Company (Friendship), the recommended Class II differential level of thirty cents was also strongly supported. Friendship takes exception to the recommended 30-cent differential level for a number of reasons. First, they take issue with the recommended decision's conclusion that the 30-cent differential level "is a recognition of the effective differential that has been functioning for a long period of time." They contend that the conclusion is inaccurate and can only be made by assembling the facts in a misleading, result-oriented manner. The Friendship exception argues that what the average Class II differential level has been, and which years should carry significance in determining this level, yields different outcomes. Depending on what year one chooses to begin with, and whether or not 1990 should carry any weight at all (in 1990 the Class II milk price averaged 61 cents above the Class III milk price) results in different "averages" of the relationship between the Class II and Class III prices. Further, according to the Friendship exception, the recommended decision did not explain the rationale for excluding the early years of the 1980's from the calculated Class II differential average or why the aberration of 1990 is included in the decision. This, according to Friendship, is arbitrary and capricious.

The Friendship exception also views the recommended 30-cent differential level as clear price enhancement. According to Friendship, reliance on the simple arithmetic mean demonstrates that thirty cents would indeed result in enhancing the Class II price. Friendship indicated that this is twenty cents more than the intended Class II differential of ten cents that has been in place since 1981.

Friendship also views the recommended decision as placing an inappropriate reliance on the majority view of producers and handlers and therefore represents a political, and not an economic, value of the recommended 30-cent differential level on Class II milk. Their exception indicated that producer and processor agreement cannot serve to relieve the Secretary of his responsibility to analyze and explain his decision by established statutory and administrative pricing standards and is contrary to law.

Finally, the Friendship exception asserts that rationale for justifying a 30-cent differential level seeks to avoid application of the pricing standards required by 7 U.S.C. 608c(18). According to Friendship, if the effective Class II differential of the past has averaged thirty cents, it has done so only because of the unintended price enhancement of the add-back provision. If that price enhancement is now proposed by the Department to be incorporated in the Class II pricing structure as the intended price, says Friendship, then the rationale supporting the price enhancement must be expressed to satisfy § 608c(18) requirements so as not to incorporate a past regulatory error into current economic reality.

The Class II milk pricing method can best be described as evolutionary. In 1981, the basic Class II pricing formula was adopted into the Class II pricing method, and Class II milk prices first enjoyed a limited form of advanced pricing. However, announced Class II milk prices could be increased retroactively whenever the Class II price for the month was below the same month's Class III price. This pricing method worked reasonably well until 1989 when the volatility in the basic formula price (the M-W price) resulted in too many instances where announced Class II prices were retroactively increased. Although Class II prices had been announced in advance since 1981, such advanced pricing in practice did not constitute true advance pricing because the Class II price could be retroactively increased.

In 1989 the elimination of the retroactive pricing aspect of Class II milk pricing was recognized as a desirable goal by virtually the entire dairy industry and is reflected in the decision that established true advanced pricing for Class II milk in the interests of promoting more orderly marketing conditions. To accomplish this, announced Class II prices were final prices. If the Class II price for the month turned out to be less than the same month's Class III price, then the difference was added in the next month's announced Class II price calculation and announcement. The 1989 decision recognized that this "add-back" feature would produce greater variation in prices on a monthly basis. However, the Class II price level would essentially be maintained while at the same time relieving the problems associated with retroactive Class II pricing.

The decision on the 43-day National Hearing found no basis for changing either the pricing method or the intended target differential for Class II milk. Additionally, that decision affirmed that the add-back feature was to ensure in principle that producers not receive less than the Class III value for their milk. In this way, the Class II milk price was coordinated with the Class III price.

Along the evolutionary path to promoting more orderly marketing conditions, a better method for pricing Class II milk has been recommended. The record evidence is clear that Class II milk pricing is more appropriately coordinated with Class I milk pricing for the reasons already indicated. Additionally, the record reveals that a fixed 30-cent differential level is appropriate because it represents an effective additional value for milk in this class for a number of reasons also already indicated. It is important to

capture this effective value in the new pricing method of coordination with Class I pricing, which does not constitute a price increase which cannot be supported on the basis of the record evidence.

The near unanimous interpretation of the disorderly features of current Class II pricing, other than the differential level, should not be construed as a reflection of non-economic analysis of the Class II milk pricing method problem. However, near unanimity on the issue of establishing an appropriate differential level is construed by Friendship to be "political." It is noted that Friendship joins in strong support of all other aspects of the recommended pricing decision but alleges that the recommended 30-cent differential is non-economic and is somehow political in nature. The record makes it abundantly clear that the appropriate differential level is certainly greater than ten cents. Beyond saying that the 10-cent level is historic, no justification is offered for retaining a 10-cent differential when it is also clear of the need to coordinate Class II milk pricing with Class I pricing.

The recommended 30-cent differential level is reasonable and economically justified because it has been the average effective differential above the Class III price since the implementation of the 1989 decision. This "effective" differential is not found to be causing disorderly marketing conditions. Other features of Class II milk pricing, namely the basic Class II formula price and the add-back provision, does result in disorderly conditions. It is for these reasons, along with the more important need to coordinate Class II pricing with Class I pricing that has resulted in the findings and conclusions of this decision. Such a revised pricing method is the most logical following step in the evolution of Class II milk pricing. Additionally, thirty cents is found to be the appropriate differential value for milk used in Class II uses because it relies upon the pricing data since the 1989 decision that was implemented in December of that year. The reality that the 1990 average Class II differential was in some way aberrant and should therefore not be included in the analysis of determining the appropriate differential level is without merit. The resulting relationship between Class II and Class III prices in 1990 reflected the supply and demand conditions prevailing at that time just as it did in other years. Further, because one does not like a pricing outcome or its impact does not discount its economic importance. To not consider such reality would be manipulating germane data in a "result-oriented manner."

2. Need for Emergency Action

On the basis of the record evidence and testimony, no emergency conditions could be ascertained that would warrant the omission of a recommended decision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New England and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the New England and other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agents

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended, and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey, Georgia, Eastern Ohio-Western Pennsylvania, Alabama-West Florida, Paducah, Kentucky, and Southwestern Idaho-Eastern Oregon marketing areas is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be March 1994 for the New York-New Jersey order; June 1994 for the Southwestern Idaho-Eastern Oregon order; and August 1994 for the Georgia, Eastern Ohio-Western Pennsylvania, Alabama-West Florida and Paducah, Kentucky orders.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Period

June 1994 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional, Indiana, and Upper Midwest marketing areas; and August 1994 for orders regulating the handling of milk in all other marketing areas except those for which referenda are provided, is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

Dated: December 2, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the New England and Other Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules and practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New England and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 22, 1994, and published in the **Federal Register** on August 26, 1994 (59 FR 44074), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

Accordingly, this decision proposes 7 CFR chapter X be amended as follows:

The authority citation for 7 CFR Parts 1001 through 1139 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

§ 1001.21 [Removed and Reserved]

1. Section 1001.21 is removed and reserved.

2. Section 1001.50 is amended by revising paragraph (b) to read as follows:

§ 1001.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1001.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1001.51 Basic formula price.

* * * * *

4. Section 1001.54 is revised to read as follows:

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I and Class II prices for the following month, and the Class III and Class III-A prices for the preceding month.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

§ 1002.19 [Removed and Reserved]

1. Section 1002.19 is removed and reserved.

2. Section 1002.50 is amended by revising paragraph (c) to read as follows:

§ 1002.50 Class prices.

* * * * *

(c) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1002.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1002.51 Basic formula price.

* * * * *

4. Section 1002.56 is amended by revising the introductory text, removing the introductory text of paragraph (a), redesignating paragraph (a)(1) as paragraph (a), revising paragraph (b), redesignating paragraph (a)(2) as paragraph (c), redesignating paragraph (a)(3) as paragraph (d), redesignating paragraph (a)(4) as paragraph (e), redesignating paragraph (a)(5) as paragraph (f), and redesignating paragraph (a)(6) as paragraph (g), to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

* * * * *

(b) The Class II price for the following month applicable at the 201–210 mile zone and at the 1–10 mile zone.

* * * * *

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

§ 1004.21 [Removed and Reserved]

1. Section 1004.21 is removed and reserved.

2. Section 1004.50 is amended by revising paragraph (b) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(b) Class II price. The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1004.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1004.51 Basic formula price.

* * * * *

4. Section 1004.53 is amended by revising the introductory text, removing the introductory text of paragraph (a), redesignating paragraph (a)(1) as paragraph (a), revising paragraph (b), redesignating paragraph (a)(2) as paragraph (c), and redesignating paragraph (a)(3) as paragraph (d) to read as follows:

§ 1004.53 Announcement of class prices and component prices.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

* * * * *

(b) The Class II price for the following month;

* * * * *

PART 1005—MILK IN THE CAROLINA MARKETING AREA

§ 1005.20 [Removed]

1. Section 1005.20 is removed.

2. Section 1005.50 is amended by revising paragraph (b) to read as follows:

§ 1005.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1005.52 [Removed and Reserved]

3. Section 1005.52 is removed and reserved.

4. Section 1005.54 is revised to read as follows:

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

§ 1006.19 [Removed and Reserved]

1. Section 1006.19 is removed and reserved.

2. Section 1006.50 is amended by revising paragraph (b) to read as follows:

§ 1006.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1006.51a [Removed]

3. Section 1006.51a is removed.

4. Section 1006.53 is revised to read as follows:

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

§ 1007.20 [Removed and Reserved]

1. Section 1007.20 is removed and reserved.

2. Section 1007.50 is amended by revising paragraph (b) to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1007.51a [Removed]

3. Section 1007.51a is removed.

4. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

§ 1011.20 [Removed]

1. Section 1011.20 is removed.

2. Section 1011.50 is amended by revising paragraph (b) to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1011.51a [Removed]

3. Section 1011.51a is removed.

4. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A price for the preceding month.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

§ 1012.19 [Removed and Reserved]

1. Section 1012.19 is removed and reserved.

2. Section 1012.50 is amended by revising paragraph (b) to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1012.51a [Removed]

3. Section 1012.51a is removed.

4. Section 1012.53 is revised to read as follows:

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

§ 1013.19 [Removed and Reserved]

1. Section 1013.19 is removed and reserved.

2. Section 1013.50 is amended by revising paragraph (b) to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1013.51a [Removed]

3. Section 1013.51a is removed.

4. Section 1013.53 is revised to read as follows:

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

§ 1030.20 [Removed and Reserved]

1. Section 1030.20 is removed and reserved.

2. Section 1030.50 is amended by revising paragraph (b) to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1030.51a [Removed]

3. Section 1030.51a is removed.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

§ 1032.20 [Removed]

1. Section 1032.20 is removed.

2. Section 1032.50 is amended by revising paragraph (b) to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1032.51a [Removed]

3. Section 1032.51a is removed.

4. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

§ 1033.20 [Removed and Reserved]

1. Section 1033.20 is removed and reserved.

2. Section 1033.50 is amended by revising paragraph (b) to read as follows:

§ 1033.50 Class and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1033.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1033.51 Basic formula price.

* * * * *

4. Section 1033.53 is amended by revising the introductory text, removing the introductory text of paragraph (a), redesignating paragraph (a)(1) as paragraph (a), revising paragraph (b), redesignating paragraph (a)(2) as paragraph (c), redesignating paragraph (a)(3) as paragraph (d), redesignating paragraph (a)(4) as paragraph (e) and redesignating paragraph (a)(5) as paragraph (f), to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

* * * * *

(b) The Class II price for the following month;

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

§ 1036.20 [Removed and Reserved]

1. Section 1036.20 is removed and reserved.

2. Section 1036.50 is amended by revising paragraph (b) to read as follows:

§ 1036.50 Class and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1036.51a [Removed]

3. Section 1036.51a is removed.

4. Section 1036.53 is amended by revising the introductory text, removing the introductory text of paragraph (a), redesignating paragraph (a)(1) as paragraph (a), revising paragraph (b), redesignating paragraph (a)(2) as paragraph (c), redesignating paragraph (a)(3) as paragraph (d), redesignating paragraph (a)(4) as paragraph (e) and redesignating paragraph (a)(5) as paragraph (f), to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

* * * * *

(b) The Class II price for the following month;

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

§ 1040.21 [Removed]

1. Section 1040.21 is removed.

2. Section 1040.50 is amended by revising paragraph (b) to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1040.51a [Removed]

3. Section 1040.51a is removed.

4. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

§ 1044.20 [Removed and Reserved]

1. Section 1044.20 is removed and reserved.

2. Section 1044.22 is amended by revising paragraph (i)(1)(i) and removing paragraph (i)(3), to read as follows:

§ 1044.22 Additional duties of the market administrator.

* * * * *

(i) * * *

(1) * * *

(i) The Class I price and Class II price for the following month;

* * * * *

3. Section 1044.50 is amended by revising paragraph (b) to read as follows:

§ 1044.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

4. Section 1044.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1044.51 Basic formula price.

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.20 [Removed]

1. Section 1046.20 is removed.

2. Section 1046.50 is amended by revising paragraph (b) to read as follows:

§ 1046.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1046.51a [Removed]

3. Section 1046.51a is removed.

4. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month

PART 1049—MILK IN THE INDIANA MARKETING AREA

§ 1049.20 [Removed]

1. Section 1049.20 is removed.

2. Section 1049.50 is amended by revising paragraph (b) to read as follows:

§ 1049.50 Class and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1049.51a [Removed]

3. Section 1049.51a is removed.

4. Section 1049.53 is amended by revising the introductory text, removing the introductory text of paragraph (a), redesignating paragraph (a)(1) as paragraph (a), revising paragraph (b), redesignating paragraph (a)(2) as paragraph (c), redesignating paragraph (a)(3) as paragraph (d), redesignating paragraph (a)(4) as paragraph (e) and redesignating paragraph (a)(5) as paragraph (f), to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

* * * * *

(b) The Class II price for the following month;

* * * * *

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

§ 1050.20 [Removed]

1. Section 1050.20 is removed.

2. Section 1050.50 is amended by revising paragraph (b) to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1050.51a [Removed]

3. Section 1050.51a is removed.

4. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

§ 1064.20 [Removed]

1. Section 1064.20 is removed.

2. Section 1064.50 is amended by revising paragraph (b) to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1064.51a [Removed]

3. Section 1064.51a is removed.

4. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

§ 1065.20 [Removed]

1. Section 1065.20 is removed.

2. Section 1065.50 is amended by revising paragraph (b) to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1065.51a [Removed]

3. Section 1065.51a is removed.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

§ 1068.20 [Removed]

1. Section 1068.20 is removed.

2. Section 1068.50 is amended by revising paragraph (b) to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1068.51a [Removed]

3. Section 1068.51a is removed.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

§ 1075.20 [Removed]

1. Section 1075.20 is removed.

2. Section 1075.50 is amended by revising paragraph (b) to read as follows:

§ 1075.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1075.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and

by removing paragraph (b), to read as follows:

§ 1075.51 Basic formula price.

* * * * *

4. Section 1075.53 is revised to read as follows:

§ 1075.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

§ 1076.20 [Removed]

1. Section 1076.20 is removed.

2. Section 1076.50 is amended by revising paragraph (b) to read as follows:

§ 1076.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1076.51a [Removed]

3. Section 1076.51a is removed.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1079—MILK IN THE IOWA MARKETING AREA

§ 1079.20 [Removed]

1. Section 1079.20 is removed.

2. Section 1079.50 is amended by revising paragraph (b) to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1079.51a [Removed]

3. Section 1079.51a is removed.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

§ 1093.20 [Removed]

1. Section 1093.20 is removed.

2. Section 1093.50 is amended by revising paragraph (b) to read as follows:

§ 1093.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1093.51a [Removed]

3. Section 1093.51a is removed.

4. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A price for the preceding month.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

§ 1094.20 [Removed]

1. Section 1094.20 is removed.

2. Section 1094.50 is amended by revising paragraph (b) to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1094.51a [Removed]

3. Section 1094.51a is removed.

4. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

§ 1096.20 [Removed]

1. Section 1096.20 is removed.

2. Section 1096.50 is amended by revising paragraph (b) to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1096.51a [Removed]

3. Section 1096.51a is removed.

4. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

§ 1099.20 [Removed]

1. Section 1099.20 is removed.

2. Section 1099.50 is amended by revising paragraph (b) to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1099.51a [Removed]

3. Section 1099.51a is removed.

4. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

§ 1106.20 [Removed]

1. Section 1106.20 is removed.

2. Section 1106.50 is amended by revising paragraph (b) to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1106.51a [Removed]

3. Section 1106.51a is removed.

4. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

§ 1108.20 [Removed]

1. Section 1108.20 is removed.

2. Section 1108.50 is amended by revising paragraph (b) to read as follows:

§ 1108.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1108.51a [Removed]

3. Section 1108.51a is removed.

4. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.19 is revised to read as follows:

§ 1124.19 Butterfat differential.

The butterfat differential is the number that results from subtracting the computation in paragraph (b) of this section from the computation in paragraph (a) of this section and rounding to the nearest one-tenth cent:

(a) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported by the Dairy Division;

(b) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

2. Section 1124.50 is amended by changing the references in paragraphs (e) and (f)(2) from § 1124.19(e) to § 1124.19 and revising paragraph (b) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1124.51 is amended by revising the section heading, removing the paragraph designation "(a)" and changing the reference in that paragraph from § 1124.19(e) to § 1124.19, and by removing paragraph (b), to read as follows:

§ 1124.51 Basic formula price.

* * * * *

4. Section 1124.53 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b), to read as follows:

§ 1124.53 Announcement of class and component prices.

* * * * *

(a) On or before the 5th day of each month, the Class I price and the Class II price for the following month, and the Class III and Class III–A price for the preceding month.

* * * * *

5. In § 1124.75 (a)(2)(i), the reference to § 1124.19(e) is changed to read § 1124.19.

PART 1126—MILK IN THE TEXAS MARKETING AREA

§ 1126.20 [Removed and Reserved]

1. Section 1126.20 is removed and reserved.

2. Section 1126.50 is amended by revising paragraph (b) to read as follows:

§ 1126.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1126.51a [Removed]

3. Section 1126.51a is removed.

4. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

§ 1131.20 [Removed and Reserved]

1. Section 1131.20 is removed and reserved.

2. Section 1131.50 is amended by revising paragraph (b) to read as follows:

§ 1131.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1131.51a [Removed]

3. Section 1131.51a is removed.

4. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

§ 1134.19 [Removed and Reserved]

1. Section 1134.19 is removed and reserved.

2. Section 1134.50 is amended by revising paragraph (b) to read as follows:

§ 1134.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1134.51a [Removed]

3. Section 1134.51a is removed.

4. Section 1134.53 is revised to read as follows:

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. Section 1135.19 is revised to read as follows:

§ 1135.19 Butterfat differential.

The butterfat differential is the number that results from subtracting the computation in paragraph (b) of this section from the computation in paragraph (a) of this section and rounding to the nearest one-tenth cent:

(a) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported by the Dairy Division;

(b) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

2. Section 1135.50 is amended by changing the references in paragraphs (e) and (f)(2) from § 1135.19(e) to § 1135.19 and revising paragraph (b) to read as follows:

§ 1135.50 Class and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1135.51 is amended by revising the section heading, removing the paragraph designation "(a)" and changing the reference in that paragraph from § 1135.19(e) to § 1135.19, and by removing paragraph (b), to read as follows:

§ 1135.51 Basic formula price.

* * * * *

4. Section 1135.53 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b), to read as follows:

§ 1135.53 Announcement of class and component prices.

* * * * *

(a) On or before the 5th day of each month, the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

* * * * *

5. In § 1135.74(b)(2) (i) and (ii), the references to § 1135.19(e) are changed to read § 1135.19.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

§ 1137.19 [Removed and Reserved]

1. Section 1137.19 is removed and reserved.

2. Section 1137.50 is amended by revising paragraph (b) to read as follows:

§ 1137.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1137.51a [Removed]

3. Section 1137.51a is removed.

4. Section 1137.53 is revised to read as follows:

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

§ 1138.20 [Removed and Reserved]

1. Section 1138.20 is removed and reserved.

2. Section 1138.50 is amended by revising paragraph (b) to read as follows:

§ 1138.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

§ 1138.52 [Removed and Reserved]

3. Section 1138.52 is removed and reserved.

4. Section 1138.54 is revised to read as follows:

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A price for the preceding month.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

§ 1139.19 [Removed and Reserved]

1. Section 1139.19 is removed and reserved.

2. Section 1139.50 is amended by revising paragraph (b) to read as follows:

§ 1139.50 Class prices and component prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

3. Section 1139.51 is amended by revising the section heading, removing the paragraph designation "(a)" without revising the text of the paragraph, and by removing paragraph (b), to read as follows:

§ 1139.51 Basic formula price.

* * * * *

4. Section 1139.53 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b), to read as follows:

§ 1139.53 Announcement of class and component prices.

* * * * *

(a) The 5th day of each month, the Class I price and the Class II price for the following month.

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

Note: This marketing agreement will not appear in the Code of Federal Regulations.

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in (_____ Name of order _____) marketing area (7 CFR Part _____[2]) which is annexed hereto; and

II. The following provisions:

§ _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 94–30368 Filed 12–13–94; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order

[2] Appropriate Part number

[3] Next consecutive section number

[4] Appropriate representative period for the order

federal register

Wednesday
December 14, 1994

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR): Travel Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 94–753]

RIN 9000–AG27

Federal Acquisition Regulation; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by Section 2191 of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 13, 1995. To be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW Room 4037, Washington, DC 20405.

Please cite FAR case 94–753 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr Clarence Belton at (703) 602–2357 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAR case 94–753

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

This notice announces FAR revisions developed under FAR case 94–753. The recommended revisions to the cost principle, FAR 31.205–46, are proposed as a result of Section 2191 of the Federal Acquisition Streamlining Act of 1994, which repealed Section 24 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 420). Generally, Section 24 of the OFPP Act required that costs incurred by contractor personnel for travel be considered reasonable and allowable only to the extent that they did not exceed the maximum per diem rates permitted by the Federal Travel Regulation (FTR) or the Joint Travel Regulations (JTR).

Simply returning to the prior standard of reasonableness could create severe administrative burdens for both the contractor and the Government and could lead to Government reimbursement of excessive costs. However, it is recognized that industry has valid concerns regarding travel costs, such as separate accounting systems for Government versus commercial work and the unavailability of Government rates at certain locations.

Accordingly, it is recommended that the FTR/JTR rates be used as a baseline from which both the contractor and the Government can proceed. However, the proposed rule would permit contractors to propose alternative rates to those prescribed in the FTR/JTR.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–753). If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before January 13, 1995.

The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because most contracts awarded to small businesses are awarded through sealed bidding on a firm fixed price basis. The cost principles apply only where contracts are based on cost or pricing data; accordingly, no Initial Regulatory Flexibility Analysis has been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 94–753), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement

Dated: December 8, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–46 is amended in the introductory text of paragraph (a)(2) by removing "paragraph (a)(3)" and inserting in its place "paragraphs (a)(3) and (a)(7)"; and adding (a)(7) to read as follows:

31.205–46 Travel costs.

(a) * * *

(7) Contractors may propose an alternative set of maximum per diem rates to replace the rates prescribed by subparagraph (a)(2) of this subsection. The contracting officer may approve alternative rates if the contractor demonstrates that the alternative rates are reasonable, are derived from the contractor's normal travel cost reimbursement system, and do not exceed amounts normally paid under that system. In order to be allowable, the alternative rates must be approved prior to the incurrence of the travel costs.

* * * * *

[FR Doc. 94–30698 Filed 12–13–94; 8:45 am]

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federal register

Wednesday
December 14, 1994

Part VI

Federal Trade Commission

16 CFR Part 18

Guides for the Nursery Industry; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 18

Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Final amendment.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of its periodic review of all its guides and rules, announces that it has concluded a review of its Guides for the Nursery Industry ("Guides" or "Nursery Guides") and has decided to retain them with certain modifications. Specifically, the Commission has decided to amend Guide 6 and the definitions section of the Guides to advise sellers of plants that it is an unfair or deceptive act or practice to offer for sale or to sell plants collected from the wild state without disclosing that fact, with the proviso that plants propagated from plants lawfully collected from the wild state may be designated as "nursery-propagated." The Commission has also decided to amend Guides 1–8 to update their legal terminology with terms that the Commission presently uses.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle, Attorney, (202) 326–3016, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Nursery Guides were issued by the Commission in 1979.[1] These Guides address numerous sales practices for outdoor plants, trees and flowers, including deceptive claims as to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price and origin or place where grown. On March 25, 1993, the Commission published a Notice in the **Federal Register** soliciting comment on the Guides.[2] Specifically, the Commission solicited comments on the costs and benefits of the Guides and their regulatory and economic effect (see Part B below) and on a proposed amendment to the Guides submitted by the Natural Resources Defense Council and others (see Part A below). The comment period closed on May 26, 1993. In response to the Notice the Commission received 37 comments. They are discussed in Part II below.

A. The Amendment Petition

On October 15, 1991, the Natural Resources Defense Council (NRDC) requested for itself and ten other organizations[3] that the Commission amend Guide 6 and the definitions section of the Nursery Guides. The petitioners asked the Commission to narrow significantly the one exception to the Guides' requirement that plants collected from the wild be identified as such. Guide 6 presently exempts from this wild-origin disclosure requirement wild-collected plants that have been grown in a nursery for a full growing season.[4] Such plants could be called "Nursery-grown" under the Guides because the Guides defined the term "nursery-grown stock" to include both plants propagated and cultivated in nurseries and wild-collected plants grown in nurseries for a full growing season.[5]

The petitioners contended that Guide 6's exception to the wild-origin disclosure requirement for wild-collected plants grown in nurseries for a growing season and the Guides' definition of the term "Nursery-grown stock" can cause consumer confusion about the origins of plants being offered for sale and contribute to the endangering of several species of wild plants. The petitioners argued that many consumers, for environmental reasons, do not want to purchase any plants collected from the wild at any stage of their existence. Such consumers are only willing to buy plants that have been propagated in nurseries. Because the present Guides allow both nursery-propagated and some wild-collected plants to be called "Nursery Grown," consumers are unable to tell whether a plant described as "Nursery-Grown" was actually collected from the wild.

The petition requested that the:

Commission amend its Guides for The Nursery Industry to prohibit use of the misleading term "nursery grown" and require that plants labeled as "propagated" be grown from seeds, cuttings, callus tissue, spores or other propagules (bulblets, bulbils, single cells, leaves) under controlled conditions.

The original petition did not propose specific amendment language. The petitioners expected discussions among interested parties would first be necessary before specific amendment language could be suggested. The essence of the petitioners' request, however, was to have the Rule henceforth require plants collected from the wild but then grown in a nursery for a full growing season to be identified as wild collected. The Rule would no longer allow them to be called "nursery grown." Only those plants propagated and grown in nurseries would be exempt from the wild-collected disclosure requirement. The petitioners also asked that the Guides make clear under what conditions plants may be designated "nursery propagated" by proposing:

The term "controlled conditions" would include open beds on one's property (including rented property) as long as the propagator is engaging in efforts to promote propagation and growth of the plants, e.g., weeding; fencing out deer, rabbits, or other wild animals; watering; or providing fertilizer.

On May 21, 1992, the American Association of Nurserymen (AAN), the nursery industry trade association, wrote to the Commission stating its support for the petitioners' request and offered for consideration specific amendment language.[6] AAN urged that the Commission amend Guide 6 to delete the exception to the wild origin disclosure requirement for "Nursery Grown" stock. Further, AAN urged restricting use of the term "Nursery Propagated" to just those plants actually grown in nurseries from seeds or other propagules and specifying that any plant propagated in a nursery from a plant lawfully collected from the wild is to be considered "nursery propagated."

AAN explained that at the time the Guides were adopted the critical issue with respect to plants' origins was to protect consumers from inferior plant specimens. Plants freshly gathered from

[1] Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 58 FR 16139.

[3] NRDC was joined in its petition by the following: California Native Plant Society (CNPS); Environmental Defense Fund (EDF); Garden Club of America (GCA); Mt. Cuba Center for the Study of Piedmont Flora (MCCSPF); National Audubon Society (NAS); Native Plant Society of Oregon (NPSO); Native Gardens (of Greenback, Tennessee) (NGGT); New England Wild Flower Society, Inc. (NEWFS); Niche Gardens Nursery of Chapel Hill, North Carolina (NGN); Traffic U.S.A. (T-USA).

[4] Guide 6, 16 CFR 18.6, entitled "Plants collected from the wild state," reads as follows: "It is an unfair trade practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state: *Provided, however,* That if collected plants are grown in the nursery row for at least one growing season before being marketed, such disclosure is not required. [Guide 6]"

[5] Section 18.0 of the Guides, 16 CFR 18.0, entitled "Definitions," includes the following definition: "'Nursery-grown stock.' Plants propagated and grown under cultivation, or plants transplanted from the wild and grown under cultivation for at least one full growing season."

[6] This letter, along with the original petition, was placed on the public record and described in the **Federal Register** Notice.

the wild often die shortly afterwards due to their weakened condition following the collection process. Guide 6 was written to prevent the omission of the material fact of recent wild-collecting and thereby protect consumers from inadvertently purchasing freshly collected wild plants. In recent years, however, plant consumers have developed environmental concerns that fifteen years ago were not known by the Commission. As a result, AAN stated that over time the disclosure allowed by Guide 6 to permit consumers to distinguish newly collected wild plants from nursery-propagated plants or wild-collected plants that have been grown in a nursery for a full growing season has become misleading. Some consumers now object to buying any wild-collected plants, not because of the harm that the collection processes may have caused the particular plants being sold, but because of the harm the collection processes may be causing the plant species in general and the environment.

AAN therefore proposed the following specific language to amend Guide 6:

It is an unfair trade practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state; provided, however, that plants propagated from plants lawfully collected from the wild state are recognized and may be designated as nursery-propagated.

AAN argued that the above language would resolve the ambiguity in the term "nursery-grown" that troubles petitioners (*i.e.*, was the plant collected from the wild state and grown in a nursery for a full growing season or was the plant propagated in a nursery from a wild-collected plant?). At the same time it avoids an ambiguity from arising over the meaning of the term "plants propagated" by recognizing that for all plants under consideration there had to have been an initial propagative stock obtained from the wild. AAN argued that succeeding generations of such plants should be distinguished from the initial stocks and that the Guides should exempt from the wild-origin disclosure requirement only the succeeding generations that have been propagated and grown in nurseries. Only such plants should be allowed to be sold as "Nursery Propagated."

The **Federal Register** Notice described the amendment proposals and sought comment on sixteen questions asking about the extent of wild-collecting, the degree consumers are concerned about knowing the origins of the plants they purchase, the interpretation consumers give to the term "nursery-grown," the identities of plant species that are now commonly wild-collected, the likelihood that continued wild-collecting of these plants might endanger the chances of the species surviving, and the costs and benefits associated with amending this Guide

B. Regulatory Review

As part of the Commission's ongoing project to review all its guides and rules, the **Federal Register** Notice that sought comment on the amendment proposal for the Guides also included questions about the costs and benefits of the guides and their regulatory and economic impact. The Notice also asked three general questions about the environmental impact of the Nursery Guides, the relationship of those Guides to statutes and treaties that cover the same subject matter, and any changes since 1979 in consumer perceptions or preferences about products covered by those Guides.

II. Comments Received

The Commission received comments from 36 individuals and organizations. Of these, 23 were from individuals interested in gardening. The others were from state or federal government officials, gardening publications, members of the nursery industry, and a garden club officer.[7]

#001 ..... William A. Niering, Professor of Botony, Department of Botony Connecticut College,[WAN].
#002 ..... Richard W. Lighty, Director, Mt Cuba Center For The Study Of Piedmont Flora [MCCSPF] One of the petitioners.
#003 ..... Richard L. Krueger, Environmental Education Coordinator, Connecticut Department of Environmental Protection [RLK].
#004 ..... Susan M. Smith [SMS].
#005 ..... Joan L. Faust [JLF].
#006 ..... Marilyn Magid, Chairman, Conservation Committee, The Garden Club of America [GCA]. One of the petitioners.
#007 ..... Ellen McMahon [EMcM]
#008 ..... Clarisse S. Willemsen [CSW]
#009 ..... Kelly Kearns, Native Plant Management Specialist, Wisconsin Department of Natural Resources [KK]
#010 ..... Aimlee D. Laderman, Lecturer in Wetland Ecology, School of Forestry and Environmental Studies, Yale University [ADL].
#011 ..... Faith Thompson Campbell, Natural Resources Defense Council [NRDC] One of the petitioners.
#012 ..... Mrs. Donald C. McClure [DCMcC]
#013 ..... Zella E. Ellshoff [ZEE].
#014 ..... Thomas Morley [TM]
#015 ..... David Morgan, Editor, Nursery Manager: The Nation's Magazine, for Nurseries, Garden Centers & Landscapers [DM].
#016 ..... Sally D. Pettit [SP].
#017 ..... Scott Weber, Co-Owner Bluestem Farm: Native Wildflowers & Grasses [SW].
#018 ..... Teri Dunn, Associate Editor Horticulture: The Magazine of American Gardening [TD].
#019 ..... Craig J. Regelbrugge,, Director of Regulatory Affairs and Grower Services American Association of Nurserymen [AAN] Joined in the petition.
#020 ..... Patrick Smith [PS].
#021 ..... Anne N. Clark [ANC]
#022 ..... Marilyn Ortt [MO].
#023 ..... Gloria C. Jones [GCJ]
#024 ..... Rebecca Beattie [RB]
#025 ..... Nina Peyton [NP].
#026 ..... Calvert J. Armbrecht [CJA]
#027 ..... Louise H. Hisdreth [LHH]
#028 ..... Stuart Swift [SS].
#029 ..... Sally L. White, Conservation Committee, Colorado Native Plant Society [SLW].
#030 ..... Jennifer McAnlis [JMcA].
#031 ..... Katharine P Mackie [KPM].
#032 ..... David S. Longland, Executive Director New England Wild Flower Society [NEWFS]. One of the petitioners.
#033 ..... Charles Thomas, President, Mailorder Association of Nurseries [CT].
#034 ..... Gracie Harison [GH].
#035 ..... Wayne L. Mitchell, Acting Chief, Office of [CITES] Scientific Authority United States Department of the Interior [WLM].
#036 ..... Mary E. Morris [MEM].
#037 ..... Aimlee D. Laderman, Lecturer in Wetland Ecology School of Forestry and Environmental Studies, Yale University [ADL].

The comments addressed only the proposal to amend Guide 6. No comment responded to any of the regulatory review questions.[8] Four of the comments were letters from the petitioners supporting their proposal.[9] A fifth comment was a follow-up letter from the American Association of Nurserymen.[10]

The comments from the petitioners and AAN stated that they had reached agreement among themselves in requesting that the Commission adopt the specifically worded amendment that AAN had proposed and that the Commission amend the definitions section of the Guides by deleting the present definition for "Nursery-grown stock" and adding instead the following two new definitions:

'Nursery propagated stock Plants propagated and grown under cultivation, including plants propagated from plants, seeds, or cuttings lawfully collected from the wild state.

'Propagation' Plants grown from seeds, cuttings, callous tissues or other plant tissues, spores or other propagules

[7] One person, Aimlee D. Laderman, submitted two comments. The list of commentators below includes the document number for the public record assigned each comment, the name of (and an abbreviation for) the commentator, and (when included in the comment or otherwise made known to the Commission) a general description of the person or organization making the comment.

[8] For the text of the questions see the March 25 1993, **Federal Register** Notice

[9] MCCSPF, #002, 1–2., GCA, #006, 1 NRDC, #011 1–9; NEWFS, #032, 1–11

[10] AAN, #019, 1–4.

under controlled conditions. 'Under controlled conditions' means in a non-natural environment that is intensely manipulated by human intervention for the purpose of producing selected species or hybrids.

Twenty-three comments simply urged the Commission to help protect the environment and plant species now being wild-collected by amending Guide 6 as petitioners have requested, but not answering any of the specific questions of the **Federal Register** Notice.[11] The 8 remaining commentators also urged the Commission to adopt the proposed amendments, contending that many consumers are increasingly becoming concerned with the effect that wild-collecting of plants is having on the chances of survival of several popular species. In response to a question in the Notice, four of these comments identified wild-collected plants that are presently being sold in nurseries.[12] For example, Marilyn Ortt wrote that *Cypripedium calceolus var. pubescens* is currently listed as "Potentially Threatened" by the State of Ohio, but sells at retail for $7–9 in southern Ohio.[13]

The other four comments provided examples of the price differences existing between wild-collected and nursery-propagated specimens of the same plant species and offered explanations for such differences.[14] For example, when collected from the wild, orchids typically cost less than $1, while orchids propagated from tissue culture or seed and then grown to maturity in nurseries can cost $15 or more.[15] Such price differences exist primarily because of the great difficulty so far experienced in getting certain popular wild plants to propagate and grow in nurseries or because of the amount of time and labor necessary to raise such plants to a point when they are suitable for sale. One commentator cited the popular plant, *Trillium*, which is rarely, if ever, nursery-propagated because it takes seven years to grow before blossoming.[16] None of the comments, however, provided any data regarding what increased costs there might be for retailers if the Guides no longer exempted from the wild-origin disclosure requirement those wild-collected plants that had grown in nurseries for a full growing season.

The United States Department of the Interior also submitted a comment favoring the petitioners' proposal to amend the Guides to narrow the exception to the wild-origin disclosure requirement. It attached copies of pertinent sections of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act of 1973 (ESA), as amended, and the Lacey Act, all of which are concerned with protecting endangered species of animals and plants. These show that revising the Guides to use the word "propagated" rather than "grown" would be consistent with the terminology of that treaty and those statutes.[17] The comment stated that the Commission's Guides "are useful for plant conservation." The kinds of plants covered by the Guides, and of concern to the petitioners, are not (yet) endangered and therefore not among those that specifically come under that treaty or those statutes. The comment nonetheless stated that amending the Guides as requested would be "an important force to help keep the trade away from overuse of wild specimens."

III. Conclusion

Although none of the comments specifically addressed the regulatory review questions, no comment suggested that sellers have experienced any difficulties in complying with the Guides.[18] The Commission infers that, because all the commentators urged the Commission to amend the Guides as petitioners have requested, they all favor retaining the Guides. The Commission therefore has concluded its regulatory review of the Guides by deciding to retain them.

All the comments urged that the Guides be amended as the petitioners have requested.[19] The Commission has determined to revise the Guides because, as presently written, Guide 6 and the definition of the term "Nursery-grown stock" do not allow consumers to distinguish between plants that were propagated in nurseries and those that were collected from the wild state and then grown in a nursery for a full growing season. Under the present Guides, both kinds of plants may be designated as "nursery-grown," which may inadvertently mislead consumers about the origin of the plants. When the Guides were issued there may have been no deception involved in so combining nursery-propagated and wild-gathered-but-nursery-cultivated plants in a single category called "nursery-grown stock." The Commission now, however, knows there are substantial numbers of consumers opposed to buying any wild-collected plants because they believe that such collection processes are endangering the survival of various plant species and damaging the environment. To them, a failure to disclose that plants were originally collected from the wild would be an omission of material fact. The industry itself (AAN) appears to concur in this view. Accordingly, the Commission's original interpretation of Section 5(a) of the FTC Act as it pertains to this issue is being revised to reflect changes in what is material to consumers when purchasing plants.

The amendments proposed by AAN and the petitioners would permit only those plants actually propagated in nurseries to be exempt from the Guides' wild-origin disclosure requirement. Those sellers who have lawfully collected plants from the wild will have to disclose this fact, even if the plants have later been grown in a nursery for a full growing season. Sellers will, however, be free to add to the wild-origin disclosure a statement that the plant has been grown in a nursery for a full growing season, if they wish. By defining what is meant by "propagated" and "propagation," the proposed amendments also will clarify that it is only the plants being offered for sale, not those from which they are descended, that are subject to the Guides' disclosure requirement.

The Commission, however, has concluded that the words "are recognized and" that the petitioners included in their proposed amendment to Guide 6 are neither necessary nor helpful and therefore has omitted them. The Commission also is using slightly revised wording for the two proposed new definitions for the Guides so that: (1) Each definition consists of just one sentence; (2) the two terms being defined are for words actually used in the Guides rather than variants of them (*i.e.*, define "nursery-propagated" rather than "nursery-propagated stock" and "propagated" rather than

[11] WAN, #001, 1; RLK, #003, 1; SMS, #004, 1; JLF, #005, 1; EMcM, #007, 1; CSW, #008, 1–2; ADL, #010, 1; WLM, #035, 1–36; DCMcC, #012, 1–2; TM, #014, 1; SP, #016, 1; ANC, #021, 1; GCJ, #023, 1; RB, #024, 1; NP, #025, 1; CJA, #026, 1; LHH, #027, 1; SS, #028, 1; SLW, #029, 1; KPM, #031, 1; CT, #033, 1; GH, #034, 1–2; MEM, #036, 1; ADL, #037, 1.

[12] SW, #017, 1; PS, #020, 1–2; MO, #022, 1–2; JMcA, #030, 1.

[13] MO, #022, 1.

[14] KK, #009, 1–3; ZEE, #013, 1–3; TD, #018, 1–5; WLM, #035, 1–36.

[15] KK, #009, 2. See also TD, #018, 2–3.

[16] PS, #020, 1.

[17] WLM, #035, 1–2.

[18] Although it did not respond to particular questions, the United States Department of the Interior stated in its comment its desire to "encourage the Federal Trade Commission to continue 16 CFR part 18—Guides for the Nursery Industry." *Ibid.*, 2.

[19] The Notice soliciting comments on the Guides (58 FR 16139, March 25, 1993) quoted both the petitioners' general request that Guide 6 be amended and the specific amendment proposals that AAN requested and that the petitioners later supported.

'propagation"); and (3) the definitions do not use a word that is itself part of the term being defined (*i.e.*, do not use the word "propagated" in the definition of the term "nursery-propagated").

Lastly, the Commission is revising §§ 18.1(a), 18.2(a)–(b), 18.3(a), 18.4(a)–(b), 18.5, 18.6, 18.7(a)–(b), and 18.8(a)–(b) of the Guides. Specifically, the Commission is deleting from the Guides the expressions "it is an unfair trade practice" and "has the capacity and tendency or effect of deceiving purchasers" that the Commission no longer uses in its orders, rules or guides. The Commission is bringing these Guides up to date by substituting the language "it is an unfair or deceptive act or practice" and "misrepresents directly or by implication." *See* the Commission's 1983 Statement on Deception found in the appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Unfair or deceptive acts or practices.

Text of Amendments

For the reasons set forth in the preamble, 16 CFR Part 18 is amended as follows:

PART 18—GUIDES FOR THE NURSERY INDUSTRY

1. The authority citation for part 18 is revised to read as follows:

Authority: Secs. 5, 6 FTC Act; 38 Stat. 719, 721; 15 U.S.C. 45, 46.

2. Section 18.0 is amended by removing the paragraph Nursery-grown stock. and by adding the following definitions:

§ 18.0 Definitions.

* * * * *

Nursery-propagated. Reproduced and grown under cultivation, including reproduced and grown under cultivation from plants, seeds or cuttings lawfully collected from the wild state.

Propagated. Reproduced from seeds, cuttings, callus or other plant tissue, spores or other propagules under a controlled environment that is intensely manipulated by human intervention for the purpose of producing selected species or hybrids.

3. Section 18.1 is amended by revising paragraph (a) to read as follows:

§ 18.1 Deception (general).

(a) It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products by any method or under any circumstance or condition that misrepresents directly or by implication to purchasers or prospective purchasers the products with respect to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or any other material aspect of the industry product.

* * * * *

4. Section 18.2 is amended by revising paragraphs (a) and (b)(1) and (2) to read as follows:

§ 18.2 Deception through use of names.

(a) In the sale, offering for sale, or distribution of an industry product, it is an unfair or deceptive act or practice for any industry member to use a name for such product that misrepresents directly or by implication to purchasers or prospective purchasers its true identity.

(b) Subject to the foregoing:

(1) When an industry product has a generally recognized and well-established common name, it is proper to use such name as a designation therefor, either alone or in conjunction with the correct botanical name of the product.

(2) When an industry product has a generally recognized and well-established common name, it is an unfair or deceptive act or practice for an industry member to adopt and use a new name for the product unless such new name is immediately accompanied by the generally recognized and well-established common name, or by the correct botanical name, or by a description of the nature and properties of the product which is of sufficient detail to prevent confusion and deception of purchasers or prospective purchasers as to the true identity of the product.

* * * * *

5. Section 18.3 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 18.3 Substitution of products.

With respect to industry products offered for sale by an industry member, it is an unfair or deceptive act or practice for any member of the industry:

(a) To ship or deliver industry products which do not conform to representations made prior to securing the order or to specifications upon which the sale is consummated, without advising the purchaser of the substitution and obtaining the purchaser's consent thereto prior to making shipment or delivery, where failure to advise would be misleading to purchasers; or

* * * * *

6. Section 18.4 is amended by revising paragraphs (a) and (b) to read as follows.

§ 18.4 Size and grade designations.

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for an industry member to use any term, designation, number, letter, mark, or symbol as a size or grade designation for any industry product in a manner or under any circumstance that misrepresents directly or by implication to purchasers or prospective purchasers the actual size or grade of such products.

(b) Under this section industry members offering lining-out stock for sale shall specify conspicuously and accurately the size and age of such stock when failure to do so may misrepresent directly or by implication such stock to purchasers or prospective purchasers.

* * * * *

7. Section 18.5 is amended by revising the introductory text to read as follows:

§ 18.5 Deception as to blooming, fruiting, or growing ability.

In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for any industry member to misrepresent directly or by implication to purchasers or prospective purchasers the ability of such products:

* * * * *

8. Section 18.6 is revised to read as follows:

§ 18.6 Plants collected from the wild state.

It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state; *provided, however,* that plants propagated in nurseries from plants lawfully collected from the wild state may be designated as "nursery-propagated." [Guide 6]

9. Section 18.7 is revised to read as follows:

§ 18.7 Misrepresentation as to character of business.

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for any industry member to represent itself directly or by implication to be a grower or propagator of such products, or any portion thereof, or to have any other experience or qualification either relating to the growing or propagation of such products or enabling the industry

member to be of assistance to purchasers or prospective purchasers in the selection by them of the kinds or types of products, or the placement thereof, when such is not the fact, or in any other manner to misrepresent directly or by implication the character, nature, or extent of the industry member's business.

Note: Among practices subject to the inhibitions of this section is a representation by an industry member to the effect that he is a landscape architect when his training, experience, and knowledge do not qualify him for such representation.

(b) It is also an unfair or deceptive act or practice for an industry member to use the word "guild," "club," "association," "council," "society," "foundation," or any other word of similar import or meaning, as part of a trade name, or otherwise, in such a manner or under such circumstances as to indicate or imply that its business is other than a commercial enterprise operated for profit, unless such be true in fact, or so as to deceive purchasers or prospective purchasers in any other material respect. [Guide 7]

10. Section 18.8 is revised to read as follows:

§ 18.8 Deception as to origin or source of industry products.

(a) It is an unfair or deceptive act or practice to sell, offer for sale, or advertise an industry product by misrepresenting directly or by implication the origin or source of such product to purchasers or prospective purchasers (*e.g.*, by use of the term "Holland" to describe bulbs grown in the U.S.A.); *provided, however,* that when a plant has an accepted common name that incorporates a geographical term and such term has lost its geographical significance as so used, the mere use of such common names does not constitute a misrepresentation as to source or origin (*e.g.*, "Colorado Blue Spruce," "Arizona Cypress," "Black Hills Spruce," "California Privet," "Japanese Barberry," *etc.*).

(b) It is also an unfair or deceptive act or practice to advertise, sell, or offer for sale an industry product of foreign origin without adequate and non-deceptive disclosure of the name of the foreign country from which it came, where the failure to make such disclosure would be misleading to purchasers or prospective purchasers. [Guide 8]

By direction of the Commission, Commissioner Varney not participating.

Donald S. Clark,

Secretary.

[FR Doc. 94–30706 Filed 12–13–94; 8:45 am]

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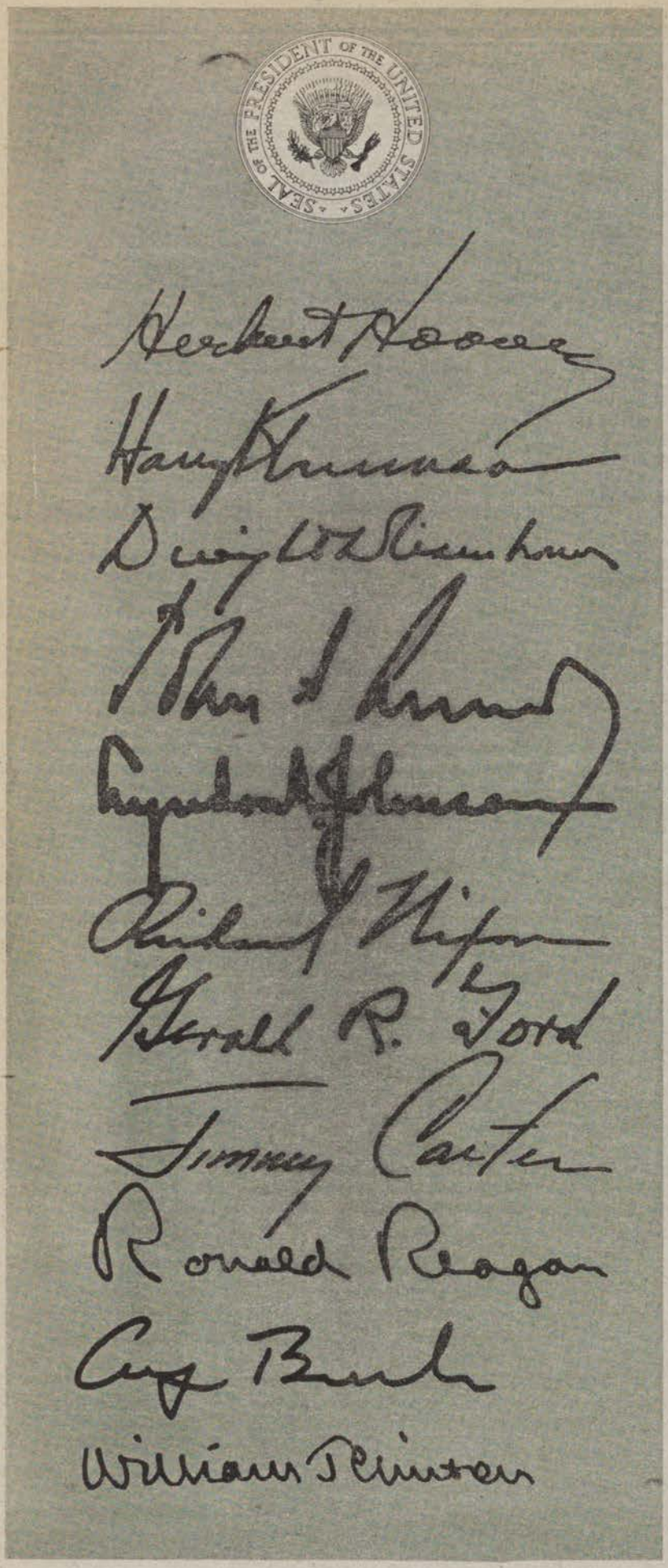
A cumulative list of Public Laws for the second session of the 103d Congress will be published in Part II of the **Federal Register** on Monday, December 19, 1994.



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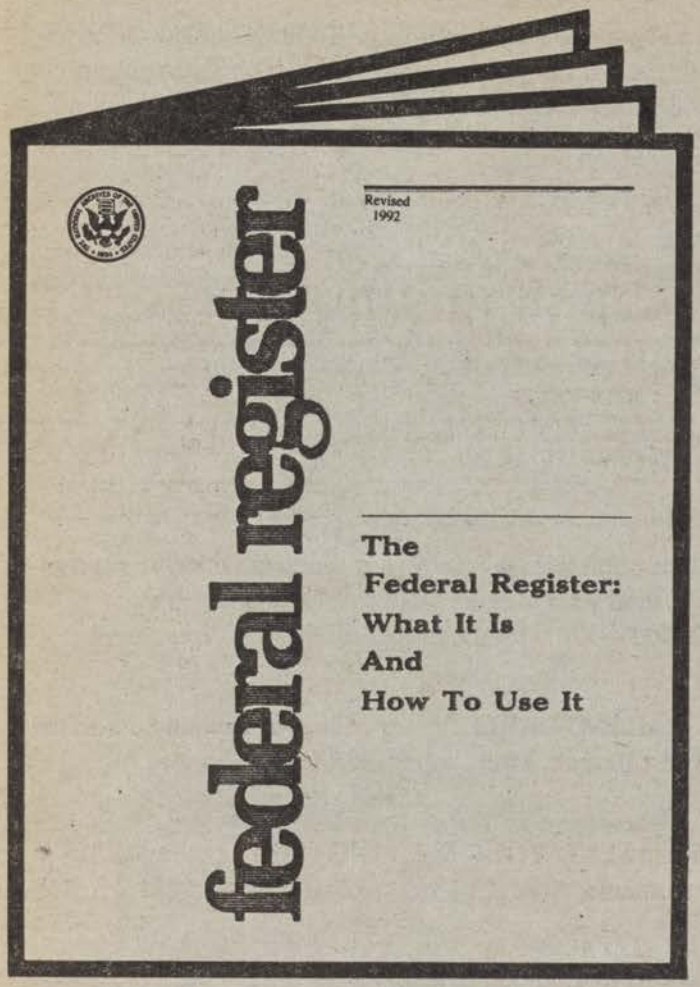

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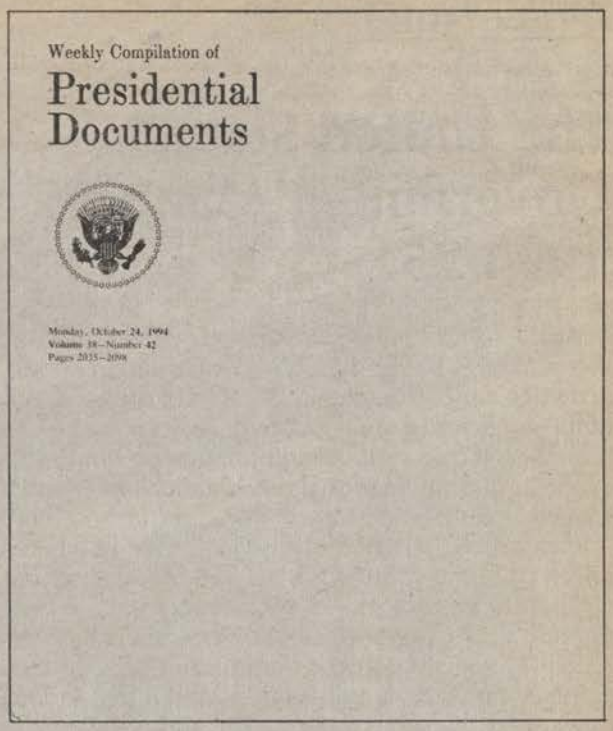

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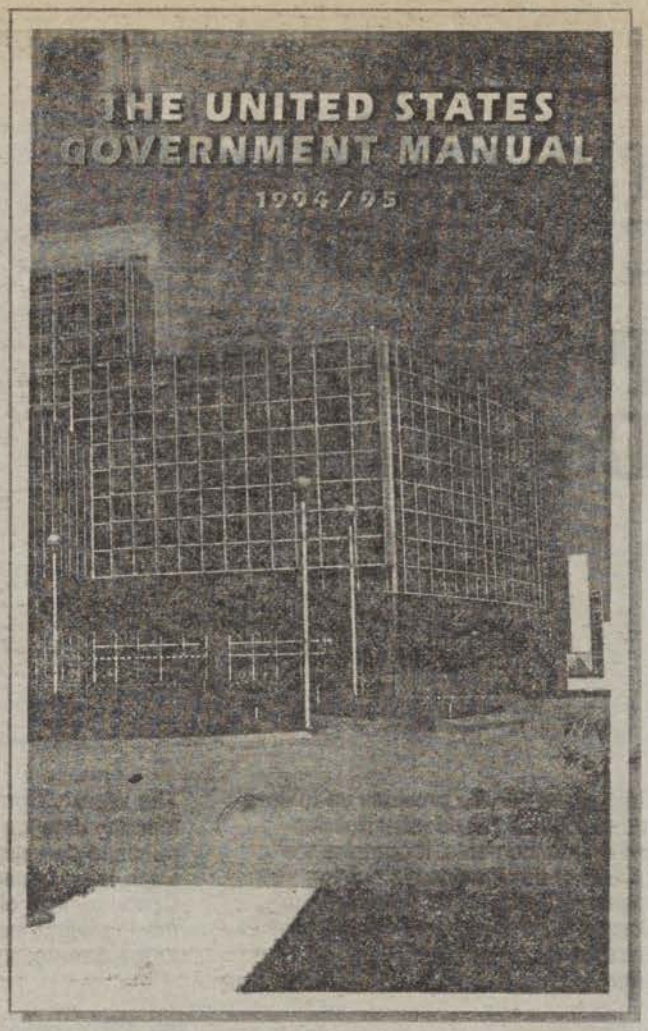

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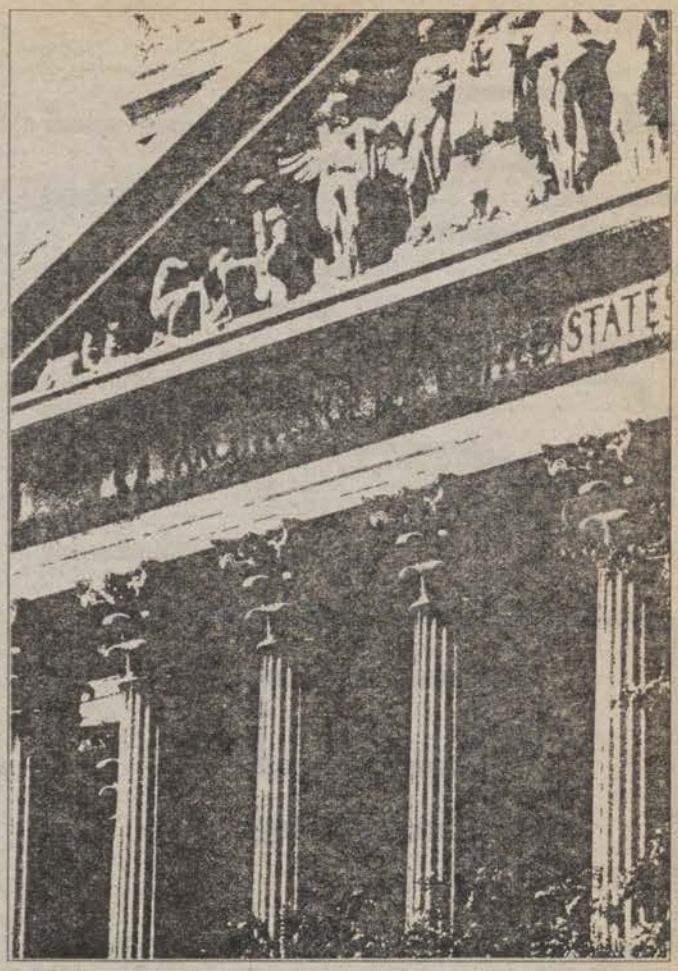

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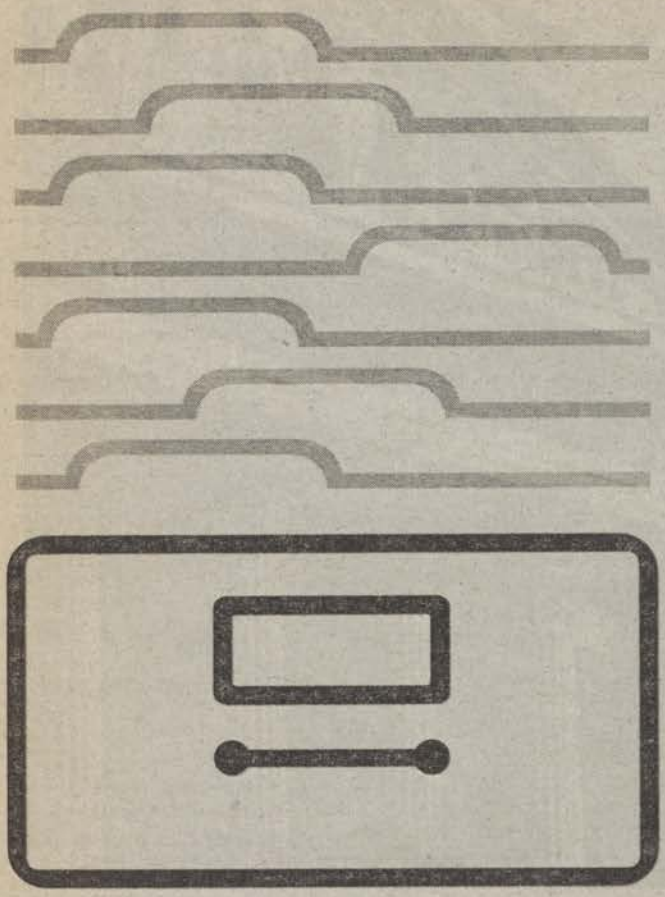

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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